

landing pier 88 feet in length at White's Landing, Parcel 7, under Lease P.R.C. 185. It has been requested that the Commission approve the construction of these two piers.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, A RESOLUTION WAS ADOPTED AUTHORIZING THE EXECUTIVE OFFICER TO APPROVE THE RECONSTRUCTION OF THE PEBBLY BEACH WHARF AND THE CONSTRUCTION OF PIERS AT FISHERMAN'S COVE AND WHITE'S LANDING, SANTA CATALINA ISLAND, PURSUANT TO THE PROVISIONS OF LEASE P.R.C. 185 ISSUED TO THE SANTA CATALINA ISLAND COMPANY.

26. (RESCISSION OF MINUTE ITEM 27, PAGE 1540, APRIL 18, 1952, OCEANSIDE-CARLSBAD SPORTSMAN'S CLUB - W.O. 1222, P.R.C. 715.) On April 18, 1952, the Commission authorized the Executive Officer to issue to the Oceanside-Carlsbad Sportsman's Club, upon issuance by the U.S. Corps of Engineers of their permit for the operations, a permit to dredge a channel in the Pacific Ocean at the entrance to Aqua Hedionda Slough, San Diego County. We have been informed by the U.S. Corps of Engineers that permit for the proposed dredging has neither been applied for nor issued. Inspection of the site by the Staff showed no indication of any dredging. For these reasons it is deemed advisable to rescind the authorization granted by the Commission on April 18, 1952, and shown in the minutes of that date as Item 27 on Page 1540.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, A RESOLUTION WAS ADOPTED RESCINDING THE COMMISSION'S ACTION SHOWN IN ITEM 27, PAGE 1540, MINUTES OF APRIL 18, 1952, WHICH AUTHORIZED THE EXECUTIVE OFFICER TO ISSUE TO THE OCEANSIDE-CARLSBAD SPORTSMAN'S CLUB A PERMIT TO DREDGE A CHANNEL IN THE PACIFIC OCEAN AT THE ENTRANCE TO AQUA HEDIONDA SLOUGH, SAN DIEGO COUNTY.

27. (TERMINATION OF LEASE P.R.C. 621, HAMMOND LUMBER COMPANY, NAPA RIVER, NAPA COUNTY.) Hammond Lumber Company holds Lease P.R.C. 621, covering a small area of tide and submerged lands in the Napa River at Napa on which was constructed a loading dock and a riprap bulkhead. The bulkhead was largely on land owned by that company, extending but a few feet on State land. The loading dock has now been removed, and termination of the lease is requested. The lease became effective on June 21, 1951, the first and last years' rental being paid. The portion of the bulkhead on State land is of no consequence insofar as occupancy is concerned.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, A RESOLUTION WAS ADOPTED AUTHORIZING THE EXECUTIVE OFFICER TO TERMINATE LEASE P.R.C. 621, EFFECTIVE JUNE 20, 1952, ISSUED TO HAMMOND LUMBER COMPANY COVERING CERTAIN TIDE AND SUBMERGED LANDS IN THE NAPA RIVER, NAPA COUNTY, AND RELEASE THE SURETY BOND IN THE AMOUNT OF \$1000, NO REFUND OF RENTAL PAID IN ADVANCE TO BE MADE.

28. (APPLICATIONS FOR APPROVAL OF LOCATION OF TELEPHONE CABLES CROSSING STATE LANDS, THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY - W.O. 369; W.O. 1291, P.R.C. 751.1; W.O. 1292, P.R.C. 752.1; W.O. 1293, P.R.C. 753.1; W.O. 1294, P.R.C. 754.1; W.O. 1298, P.R.C. 755.1; W.O. 1303, P.R.C. 756.1.) For some years past the Division of State Lands and the telephone and telegraph companies have been in an impasse over the right of the State to require those companies to take out permits and pay fees and rentals in the manner prescribed by the Public Resources Code and the rules and regulations of the State Lands Commission for occupation or use of State lands. The companies maintained that they are the beneficiaries of a grant by the State under the

provisions of Public Utilities Code Section 7901 (formerly Civil Code Section 536), which reads as follows:

"Telegraph or telephone corporations may construct lines of telegraph, or telephone lines along and upon any public road or highway, along or across any of the waters or lands within this state, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters. (Enacted 1872; Repealed and re-enacted by Stats. 1905, p. 492.)"

The Division of State Lands has taken the position that the provisions of the Public Resources Code take precedence, and in recent years has gone on record in protest of each known installation of telephone or telegraph facilities crossing State lands. The results have been nil until quite recently except for the building up of a record and the amassing of correspondence.

During the past month negotiations initiated by The Pacific Telephone and Telegraph Company have progressed to the point where an immediate interim solution has reached the status of the presentation of definite recommendations to the Commission. The plan includes the filing of applications by the Company for approval of location of the telephone crossings in accordance with our standard procedure. A form of agreement has been prepared, which recites the approval of the location of the crossing, provides for removal at the expense of the Company on nonuse or upon expiration or termination, and holds the State harmless in cases of claims for damage or injuries.

The form of agreement requires the initiation and prosecution of legal action by either party, with a view to a final judgment and decree by a court of competent jurisdiction of the State of California determining the rights of the parties. It further provides for the amendment of the agreement in conformity with the terms of such judgment or decree. If the latter gives the State Lands Commission the right to charge and collect rents, the agreement will fix the amounts to be paid in each instance; these are to be calculated in accordance with existing Commission policies.

The form of agreement has been submitted to and received the approval of the Office of the Attorney General. A copy of this form is given below.

Concurrently applications have been received from The Pacific Telephone and Telegraph Company for approval of location of telephone crossings of State lands at six places. Filing fees and expense deposits have been paid. It is proposed to use the form of agreement which appears below as the instrument of approval.

Mr. Dean asked if the form of agreement had been checked with the Office of the Attorney General, and was informed that it had been--with both the Los Angeles and the San Francisco Offices--and was agreeable to them.

Mr. John H. Sutro, of Pillsbury, Madison & Sutro, appeared on behalf of The Pacific Telephone and Telegraph Company, and requested that an opinion first be requested of the Attorney General before initiating litigation; if the opinion should be to the effect that The Telephone Company does not have to pay rental, then there would be no necessity to start court action. He

STANDARD B & P "NONIAR"

believes that The Telephone Company is not liable for rent, basing this opinion on the fact that the question has been before the Courts many times in the past in connection with other State agencies.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, A RESOLUTION WAS ADOPTED APPROVING THE FORM OF AGREEMENT (WHICH FOLLOWS) SUBJECT TO AMENDING PARAGRAPH VIII SO AS TO REQUIRE A FINAL JUDGMENT OR DECREE WITH RESPECT TO THE ISSUES ONLY IN THE EVENT THE ATTORNEY GENERAL RENDERS AN OPINION THAT THE STATE HAS RIGHTS IN THE PREMISES BEYOND THOSE EVIDENCED AND AGREED TO IN THE FORM OF AGREEMENT WHICH ARE DENIED BY THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY; AND AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE SUCH AGREEMENTS WITH THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, APPROVING THE LOCATION OF TELEPHONE CROSSINGS OF STATE LANDS, IN ACCORDANCE WITH THE APPLICATIONS AS FILED WITH THE DIVISION OF STATE LANDS, AT THE FOLLOWING LOCATIONS:

- SACRAMENTO RIVER, SACRAMENTO AND YOLO COUNTIES - W.O. 1291
- MOKEYTIME RIVER, SACRAMENTO AND SAN JOAQUIN COUNTIES - W.O. 1292
- TOMALES BAY, MARIN COUNTY - W.O. 1293
- CORTE MADERA CANAL, MARIN COUNTY - W.O. 1294
- TURNER CUT, SAN JOAQUIN COUNTY - W.O. 1298
- MIDDLE RIVER, SAN JOAQUIN COUNTY - W.O. 1303

THE AMOUNT OF RENTAL TO BE INSERTED IN EACH FORM OF AGREEMENT SHALL BE CALCULATED AT THE RATE OF FIFTEEN CENTS PER LINEAL FOOT OF LENGTH OF CENTERLINE OF THE STRIP OF STATE LANDS OCCUPIED, OR SHALL BE THE SUM OF \$50, WHICHEVER IS THE GREATER. IT WAS FURTHER RESOLVED THAT THE ATTORNEY GENERAL IS TO BE REQUESTED TO TAKE SUCH ACTION AS MAY BE APPROPRIATE WITH A VIEW TO THE ULTIMATE DETERMINATION OF THE RIGHTS OF THE STATE OF CALIFORNIA IN THE PREMISES.

(Form of Agreement with The Pacific Telephone and Telegraph Company)

THIS AGREEMENT, made and executed this _____ day of _____, 1952, by and between the STATE OF CALIFORNIA, acting by and through its duly appointed, qualified and acting State Lands Commission, hereinafter referred to as "State", and THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation, of San Francisco, California, hereinafter referred to as "Telephone Company",

WITNESSETH:

WHEREAS Telephone Company, pursuant to the rules and regulations of State, has made written application to State for approval of the location of its telephone and telegraph lines, consisting of overhead and underground cable, together with the necessary fixtures and appurtenances hereinafter referred to as "telephone and telegraph facilities", in and across

in _____ County, California; and

WHEREAS State, pursuant to the provisions of Division 6 of the Public Resources Code of the State of California, has authority to grant such

STANDARD B & P "NONIAR"

STANDARD B & P "NEGAR"

STANDARD B & P "NEGAR"

approval and finds that the same will be beneficial and to the best interests of State:

Now, Therefore, in consideration of the mutual undertaking, promises and agreements and subject to the conditions herein contained, the parties hereto mutually agree as follows, to wit:

I

Telephone Company is authorized to construct, operate and maintain said telephone and telegraph facilities within a strip _____ () feet in width, _____ () feet on each side of the centerline indicated by the broken (color) line in and across the lands and waters, the exterior boundaries of which are delineated by the continuous (color) lines as set forth on the plat attached hereto marked "Exhibit A", and by reference thereto made a part hereof.

II

Telephone Company, at its sole risk and expense, shall construct, operate and maintain said telephone and telegraph facilities in good order, repair and condition.

III

Telephone Company shall construct, operate and maintain said telephone and telegraph facilities in conformity with all applicable laws relating thereto.

IV

Telephone Company shall hold and save the State of California or any of its agencies free from all claims for damage or injuries that may be caused by the exercise of the authorization herein given.

V

This agreement and the authorization herein given Telephone Company shall terminate in the event Telephone Company shall fail for a continuous period of one (1) year, after the initial installation, to maintain and operate said telephone and telegraph facilities.

VI

If for any reason this agreement be terminated, Telephone Company, at its own expense and risk when requested in writing to do so by State, shall remove all property and equipment placed by or for Telephone Company in and across said land and waters referred to in paragraph I hereof, and if Telephone Company shall fail so to do within sixty (60) days after receipt of said request, State may do so at the risk of Telephone Company, and all cost and expense of said removal shall be paid by Telephone Company to State on demand.

Furthermore, upon the termination of the authorization herein given, Telephone Company shall execute and deliver to State within sixty (60) days

after service of written demand therefor, a good and sufficient quitclaim deed to said strip of land. Should Telephone Company fail or refuse to deliver said quitclaim deed as aforesaid, a written notice by State reciting the failure of Telephone Company to execute and deliver said quitclaim deed as herein provided, and reciting the fact of termination of this agreement and authorization, after ten (10) days from the recordation of said notice, shall be conclusive evidence to Telephone Company and all persons claiming under Telephone Company of the termination of said authorization.

VII

State expressly reserves the right to grant easements or crossings, in, upon and under the aforesaid premises, and nothing herein contained shall be construed as limiting the powers of State to lease, convey, or otherwise transfer or encumber, during the life of this agreement and authorization, the said lands for any purpose whatsoever not inconsistent or incompatible with the authorization herein granted to Telephone Company by this agreement and authorization.

VIII

State contends that Telephone Company is obliged to comply with the provisions of Division 6 of the Public Resources Code. Telephone Company contends that it has a contract with the State of California pursuant to Public Utilities Code Section 7901 (formerly Civil Code Section 536), and that by virtue of said contract State is not entitled to charge rent. The rights and obligations of the parties hereto respecting said contentions shall be determined by final judgment or decree of a court of competent jurisdiction of the State of California in an action between State and Telephone Company brought by either party for such purpose and pursued diligently. When such judgment or decree becomes final this agreement and authorization, or any part thereof, shall be amended so as to conform with applicable statutes, rules and regulations, insofar as the same are consistent with said final judgment or decree. Should it be determined by said final judgment or decree that State is entitled to charge Telephone Company rent, such rent shall become due and be payable by Telephone Company to State in the amount of _____ Dollars (\$ _____) in full.

IX

Telephone Company shall not transfer or assign this agreement except upon the prior written consent of State first had and obtained.

X

All notices herein provided to be given shall be deemed to have been fully given when made in writing and deposited in the United States mail, registered and postage prepaid, addressed as follows:

To the State:

State Lands Commission,
Room 302,
California State Building,
217 West First Street,
Los Angeles 12, California;

and to The Telephone Company:

The Pacific Telephone and Telegraph Company,
Attention of General Plant Department,
140 New Montgomery Street,
San Francisco 5, California.

The address to which the notices shall be mailed as aforesaid may be changed by written notice as herein provided; but nothing herein contained shall preclude the giving of such notice by personal service.

II

Time is the essence of each and all the terms and provisions of this agreement and the terms and provisions of this agreement and authorization shall extend to and be binding upon the successors and assigns of the respective parties hereto.

XIII

This agreement may be terminated or the provisions changed, altered or amended by the mutual consent of the parties.

IN WITNESS WHEREOF, The parties hereto have caused this agreement to be executed as of the day and year first above written.

STATE OF CALIFORNIA
STATE LANDS COMMISSION

By _____
Executive Officer

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY

By _____
President

By _____
General Manager

29. (APPLICATION FOR RENEWAL OF LEASE, CORTE MADERA ARK SITE NO. 19, MARIN COUNTY, HAROLD O. LIND AND THELMA E. LIND - W.O. 1122, P.R.C. 757.1.)
Mr. and Mrs. Harold O. Lind have held Lease P.R.C. 321, covering Corte Madera Ark Site No. 19. This lease expired on May 12, 1952, but, due to litigation with the adjacent upland owner, Mr. A. A. Tiscornia, Mr. and Mrs. Lind have been unable to obtain a waiver or permit from Mr. Tiscornia. Litigation has now been settled and application received for a new lease. Other ark site leases have issued for a two-year period pending completion of a sanitary sewer serving the area. Funds are now available for such sewer construction, contracts to be let by the Division of Architecture upon completion of detailed plans by the City Engineer of Larkspur. Rental has been established at \$56 annually for Ark Site No. 19.