

Staff Report 18

APPLICANT:

Liberty Utilities (CalPeco Electric) LLC

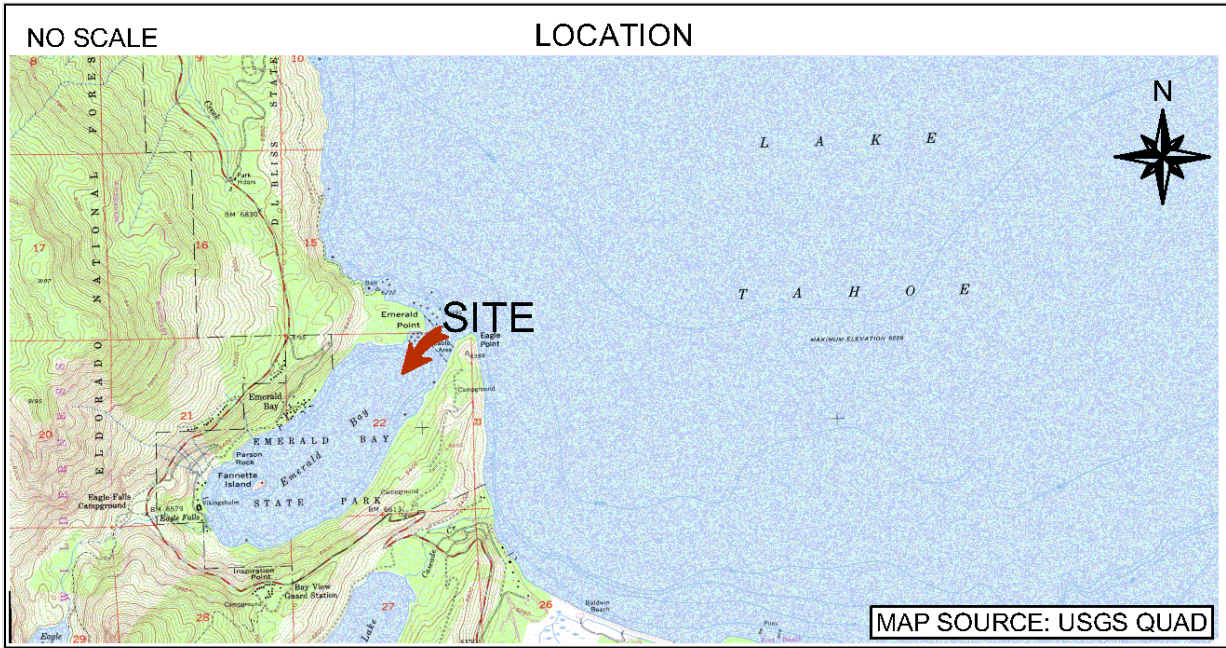
PROPOSED ACTION:

Issuance of a General Lease – Right-of-Way Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to Assessor's Parcel Numbers 018-041-004 and 018-060-005, crossing Emerald Bay, El Dorado County (as shown in Figure 1).

Figure 1. Location

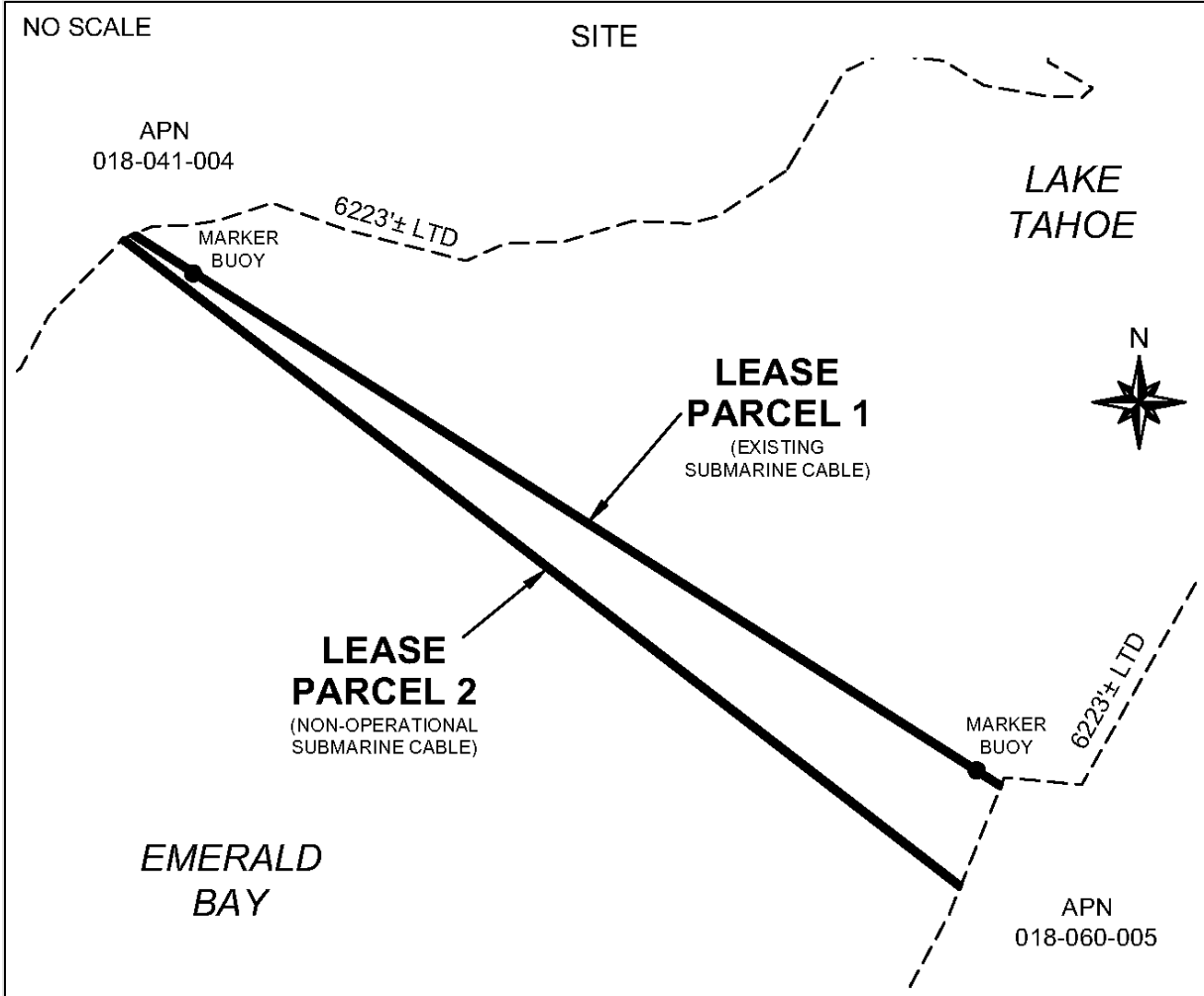


AUTHORIZED USE:

Use and maintenance of one existing submarine electrical power cable and one nonoperational submarine electrical power cable previously authorized by the

Commission, and two existing marker buoys not previously authorized by the Commission (as shown in Figure 2).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

TERM:

20 years, beginning December 1, 2022.

CONSIDERATION:

\$1,065 per year, with an annual Consumer Price Index adjustment, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$3,000,000 per occurrence.
- Surety bond (or similar security) in an amount of \$2,000,000.
- Lessee expressly acknowledges that a permit from the Tahoe Regional Planning Agency (TRPA) is required for the Authorized Improvements and failure to obtain a permit from TRPA and maintain compliance with that permit may result in TRPA imposing civil penalties and will constitute a breach of this lease.
- Lessee shall not store any personal items or construct any improvements in the Public Trust easement which may impair the public's right of access for navigation, fishing, and public trust consistent recreational uses.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On June 18, 2002, the Commission authorized a 20-year General Lease – Right-of-Way Use to Sierra Pacific Power Company, for use and maintenance of an existing submerged electric transmission power cable ([Item 11, June 18, 2002](#)). On August 24, 2006, the Commission authorized an amendment of lease, for the retention of the existing 3-inch-diameter inoperable submarine power cable which was placed into caretaker status and the installation of a new 4.5-inch-diameter submarine power cable, including revision of the land area and description and modification of rent from \$549 per year to \$1,038 per year ([Item 19, August 24, 2006](#)). On June 23, 2011, the Commission authorized an assignment of lease from Sierra Pacific Power Company to California Pacific Electric Company LLC ([Item 64, June 23, 2011](#)). In 2013, the Lessee amended its business name to Liberty Utilities (CalPeco Electric) LLC. On December 2, 2013, staff performed a rent review as directed by lease terms and conditions. That resulted in a modification of rent from \$1,038 per year to \$1,185 per year, effective December 1, 2013 ([Item 61, December 2, 2013](#)). On November 29, 2017, staff performed a rent review as directed by lease terms and conditions. This resulted in a modification of rent from \$1,185 per year to \$1,290 per year, effective December 1, 2017 ([Item 19, November 29, 2017](#)).

In August 2021, the lessee requested a Letter of Non-Objection from Commission staff, in order to make emergency repairs to the operational cable to sustain operations to its customers which include local fire departments. On August 25,

2021, the Commission issued a Letter of Non-Objection for such repairs to the existing 4.5-inch-diameter 14.4-kilowatt submarine electrical power cable authorized under the lease. The repairs included armoring the cable with cast-iron protectors and installing two marker buoys, along with signage to enhance public safety. The work was completed before January 12, 2022. The subject lease expired on November 30, 2022.

The Applicant is applying for a General Lease – Right-of-Way Use, for use and maintenance of one existing submarine electrical power cable, one nonoperational submarine electrical power cable previously authorized by the Commission, and two existing marker buoys not previously authorized by the Commission, in Emerald Bay, El Dorado County. On December 8, 2021, the Applicant was issued a permit by TRPA (Permit Number ERSP2021-1641).

The subject improvements are privately owned and maintained by the Applicant. Based on the application package and Commission records, the submarine electric cables have existed at this location for many years. The buried cables do not impair public recreation or enjoyment of state resources, and do not impede Public Trust uses. The nonoperational cable does not contain lead and therefore presents no known water contamination issue. The Applicant will be responsible for monitoring the cables as directed by lease terms and conditions.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 20-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land and restore the lease premises to their original condition. The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for use of the public land involved.

Staff recommends issuance of a new lease to Applicant beginning December 1, 2022, to coincide with the prior lease expiration date and prevent any gap in liability coverage. The new lease will require the Applicant to indemnify the State for the entire lease term, so the State will be fully protected.

CLIMATE CHANGE:

Climate change significantly affects inland non-tidal lakes such as Lake Tahoe. The frequency and severity of natural disasters like flooding, wildfire, drought, extreme heat, and storms are increasing throughout the state of California, including the Sierra Nevada mountains, and will continue to accelerate through the end of the

century. Structures along the shores of inland lakes are particularly vulnerable to the more frequent and extreme weather events and shifts in seasonal characteristics.

According to [California's Fourth Climate Change Assessment](#), released in 2018, the most significant impacts of climate change in the Sierra Nevada Region are more intense heat, precipitation extremes, declining snowpacks, and changes in streamflow timing. The long-term warming trend will lead to warmer and shorter winters, and longer and dryer summers. Successive dry and warm winters are resulting in minimal snowpack, increased winter streamflows and floods, and decreased spring and summer runoff. Prolonged low lake levels will become normal. Low lake level conditions can create more expansive beaches and increased shoreline access in dry months.

Dry winters will be punctuated with exceedingly wet years where prolonged and excessive precipitation can produce flash floods. High precipitation in these years will result in higher lake levels, causing beaches to narrow and reducing public access. Extra saturation of the soil can increase erosion, especially following intense wildfire seasons. Surface runoff water may carry more sediment into the lake, adversely impacting water quality and clarity.

Climate change may also lead to more intense and unpredictable storm events and winds. These storms may deviate from prevailing wind patterns for the region. These winds can accelerate shoreline erosion in some areas or cause erosion in areas not typically subject to erosion. Additionally, these winds can increase wave damage on structures along the lake.

The electrical power cables and marker buoys authorized under this lease may require more frequent inspection and maintenance to ensure they are not displaced or damaged during storm events.

CONCLUSION:

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the

application, the Applicant may be required to remove the improvements and return the premises to their original condition. The lessee has no right to a new lease or to renewal of any previous lease.

2. This action is consistent with the “Leading Climate Activism” and “Meeting Evolving Public Trust Needs” Strategic Focus Areas of the Commission’s 2021-2025 Strategic Plan.
3. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

PUBLIC TRUST AND STATE’S BEST INTERESTS:

Find that the proposed activity will not substantially impair the public rights to navigation or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Right-of-Way Use to the Applicant beginning December 1, 2022, for a term of 20 years, for the use and maintenance of one existing submarine electrical power cable, one nonoperational submarine electrical power cable, and two existing marker buoys; annual rent in the amount of \$1,065, with an annual Consumer Price Index adjustment; liability insurance in an

amount no less than \$3,000,000; surety bond (or similar security) in an amount of \$2,000,000.