

LIBERTY UTILITIES FENCE SHORT-TERM LICENSE AGREEMENT AND PERMANENT EASEMENT

Recommended Action: Adopt Resolution 22-03-03 (Attachment 1) authorizing staff to execute:

- 1) A short-term license agreement with Liberty Utilities (Liberty) allowing construction and maintenance of a fence that encloses a portion of California Tahoe Conservancy (Conservancy) property (El Dorado County Assessment Number (AN) 029-240-001); and
- 2) A permanent easement with Liberty for the fence and the land it encloses.

Executive Summary: The recommended action will allow Liberty to install and maintain a nine-foot-tall fence, constructed of concrete blocks, that encloses an electric substation and a portion of Conservancy-owned property. The fence will replace an existing fence and extend further into the Conservancy property to provide Liberty with adequate space to comply with the National Electrical Safety Code ensuring public safety. A short-term license agreement is required for Liberty to access and construct the fence. Liberty also needs a permanent easement through the Conservancy property to access and maintain the fence once construction is complete. The Conservancy regularly provides short-term license agreements and easements to access Conservancy lands to implement public works and safety functions. The recommended action helps achieve the 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 Liberty substation and fence are located just east of the intersection of Fern Road and Montreal Road in South Lake Tahoe (Attachment 2). The fence will be located on Conservancy property (AN 029-240-001).

Fiscal Summary: No funding is required. Processing the short-term license agreement and easement requires incidental staff costs. Liberty will compensate the Conservancy for appraisal costs and the fair market value of the easement.

Overview

History

The Conservancy acquired the subject property in 2000 as part of a larger, U.S. Highway 50 right-of-way land transfer between the Conservancy and California Department of Transportation (Caltrans). The property contains developable, non-sensitive land (Bailey classes 5 and 7). Liberty currently owns an existing six-foot-tall wood fence topped with barbed wire located roughly five feet onto the western boundary of the Conservancy's property. The purpose of the fence is to deter public access to an electric substation on the adjacent Liberty property (AN 029-240-005).

Liberty discovered that to be compliant with the National Electrical Safety Code (2017 NESC Section 110, Table 110-1 for 69kV voltage) it is required to have a fence roughly six feet farther into the Conservancy property (Attachment 3). Liberty installed the existing fence under an encroachment permit from Caltrans. The Conservancy is subject to the encroachment permit. However, the new fence alignment is outside of what is allowed by the existing permit and therefore an easement is needed for the expansion of the fence that Liberty intends to construct.

Detailed Description of Recommended Action

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

Staff recommends executing a short-term license agreement and a permanent easement with Liberty. The license agreement with Liberty will cover access to install and maintain the fence. Liberty is in the planning phase of this project and anticipates constructing the fence in summer 2023. Liberty plans to construct a new nine-foot-tall fence out of concrete blocks with barbed wire or razor wire at the top for scaling defense. Liberty will build the fence along a new alignment to extend beyond the existing fence on Conservancy property. The fenced area will be approximately 14 feet by 120 feet, encompassing about 1,740 square feet of the Conservancy property. Liberty will obtain all required permits prior to construction activities.

Under the license agreement, Liberty will be responsible for all contractors and any other authorized activities. The Conservancy will monitor the construction for adherence to the license agreement. The permanent easement with Liberty will allow Liberty (including its contractors) to access and maintain the fence in perpetuity. Fence maintenance is anticipated to be minimal, due to the nature of the construction materials. The easement will include maintenance obligations that are consistent with Conservancy easements and licenses provided to other private entities and government organizations to access long-term infrastructure.

2. Overall Context and Benefits

Constructing the fence will provide Liberty with the space to comply with the National Electrical Safety Code and ensure public safety. The existing fence does not comply with the current National Electrical Safety Code standards.

Liberty needs Conservancy approval prior to applying for a building permit with the City of South Lake Tahoe (City) and the Tahoe Regional Planning Agency (TRPA). Visual and scenic matters will be addressed during the City and TRPA permit process. Liberty will be required to comply with all City and TRPA permit conditions. Depending on the outcome of the permit process, the Conservancy may include additional scenic and/or construction control measures in the license agreement.

3. Schedule for the Recommended Action

Staff will negotiate the short-term license agreement and anticipates execution in spring 2023, prior to fence construction in summer 2023. Staff will negotiate the easement in summer 2023 and execute the easement prior to the expiration of the license agreement.

Financing

No Conservancy funding is required for this action. Liberty will compensate the Conservancy for appraisal costs and for the fair market value of the easement. Processing the short-term license agreement and easement 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 easement are consistent with the existing use of 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 Liberty's proposed activities associated with the license agreement and easement and found all activities to be exempt under CEQA. The construction of a fence qualifies for a categorical exemption under CEQA Guidelines, section 15302 (Replacement or Reconstruction) because it consists of replacing an existing fence with a new fence where it will have substantially the same purpose and capacity as the existing fence. Staff prepared a notice of exemption (NOE) (Attachment 4). If the Board approves the license agreement and easement, staff will file the NOE with the State Clearinghouse pursuant to CEQA Guidelines, section 15062.

List of Attachments

- Attachment 1 – Resolution 22-03-03
- Attachment 2 – Location Map
- Attachment 3 – Project Map
- Attachment 4 – NOE
 - Exhibit A – NOE Map

Conservancy Staff Contact

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