
BRENT P. COLLINSON, ATTORNEY AT LAW

DATE: 7/16/2015
TO: BOARD OF DIRECTORS, TRUCUKEE TAHOE AIRPORT
DISTRICT
FROM: BRENT P. COLLINSON
RE: LIBERTY UTILITIES EASEMENT

Dear Board—An Agenda item for the July Board Meeting deals with selling an easement to Liberty Utilities. There are three different documents that need to be approved for this to go forward. The three documents are:

- Amendment to Grant of Conservation Easement;
- Agreement for Acquisition of Easement; and
- Grant of Easement.

Background: When the District acquired Waddle Ranch, it was in conjunction with the Truckee Donner Land Trust (“TDLT”), Placer County and other private and government entities. Although title to the property was initially deeded to TDLT, who then gave the Conservation Easement (“CE”) to Placer County, TDLT then deeded ownership of the property to the District and we took it subject to the CE, which could be enforced by both TDLT and Placer County.

One of the “restrictions” in the CE was that no further construction or improvements take place on the property. Arguably, this includes an expanded utility easement.

In the meantime, Liberty Utilities, which has an existing 25-foot wide easement for a utility line, desires to upgrade that line and needs an additional 15 feet of easement. As a public utility, they possess the power of eminent domain.

Before the District can grant the requested easement, notice (and approval) must be given to and received from TDLT. We have therefore been working with both TDLT, Placer County and Liberty Utilities on addressing these challenges, knowing that Liberty

7/16/2015

Utilities could commence an Eminent Domain action if the easement was not "sold" to them.

After negotiations between all of the parties, it was agreed that the District, TDLT and Placer County would agree to amend the CE to allow for this expanded easement to be created. Liberty also agreed to increase the compensation paid for the easement.

Therefore, the three documents to be approved are discussed below:

1. Agreement to Amend Conservation Easement. This is the agreement between the District, TDLT and Placer County that the CE can be and is amended so to allow the expanded utility easement to be granted. The recitals in that document also explain the background and how we got to this point.
2. Agreement for Acquisition of [Utility] Easement. This document sets forth the Agreement between the District and Liberty Utilities that we are selling them the additional 15 feet of easement so they will have a 40 foot wide easement.
3. Grant of Easement. This is the actual document transferring the additional 15 feet of easement.

One additional item to note is in regards to the compensation to be paid by Liberty Utilities. The amount to be paid is \$6,850, as determined by Johnson Perkins (on behalf of Liberty Utilities) and is determined based on the value of the easement IF the CE was not in place and the property could be developed.

However, per sections 19 and 20 of the CE, any eminent domain proceeds are to be divided 87% to TDLT and 13% to the District (after compensating either party for their reasonable expenses). This 87/13 division is based on the contributions to acquire the property: \$3,000,000 by the District and \$20,500,000 obtained by TDLT. It is unknown the amount of reasonable expenses incurred by TDLT and we are in the process of determining our reasonable expenses and will have that amount available at the Board Meeting.

It is therefore recommended that the Board approve the execution of each of these three documents, which can be done in one (or three) Motions.



BPC

Amendment to Conservation Easement

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Perry Norris
C/O Truckee Donner Land Trust
P.O. Box 8816
10069 West River Street
Truckee, CA 96162

AMENDMENT TO GRANT DEED OF CONSERVATION EASEMENT

This Amendment to the "Grant Deed of Conservation Easement" (this "Amendment") is entered into on this ___ day of _____, 2015, by and between TAHOE TRUCKEE AIRPORT DISTRICT, a California Airport District organized and existing pursuant to the provisions of California Public Utilities Code Sections 22001 and following ("TTAD" or "Grantor"), TRUCKEE DONNER LAND TRUST, a 501(c)(3) non-profit California Corporation ("TDLT" or "Grantee") and COUNTY OF PLACER, a political subdivision of the State of California ("Placer County" or "Original Grantee"), collectively referred to herein as the "Parties."

RECITALS:

- A. TTAD, TDLT and Placer County are parties to the "Grant Deed of Conservation Easement" dated for reference purposes as of October 26, 2007 (the "Conservation Easement"), which agreement was recorded in the Office of the Placer County Recorder on October 29, 2007, as Document No. 2007-0102420-00, and in the Office of the Nevada County Recorder on October 29, 2007, as Document No. 2007-0033300-00.
- B. The Conservation Easement was initially conveyed to Placer County, as original Grantee, over certain land owned by TDLT, as original Grantor, and as legally described in Exhibit 1 to the Conservation Easement (the "Property"), before mandatory transfer of fee title by TDLT, as original Grantor, to TTAD, as subsequent Grantor, and mandatory transfer of the Conservation Easement from Placer County, as original Grantee, to TDLT, as subsequent Grantee.
- C. The Conservation Easement recognizes that the Property possesses significant natural, ecological, and aesthetic values for conservation purposes as well as scenic, open space, and non-motorized recreational values which are of importance to all Parties, to the people of Placer County, and to the people of the State of California. These values further include, but are not limited to, wildlife

and plant resources of value as habitat, food sources and migratory routes; open space for scenic enjoyment of the general public; and public recreational access.

- D. The Conservation Easement recognizes certain Easement Purposes, including that all Parties intend the use of the Property to be managed and maintained in a manner that is consistent with the preservation, protection, and maintenance in perpetuity of the Conservation Values of the Property, and the enhancement of those Conservation Values, while allowing the continuation of certain compatible existing uses at the Property, subject to the terms of the Conservation Easement.
- E. The Conservation Easement provides that it may be modified through an Amendment executed by all Parties, provided that any Amendment shall enhance or be neutral with regard to the Easement Purposes.
- F. The Conservation Easement recognizes the possibility of condemnation by eminent domain, and provides that Parties shall cooperate in appropriate action at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, it being expressly agreed that the Conservation Easement constitutes a compensable property right.
- G. California Pacific Electric Company (d/b/a Liberty Utilities) (“Liberty”) currently holds a 25-foot wide easement across the southern portion of the Property bordering State Route 267 to accommodate its 60kV transmission line, which utility easement was in existence prior to execution of the Conservation Easement (the “Existing Utility Easement”).
- H. Liberty is a public utility which in some circumstances may employ the power of eminent domain.
- I. Liberty was granted a Permit to Construct certain transmission line upgrades by the California Public Utilities Commission in Decision 15-03-020 on March 26, 2015, which upgrades require an overhead easement over an additional 15 feet of land along the existing 25-foot wide easement. Liberty advised via written letter to TTAD dated November 20, 2014 that it “may have no other avenue than to act upon its power of eminent domain to acquire the property interest” if an agreement in lieu of formal condemnation could not be reached.
- J. The Final EIS/EIS/EIR prepared for the approved transmission line upgrade, “California Pacific Electricity Company 625 and 650 Electrical Line Upgrade Project: Final EIS/EIS/EIR, SCH# 2012032066,” provides that Liberty will, amongst other measures, establish an exclusion zone around any identified special-status botanical species; use self-weathering dark brown steel poles for the power lines to reduce potential visual contrast; preserve trees and vegetation

within the "clear zone" that do not pose a risk to power lines; retain qualified environmental monitors to be present with each crew during all vegetation-removal activities to help ensure that impacts to biological resources are minimized; develop, prior to construction, a Restoration Plan that will address final clean-up, stabilization, and revegetation procedures for areas disturbed by the project; and, to the extent feasible, restore areas of temporary disturbance around each pole, as well as areas used for conductor stringing and staging, to preconstruction conditions.

- K. Liberty offered fair market value in exchange for its proposed easement expansion in compliance with Section 1240.055(g) of the California Code of Civil Procedure, has agreed to recognize, support, and comply with all Conservation Values and Conservation Purposes contained in the Conservation Easement, and has agreed to adhere to and implement all applicable mitigation measures and applicant proposed measures in the "California Pacific Electricity Company 625 and 650 Electrical Line Upgrade Project: Final EIS/EIS/EIR, SCH# 2012032066" incorporated or described therein.

NOW, THEREFORE, the Parties agree as follows:

1. The Recitals above are true and correct and are included as part of the agreement of the Parties.
2. Capitalized terms that are not defined in this Amendment have the meanings given to them in the Conservation Easement.
3. The Conservation Easement is amended to recognize as permissible an additional 15 foot wide right-of-way alongside the Existing Utility Easement for the purposes of constructing, repairing, and maintaining electric transmission lines (the "Expanded Utility Easement"), provided any Expanded Utility Easement contains the commitments and limitations described in Section K. The legal description of the proposed Expanded Utility Easement is attached as Exhibit A.
4. Considering all the circumstances, Liberty could file a condemnation action in superior court seeking to acquire the Expanded Utility Easement, the litigation of which would be costly, inefficient, and uncertain for all stakeholders.
5. Liberty has offered fair market value in exchange for the Expanded Utility Easement in compliance with Section 1240.055(g) of the California Code of Civil Procedure.
6. This Amendment will be neutral with respect to the Conservation Easement and will not affect the Conservation Easement's perpetual duration.

7. Upon execution, TDLT shall promptly record this Amendment in the official records of Placer County and Nevada County and shall thereafter promptly provide a copy of the recorded Amendment to TTAD and to Placer County.
8. The Conservation Easement shall remain in full force and effect, and nothing in this Amendment shall be construed to abrogate or otherwise affect its terms except as herein recognized.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed this ___ day of _____, 2015.

GRANTOR

Truckee Tahoe Airport District, a
California Airport District

Signature

Print Name

Title

Date

GRANTEE

Truckee Donner Land Trust,
a California non-profit corporation

Signature

Print Name

Title

Date

ORIGINAL GRANTEE

County of Placer, a political subdivision
of the State of California

Signature

Print Name

Title

Date

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

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State of California

County of _____)

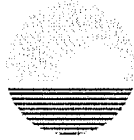
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(insert name and title of the officer)

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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)



Liberty UtilitiesSM

W.O. 650-Rebuild:

Truckee Tahoe Airport District
APN: 110-010-017, 018 & 021

EXHIBIT "A"
EASEMENT-LEGAL DESCRIPTION

A portion of the Southeast quarter of Section 20, Township 17 North, Range 17 East, M.D.M., Placer County, California; situated within that Parcel of land described as in document 2009-0033219, recorded on April 23, 2009, Official Records of Placer County, California.

An easement, 40 feet in width, lying 20 feet on each side of the following described centerline:

Commencing at the Southwest corner of said Section 20;

Thence along the south line of said section North 88°24'46" East, 4393.89 feet to the POINT OF BEGINNING from which the southeast corner of said section 20 bears North 88°24'46" East, 947.23 feet;

Thence North 43°04'28" West, 315.69 feet;

Thence North 85°49'26" West, 1518.00 feet to the westerly boundary of said parcel and the terminus of this description.

Excepting that portion over the Cal Trans Right of Way of State Route 267.

The sidelines of said easement are to be extended or truncated as to terminate on the southerly and westerly boundary line of the Grantor.

Together with the right to install guy and anchor facilities at poles required, to support said poles. Said facilities to extend not more than 60 feet from poles so supported.

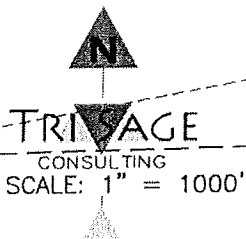
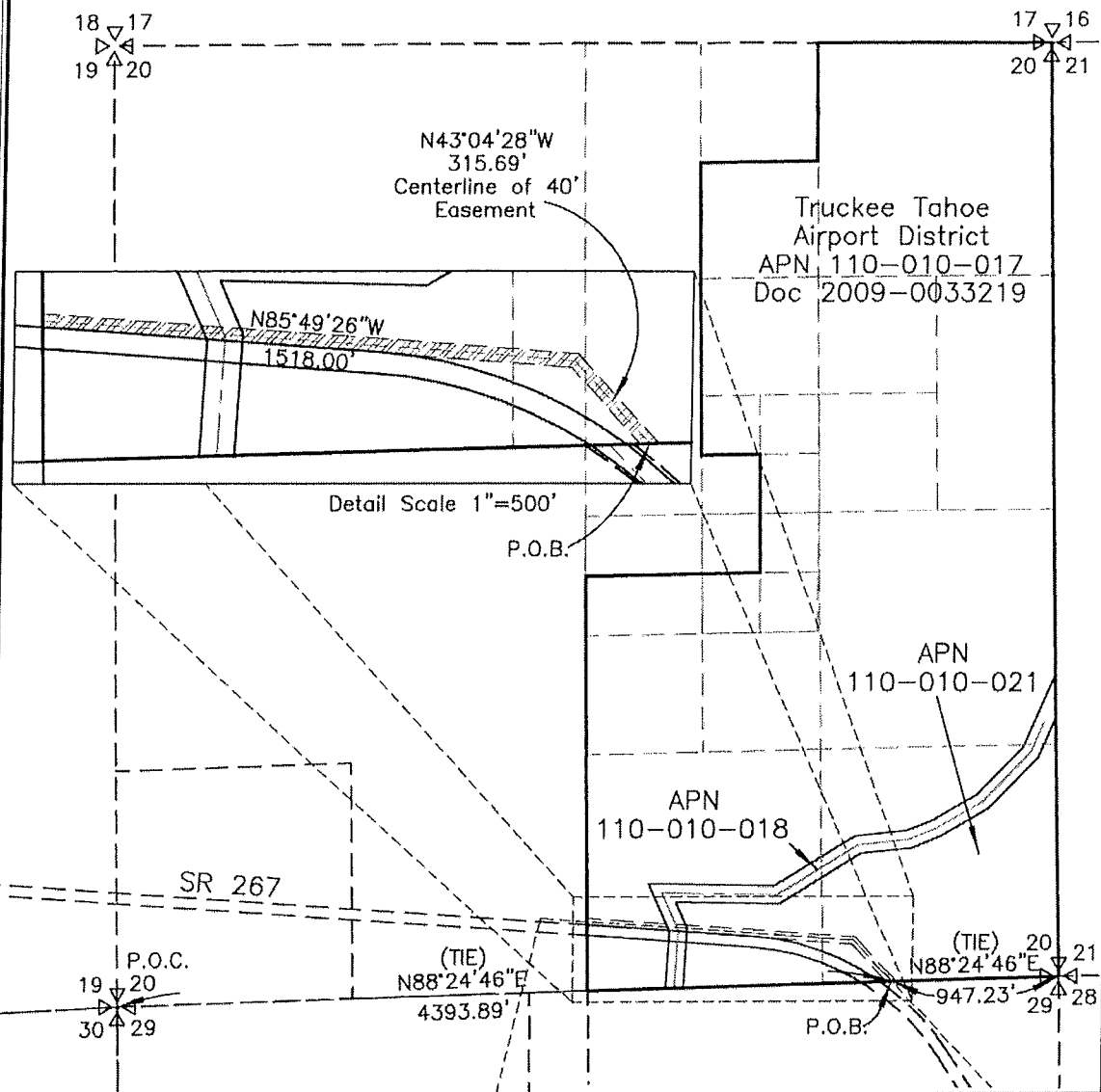
Said Easement contains 73,348 square feet more or less.

See Exhibit "B" attached hereto and made a part thereof.

The Basis of Bearings for this Exhibit is the south line of said section.

Prepared by Bob Fong, LSI.
Tri Sage Consulting, 5418 Longley Lane, Suite A, Reno, NV 89511

EXHIBIT B



Liberty Utilities

933 Eloise Ave.
South Lake Tahoe,
CA
96150

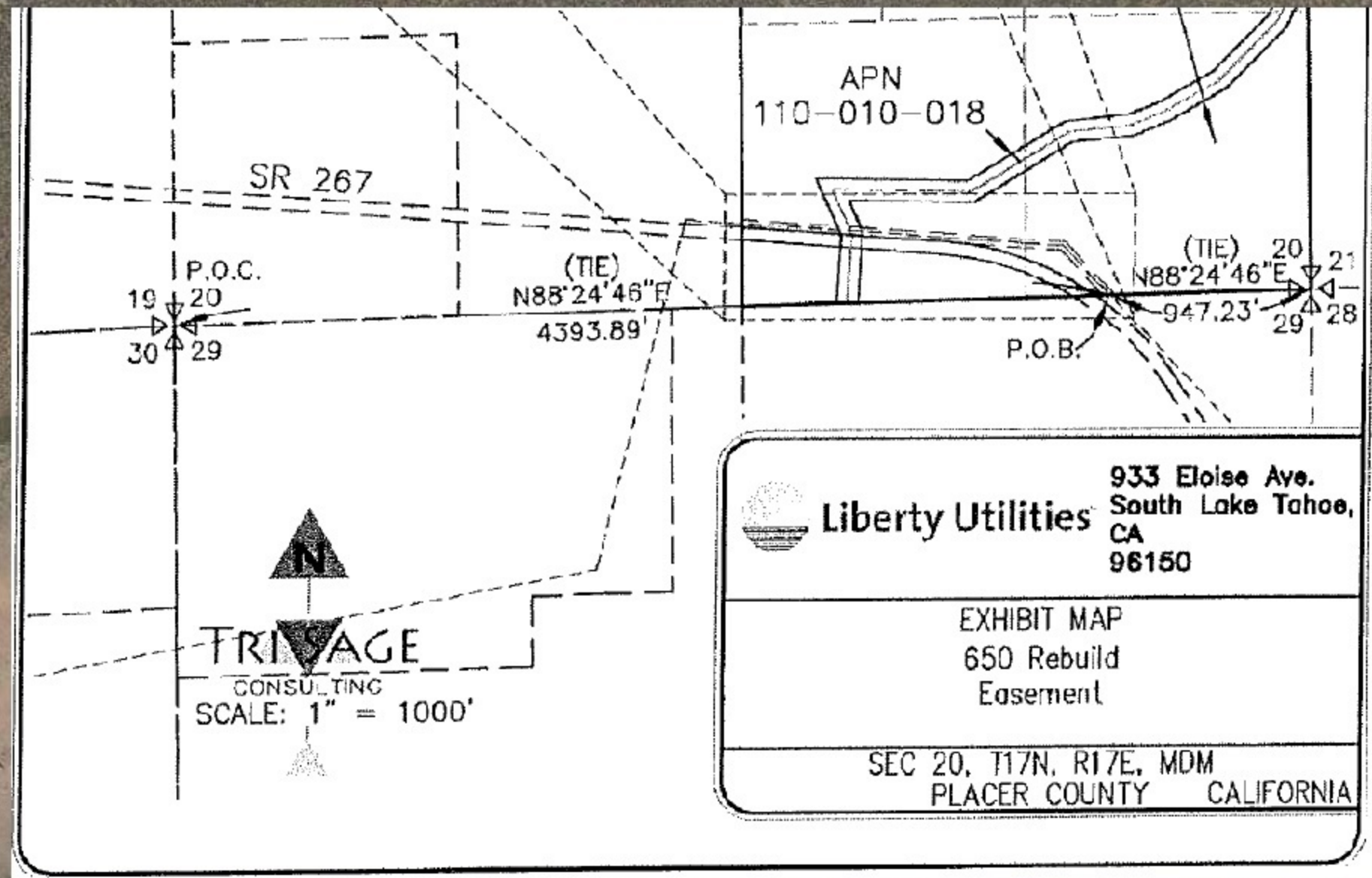
EXHIBIT MAP
650 Rebuild
Easement

SEC 20, T17N, R17E, MDM
PLACER COUNTY CALIFORNIA

Liberty Energy Easement

Legend

- APN:
- APN: 110010020000
- Liberty Energy Easement




 **Liberty Utilities**
933 Eloise Ave.
South Lake Tahoe,
CA
96150

EXHIBIT MAP
650 Rebuild
Easement

SEC 20, T17N, R17E, MDM
PLACER COUNTY CALIFORNIA





Liberty Utilities

California Pacific Electric Company

AGREEMENT FOR ACQUISITION OF EASEMENT

This is an agreement between Liberty Utilities (Liberty) and Truckee Tahoe Airport District referred to herein as Grantor.

It is agreed between the parties as follows:

1. Delivery of Easement.

The original of the Easement, attached hereto as Exhibit A, in the form of an easement has been executed and delivered by Grantor to Liberty Utilities for the purpose of conveying to Liberty, the easement described in the document.

2. Purchase Price & Title

Liberty shall pay Grantor the sum of \$6,850 for the easement conveyed in the Document when the easement is recorded free and clear of all liens, encumbrances, taxes, assessments or leases recorded or unrecorded, except for any liens, encumbrances, taxes, assessment or leases that Liberty, in its reasonable judgment after a reasonable title search, believes will not impair or otherwise interfere with Liberty's full, free and complete use and enjoyment of the easement, as set forth in the Document. In the event Liberty believes that any such interest impairs Liberty's full and free right to use the easement in the manner contemplated in the easement document, Liberty shall not be required to proceed with the acquisition of the easement based on the terms set forth herein will return the original easement document to Owner, and retains the right to proceed in any manner permitted by law, including exercising its rights of eminent domain.

3. Payments Due Mortgage or Deed of Trust

All money payable under this agreement that is due or payable to any mortgagee or trustee under any mortgage or deed of trust shall be paid to such mortgagee or trustee on demand and on the condition that mortgagee or trustee shall furnish Grantor with good and sufficient receipt showing the money paid as credited against any indebtedness secured by the mortgage or deed of trust or in such manner as required by any mortgage or deed of trust.

4. Lease Warranty

Grantor warrants that there are no oral or written leases, or licenses to use, on any portion of the property covered by or to be encumbered by the Easement, and Grantor further agrees to hold Liberty harmless and reimburse Liberty for any and all losses and expenses occasioned by reason of any lease or licenses of the property held by any tenant of Grantor.

5. Possession

Grantor shall retain full use and possession of all property covered by this easement until such time as the easement is recorded at which time Grantor shall retain only such use and possessory rights as are permitted by the easement document.

LIBERTY UTILITIES

GRANTOR

DATE

GRANTOR

DATE

APN: 110-010-017, 018 & 021
Project Number: 650 Rebuild

Recording Requested by and
When Recorded Return To:
ATTN: Bob Fong
Tri Sage Consulting
5418 Longley Lane, Suite A
Reno, NV 89511

**GRANT OF EASEMENT FOR
OVERHEAD ELECTRIC AND COMMUNICATIONS**

THIS GRANT OF EASEMENT, made and entered into _____,
by and between **Truckee Tahoe Airport District**, (hereinafter referred to as "Grantor"), and
Liberty Utilities (CalPeco Electric) **LLC**, a California limited liability company (hereinafter
referred to as "Grantee"),

WITNESSETH:

GRANTOR, for and in consideration of the sum of \$6,850, in hand paid by Grantee, and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby grant to Grantee, its successors, assigns and agents, permanent and exclusive easements and rights of way to construct, alter, maintain, inspect, repair, reconstruct, add to, upgrade, improve, increase the voltage and or capacity of, and operate one or more overhead electric and communication facilities, consisting of one or more circuits, together with poles, guys and anchors, supporting structures, insulators and cross-arms, wires, fibers and cables, fixtures, and appurtenances connected therewith, (hereinafter called "Utility Facilities"), across, upon, over, and through the following described property situated in the County of PLACER, State of CALIFORNIA, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

IT IS FURTHER AGREED:

1. Grantee shall have at all times ingress and egress to the above-described land, and reasonable use of the land, including the larger parcel over which the easement is located or situated, for the purpose of constructing, altering, maintaining, inspecting, repairing, reconstructing, upgrading, improving and operating said Utility Facilities, including increasing the voltage and capacity.

2. Grantee shall be responsible for any damage to personal property or improvements, suffered by Grantor by reason of constructing, altering, maintaining, inspecting, repairing, reconstructing and operating said Utility Facilities by Grantee.

3. Grantee will at all times save and hold harmless Grantor with respect to any and all loss, damage or liability suffered or sustained by reason of any injury or damage to any person or property, caused by the constructing, altering, maintaining, inspecting, repairing, reconstructing and operating of said Utility Facilities by Grantee.

4. Grantor shall not erect or construct, nor permit to be erected or constructed any buildings, fences or structures, nor permit any activity, which in the reasonable judgment of Grantee, is inconsistent with or would otherwise impair the Grantee's reasonable and safe use of said easement.

5. Grantee shall have the right to remove or clear any and all buildings, fences, structures, combustible materials, trees, brush, debris, or any other obstruction from said easement, which in the reasonable judgment of Grantee, may interfere with or endanger the constructing, altering, maintaining, inspecting, repairing, reconstructing and operating of said Utility Facilities.

6. Grantee shall have the right to cut down or trim all trees and other vegetation within said easement, which may in the reasonable judgment of Grantee, endanger the constructing, altering, maintaining, inspecting, repairing, reconstructing and operating of said Utility Facilities, or which may exceed or violate any industry or governmental standards applicable to such easements. Grantee shall have the right to cut down or trim all trees and other vegetation adjacent to or outside of said easement meeting the definition of "danger tree" under Section 895.1, Title 14, of the California Code of Regulations and as directed by section 4293 of the Public Resources Code, and any subsequent amendments thereto.

7. Grantee shall adhere to and implement all applicable mitigation measures and applicant proposed measures incorporated or described in the "California Pacific Electricity Company 625 and 650 Electrical Line Upgrade Project: Final EIS/EIS/EIR, SCH# 2012032066," within said easement and surrounding property, and such mitigation measures and applicant proposed measures are hereby incorporated by reference into, and made a part of, this Grant of Easement.

8. Grantee recognizes and shall support and comply with all Conservation Values and Conservation Purposes contained in the "Grant Deed of Conservation Easement" dated for reference purposes as of October 26, 2007 that was recorded in the Office of the Placer County Recorder on October 29, 2007, as Document No. 2007-0102420-00, within said easement and surrounding property, and such Conservation Values and Conservation Purposes are incorporated by reference into, and made a part of, this Grant of Easement.

9. Truckee Donner Land Trust and the County of Placer are express third party beneficiaries to this Grant of Easement, particularly with respect to enforcing Sections 6, 7 and 8 and Grantor represents and warrants that it has properly notified Truckee Donner Land Trust and County of Placer of this easement and all of its terms and conditions and that Truckee Donner Land Trust and County of Placer have consented to this Grant and all of its terms and conditions.

THIS GRANT OF EASEMENT and the terms contained herein shall be binding upon the successors, agents and assigns of Grantor and Grantee, and all rights herein granted may be assigned.

TO HAVE AND TO HOLD all and singular the said premises, granted together with the appurtenances, unto said Grantee, its successors, agents and assigns forever.

IN WITNESS WHEREOF, Grantor has caused these presents duly to be executed the day and year first above written.

(GRANTOR)

**Truckee Tahoe Airport District, a California
Airport District**

(GRANTEE)

Liberty Utilities (CalPeco Electric) LLC

Signature

Signature

Print Name

Print Name

Title

Title

GRANTOR ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

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County of _____)

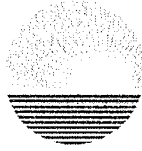
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Liberty UtilitiesSM

W.O. 650-Rebuild:

Truckee Tahoe Airport District

APN: 110-010-017, 018 & 021

EXHIBIT "A"

EASEMENT-LEGAL DESCRIPTION

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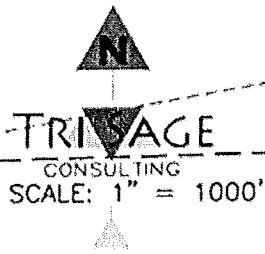
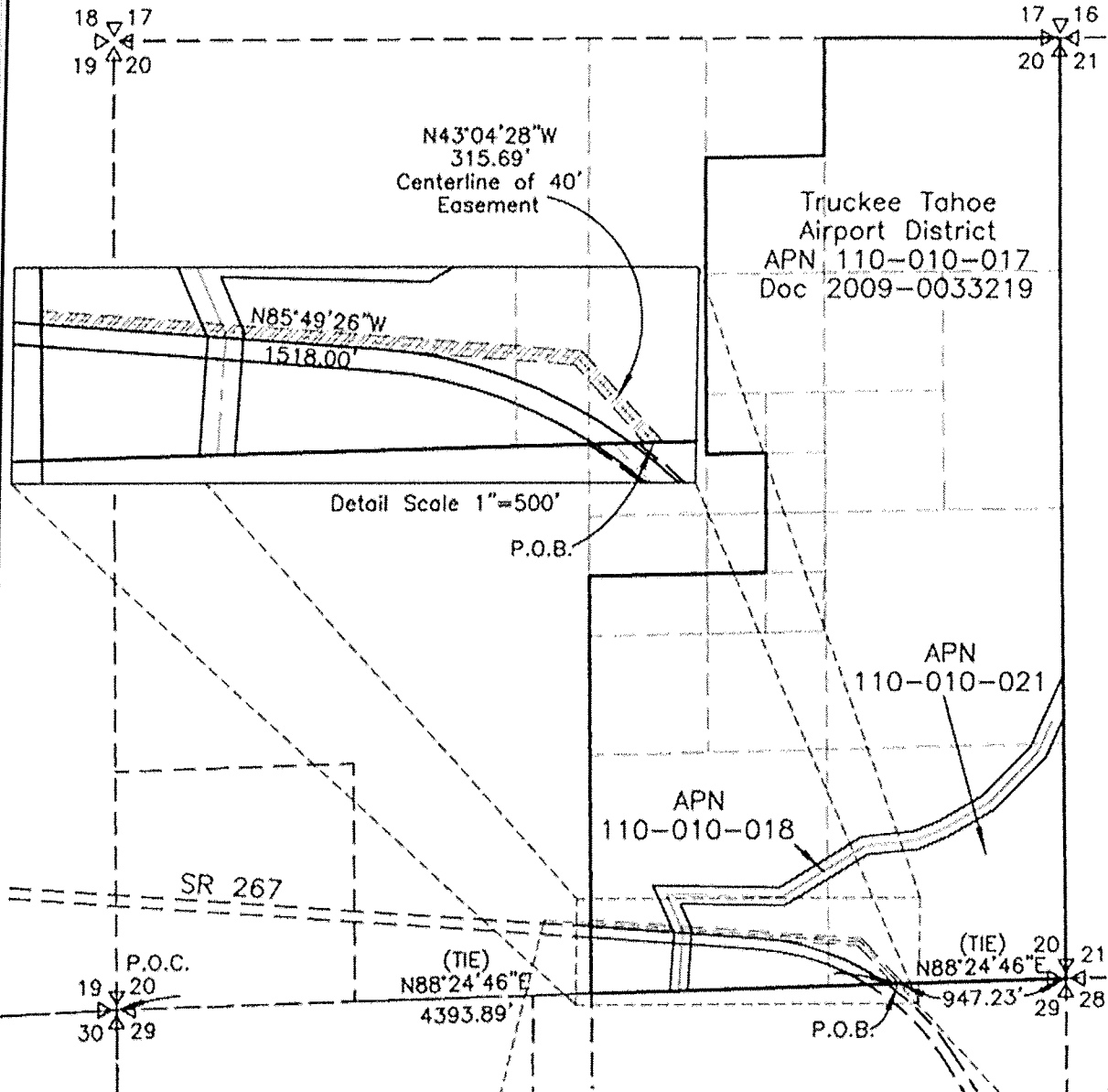
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The Basis of Bearings for this Exhibit is the south line of said section.

Prepared by Bob Fong, LSI.

Tri Sage Consulting, 5418 Longley Lane, Suite A, Reno, NV 89511

EXHIBIT B




 **Liberty Utilities**
933 Eloise Ave.
South Lake Tahoe, CA
96150

EXHIBIT MAP
650 Rebuild
Easement

SEC 20, T17N, R17E, MDM
PLACER COUNTY CALIFORNIA