

**CALENDAR ITEM
C22**

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10/13/16
W 26991
A. Franzoia

CONSIDERATION OF AN INDEMNIFICATION AGREEMENT

PARTIES:

CCO SoCal 1, LLC

California State Lands Commission

BACKGROUND:

On December 18, 2015, the Commission authorized Lease No. PRC 9301.9, a General Lease – Public Agency Use, to the County of Stanislaus (County) for a term of 25 years for the demolition and removal of an existing bridge and construction of a new bridge at Santa Fe Avenue on the Tuolumne River ([Calendar Item C81, December 18, 2015](#)). The new bridge will be constructed with approximately 50 feet of clearance from the river bottom to provide adequate clearance for recreational boats. Upon construction, CCO SoCal 1, LLC (CCO), will install video communication lines within two, 2-inch-diameter plastic conduits in the bridge.

CCO is an indirect subsidiary of Charter Communication Operating, LLC, and is managed by Charter Communications, Inc., and maintains a California Video Franchise Certificate, Franchise No. 0007, that includes Stanislaus County for the right to use County easements and rights-of-way adjoining the lease premises for the installation, operation, and maintenance of video lines and appurtenances for the public benefit. Consequently, Commission authorization of a separate lease with CCO for the video communication lines is not required.

The proposed Indemnification Agreement is intended to indemnify the State for any harm that may occur or arise from the installation, use, operation, and maintenance of the video lines on the new bridge.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, and 6301; California Code of Regulations, title 2, section 2000, subdivision (b).

CALENDAR ITEM NO. **C22** (CONT'D)

Public Trust and State's Best Interests Analysis:

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes that include, but are not limited to, waterborne commerce, navigation, fisheries, water-related recreation, visitor-serving amenities, habitat preservation, and open space. The Commission is the trustee of these sovereign lands within the bed of the Tuolumne River.

Commission staff and CCO have negotiated an Indemnification Agreement indemnifying the State for any harm that may occur or arise from the installation, use, operation, and maintenance of CCO video lines attached to the bridge structure. CCO agrees to indemnify the State, without limitation, for any claim or liability arising from the installation, use, operation, or maintenance of the CCO video lines and any CCO facilities or improvements located within the lease premises of Lease No. PRC 9301.9. CCO further agrees to promptly remove all facilities upon the earlier occurrence of either the termination or expiration of the lease or Franchise. All facilities removed from the bridge shall be at CCO's sole cost and expense. This proposed Indemnification Agreement is unlimited as to amount or duration, and it shall be binding upon and inure to the benefit of the parties, their successors, assigns and officers, agents, employees and representatives.

Based on a review of the proposed project design plans for the new bridge, Commission staff believes the CCO video lines are to be attached in a fashion that does not interfere, inhibit, or cause an unreasonable risk to public access or navigation on sovereign land.

Commission staff believes that the CCO video lines on the new bridge do not substantially interfere with the Public Trust needs and values in the area at this location at this time. Further, the proposed Indemnification Agreement will provide sufficient liability protection for the State.

For all the reasons above, Commission staff believes approval of the Indemnification Agreement is consistent with the common law Public Trust Doctrine and in the best interests of the State.

CALENDAR ITEM NO. **C22** (CONT'D)

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. Authorizing the Indemnification Agreement between the Commission and CCO is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed Indemnification Agreement will not substantially interfere with the public rights to navigation or the Public Trust needs and values at this location at this time, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

AUTHORIZATION:

Authorize the Indemnification Agreement, substantially in the form on file with the Commission, between the State Lands Commission and CCO SoCal 1, LLC, beginning October 13, 2016.

EXHIBIT A

W 26991

LAND DESCRIPTION

A parcel of submerged land situated in the bed of the Tuolumne River, lying adjacent to Section 32, Township 3 South, Range 10 East and Section 5, Township 4 South, Range 10 East, Mount Diablo Meridian, County of Stanislaus, State of California, and more particularly described as follows:

BEGINNING at Station 147+00 on the centerline of Santa Fe Avenue as shown on the survey of the Empire Bridge County Survey No. 1246; thence N 78° 10' 10" E, 80.00 feet to the northeasterly right-of-way line of Santa Fe Avenue; thence along said line and southerly prolongation thereof, S 11° 49' 50" E 750.00 feet; thence leaving said prolongation S 78° 10' 10" W, 130.00 feet to the southwesterly line of Santa Fe Avenue; thence along said line N 11° 49' 50" W 750.00 feet; thence leaving said line N 78° 10' 10" E, 50.00 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portions lying landward of low water marks of said Tuolumne River.

END DESCRIPTION

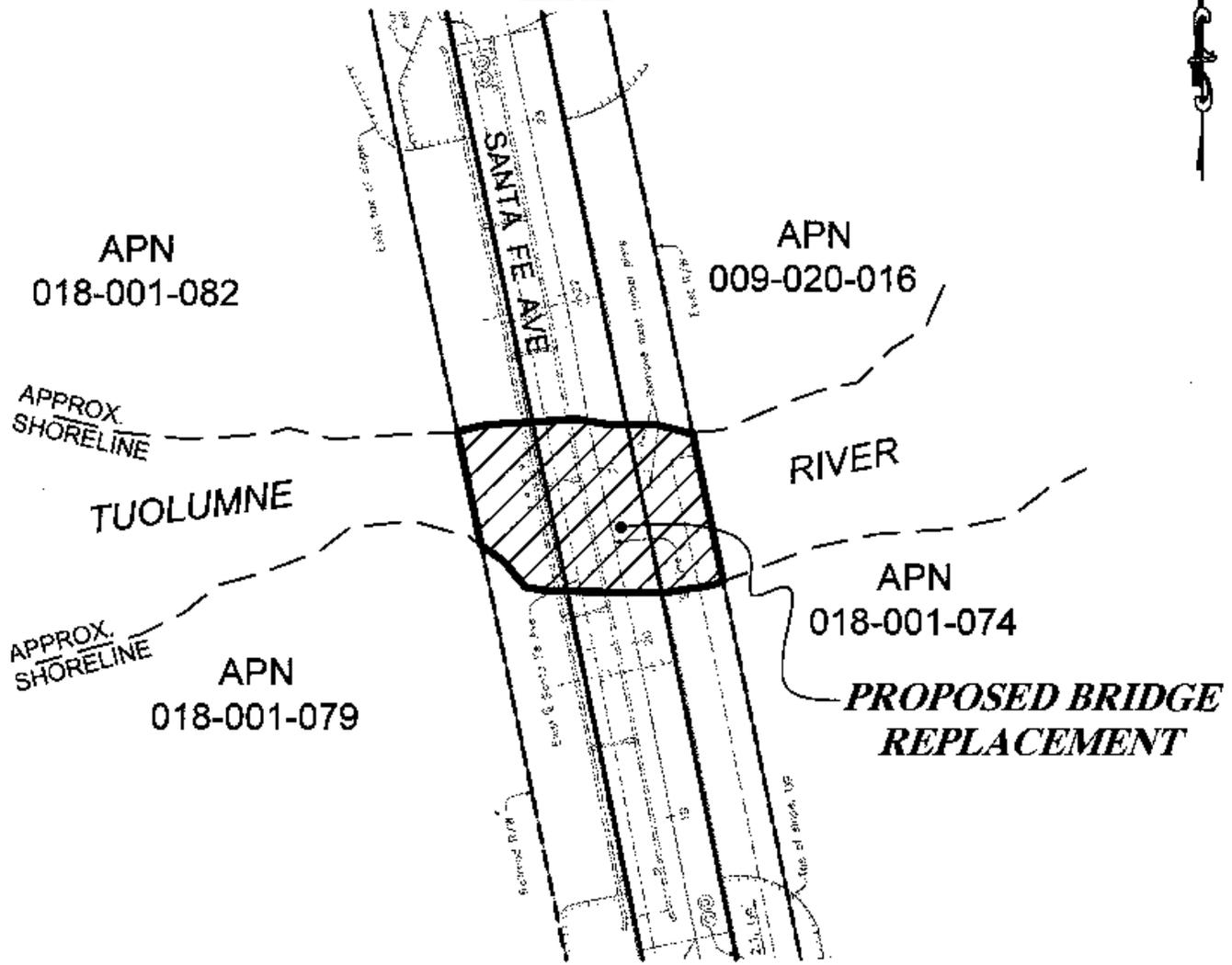
This description is based on Applicant provided design plans, by Stanislaus County Department of Public Works, Engineering and Operations Division, dated February 6, 2015, for a proposed replacement of the existing Santa Fe Avenue Bridge, together with any and all appurtenances pertaining thereto, to be built at a later date within the Lease time frame. This description is to be updated once final as-built plans are submitted.

Prepared 09/01/16 by the California State Lands Commission Boundary Unit



NO SCALE

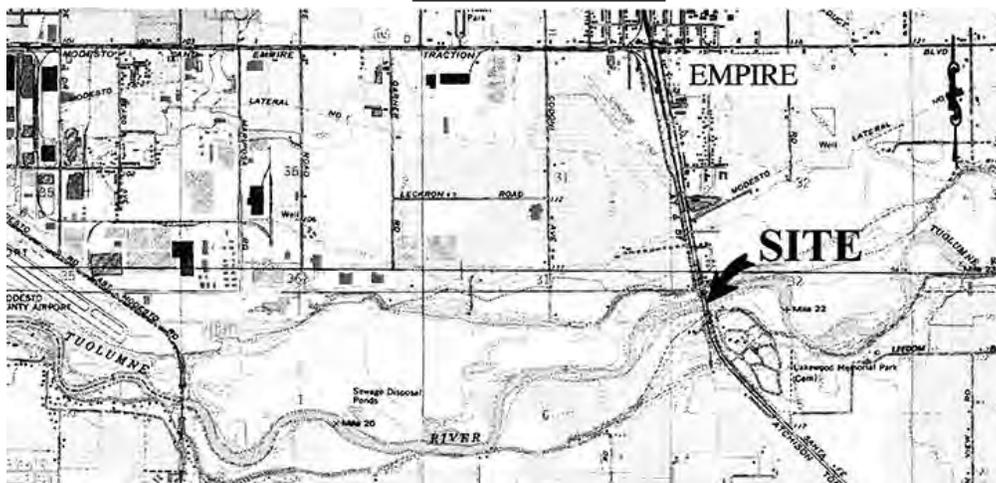
SITE



SANTA FE AVENUE BRIDGE AT TUOLUMNE RIVER

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

W 26991
 CCO SoCAL I, LLC
 APNs 018-001-074, -079, -082
 & 009-020-016
 GENERAL LEASE -
 PUBLIC AGENCY USE
 STANISLAUS COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.