

**TAHOE MOUNTAIN CELL TOWER SHORT-TERM LICENSE AGREEMENT AND  
PERMANENT EASEMENTS**

**Recommended Action:** Adopt Resolution 21-06-04 (Attachment 1) authorizing staff to execute:

- 1) a short-term license agreement with New Cingular Wireless (AT&T) allowing use of an existing road that crosses Conservancy property (El Dorado County Assessment Numbers (AN) 032-050-020, 032-050-022, and 032-050-069) (Existing Road) for installation of fiber optics and a powerline, and for access to USDA Forest Service Lake Tahoe Basin Management Unit (LTBMU) land for construction of a cell tower and supporting facilities;
- 2) a permanent 20-foot-wide easement with AT&T along the Existing Road; and
- 3) a permanent 20-foot-wide utility easement with Liberty Utilities along the Existing Road.

**Executive Summary:** The recommended action will allow AT&T and Liberty Utilities to install and maintain underground utility infrastructure on the Existing Road that crosses three Conservancy-owned parcels and access the cell tower project site on LTBMU land at the summit of Tahoe Mountain (Project Site). Under a lease with the LTBMU, AT&T will construct and maintain a 117-foot-tall cell tower and supporting facilities, including an equipment shelter, emergency generator, and propane tank, to provide hi-speed broadband internet and cellular service to the community and public safety agencies. A short-term license agreement is required for AT&T to access the Project Site during construction of the cell tower and to install underground utilities. AT&T will install underground fiber optics, and acting under AT&T's license, Liberty Utilities will install a powerline in the Existing Road. AT&T also needs a permanent easement through the Conservancy-owned parcels to access and maintain the cell tower and fiber optic lines once construction is complete. After installation of the powerline, Liberty Utilities will require a permanent utility easement along the Existing Road through the Conservancy-owned parcels to access and maintain the powerline. As a condition of the license agreement and easements, AT&T and Liberty Utilities will have maintenance responsibilities for their usage of the Conservancy's portion of the road. The Conservancy regularly provides short-term license agreements and easements to access Conservancy land to help implement public works and public safety functions. The recommended action helps achieve Conservancy's Strategic Plan Goal 1, which tasks the Conservancy

with implementing and developing innovative financial partnerships and interagency agreements to manage its lands and protect communities.

**Location:** The Existing Road is located off Deveron Way in El Dorado County, approximately 0.75 miles east of Fallen Leaf Lake (Attachment 2), and extends to the top of Tahoe Mountain (Attachment 3). The cell tower will be located on LTBMU land (AN 032-040-001). The road crosses multiple land ownerships, including Conservancy parcels ANs 032-050-020, 032-050-022, and 032-050-069.

**Fiscal Summary:** No funding is required. Processing the license agreement and easements requires incidental staff costs.

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## Overview

### History

The Conservancy acquired the three parcels in 1987 with Lake Tahoe Acquisition Bond Act funding. The Existing Road existed prior to the Conservancy's acquisition of the parcels and crosses three Conservancy-owned parcels, several LTBMU parcels, and privately owned parcels, leading to the summit of Tahoe Mountain. The Existing Road provides access to the otherwise landlocked parcels, and is an access route to the City of South Lake Tahoe airport light beacon, also located at the Project Site. Currently, there are no utilities or other improvements along the unpaved Existing Road.

Epic Wireless, a consultant for AT&T, contacted Conservancy staff in spring 2020 requesting use of the Existing Road. AT&T plans to construct a new 117-foot-tall cell tower at the Project Site. The proposed supporting facilities on the Project Site consist of one 12-foot-tall equipment shelter, one emergency generator, and a 1,000-gallon propane tank.

Along the Existing Road, AT&T will dig a five-foot-deep and two-foot-wide trench, lay conduit and lines for fiberoptic, and backfill the trench. AT&T will install pull boxes along the length of the utility corridor providing future maintenance access without requiring digging. AT&T will not install pull boxes on Conservancy property. Liberty Utilities will install a power line in the conduit to service the cell tower.

The LTBMU and private owners have granted access to AT&T for the portions of the road crossing their respective parcels. In October 2020, the LTBMU completed review and approval of the cell tower project. In January 2021, the Tahoe Regional Planning Agency (TRPA) Hearings Officer approved permitting of the cell tower. Approval by the Conservancy Board (Board) is the final agency approval required for AT&T and Liberty Utilities to access the Project Site.

## **Detailed Description of Recommended Action**

### **1. Major Elements and/or Steps of the Recommended Action**

Staff recommends one license agreement with AT&T and two permanent 20-foot-wide easements, one with AT&T and one with Liberty Utilities.

The short-term license agreement with AT&T will cover access to the Project Site during the construction phase of the cell tower and will allow for installation of the fiber optics and powerline along the Existing Road. AT&T is the project lead and will be responsible for all activities related to the construction of the project, including Liberty Utilities' installation of the power line along the Existing Road. Under the license agreement, AT&T will be responsible for all partners, contractors, sublessees, and any other authorized party, including Liberty Utilities. AT&T is also responsible for road maintenance and repair during the term of the license associated with their use of the Existing Road. Staff will monitor the project for adherence to the license agreement.

The permanent easement with AT&T will allow AT&T (including its partners, contractors, and sublessees) to access and maintain its facilities along the Existing Road and at the Project Site in perpetuity. AT&T anticipates needing quarterly access to the Project Site to maintain the cell tower and auxiliary facilities. Maintenance of the fiber optic line within the Existing Road is anticipated to be minimal, particularly because the pull boxes are not located on Conservancy-owned parcels. The easement will include maintenance obligations associated with AT&T's use of the Existing Road that are consistent with easements and licenses provided to other private entities and government organizations to access long-term infrastructure.

The permanent utility easement with Liberty Utilities will allow Liberty Utilities to access and maintain its facilities along the Existing Road in perpetuity. The easement agreement will include maintenance obligations associated with Liberty Utilities' use of the Existing Road that are consistent with easements and licenses provided to other private entities and government organizations to access long-term infrastructure.

### **2. Overall Context and Benefits**

Constructing a cell tower at one of the highest points of elevation in the South Lake Tahoe area will provide wireless hi-speed broadband internet and cellular service to the nearby residences and public roadways. The Tahoe Prosperity Center and cell phone communication companies identified Tahoe Mountain as a critical location to service the surrounding community.

The facilities include FirstNet technology, which provides a dedicated highspeed wireless network to all public safety agencies during emergencies. Wireless communication networks become overloaded and inaccessible during times of heavy public use (e.g., in emergencies and during large events). Without FirstNet, public safety users are treated the same as any other user, and communications can be limited due to capacity issues.

AT&T is also improving portions of the Existing Road on LTBMU and private land to provide sufficient turning radius for emergency, construction, and maintenance vehicles accessing the Project Site, and to improve road integrity and drainage. These modifications to the Existing Road will contribute to attaining Total Maximum Daily Load (TMDL) thresholds by achieving proper road grades for capturing and reducing storm water runoff.

### 3. Schedule for the Recommended Action

Staff has negotiated the short-term license agreement and anticipates execution upon Board approval. Staff will negotiate the easements in Winter 2021/2022 and execute the easements prior to the expiration of the license agreement.

### **Financing**

No Conservancy funding is required for this action. AT&T will compensate the Conservancy for appraisal costs and the fair-market value of the easements. Processing the license agreement and easements requires incidental staff costs.

## **Authority**

### **Consistency with the Conservancy's Enabling Legislation**

The recommended action is consistent with the Conservancy's enabling legislation. Specifically, Government Code section 66907.9 authorizes the Conservancy to initiate, negotiate, and participate in agreements for the management of land under its ownership or control with corporate entities.

### **Consistency with the Conservancy's Strategic Plan**

The recommended action helps achieve the Conservancy's Strategic Plan Goal 1, which tasks the Conservancy to implement and develop innovative financial partnerships and interagency agreements to manage its lands and protect communities.

### **Consistency with the Conservancy's Program Guidelines**

The recommended action is consistent with the Conservancy's Special Use Guidelines. The proposed license agreement and easements are allowed uses of the road and Conservancy land.

## **Compliance with the California Environmental Quality Act**

Pursuant to the California Environmental Quality Act (CEQA) Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.), certain classes of activities are statutorily exempt from CEQA or are exempt because they have been determined by the Secretary of the California Natural Resources Agency to have no significant effect on the environment.

Pursuant to Public Resources Code sections 21001(f) and 21082, the Conservancy has also adopted regulations to implement, interpret, and make specific the provisions of CEQA. (Cal. Code Regs., tit. 14, § 12100 et seq.) Staff has evaluated AT&T's and Liberty Utilities' proposed activities associated with the license agreement and easements and found them to be exempt under CEQA. The construction of the cell tower and associated facilities qualify for categorical exemption under CEQA Guidelines, sections 15303 (New Construction or Conversion of Small Structures) and the road improvement and associated grading activities qualify for categorical exemption under section 15304 (Minor Alterations to Land). Staff prepared a notice of exemption (NOE) (Attachment 4). If the Board approves the license agreement and easements, staff will file the NOE with the State Clearinghouse pursuant to CEQA Guidelines, section 15062.

### **List of Attachments**

Attachment 1 – Resolution 21-06-04

Attachment 2 – Location Map

Attachment 3 – Project Site Map

Attachment 4 – NOE

- Exhibit A – NOE Map

### **Conservancy Staff Contact**

Nick Meyer, Associate Environmental Planner

[nick.meyer@tahoe.ca.gov](mailto:nick.meyer@tahoe.ca.gov)