

**CALENDAR ITEM
C76**

A 74
S 38

06/28/10
PRC 8727.1
S.Young

**AUTHORIZATION OF AN AGREEMENT AND CONSENT TO
ENCUMBRANCING OF LEASE**

CO-LESSEE:

Poseidon Resources (Channelside) LLC
501 West Broadway, Suite 2020
San Diego, CA 92101

SECURED-PARTY LENDER:

Union Bank, N.A.
120 S. San Pedro St., 4th Floor
Los Angeles, CA 90012

AREA, LAND TYPE, AND LOCATION:

5.548 acres, more or less, of sovereign lands in the Pacific Ocean, city of Carlsbad, adjacent to Aqua Hedionda Lagoon, San Diego County.

AUTHORIZED USE:

Continued use and maintenance of existing intake and outfall structures.

LEASE TERM:

Twenty years, beginning December 14, 2006.

CONSIDERATION:

First year's rent of \$123,000, referred to as the "Base Rent" paid by Co-Lessee Cabrillo Power I, LLC. The "Base Rent" to be adjusted annually by the Consumer Price Index (CPI) for All Urban Consumers, San Diego, CA with the State reserving the right to fix a different "Base Rent" periodically during the term of the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:
\$5,000,000 combined single limit
Bond:

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As to Co-Lessee Cabrillo Power I, LLC: Surety Bond in the amount of \$500,000.

Other:

As to Co-Lessee Poseidon Resources (Channelside) LLC: Non-cancelable operational performance deposit in the amount of not less than \$1,000,000 and a non-cancelable wetland performance deposit in the amount of \$3.7 million to ensure implementation of compensatory mitigation, monitoring and maintenance as described in the approved plan.

OTHER PERTINENT INFORMATION:

1. Co-Lessee, Poseidon Resources (Channelside) LLC, has the right to use the uplands adjoining the lease premises.
2. Poseidon Resources (Channelside) LLC is requesting that the Commission approve an Agreement and Consent to Encumbrancing of the Lease (Agreement) with Union Bank, N.A., as Secured Party for its interest in the lease premises. In connection with the financing of Poseidon's new Carlsbad desalination plant, the California Infrastructure and Economic Development Bank (I-Bank) will consider the approval of the issuance of \$530 million in tax free revenue bonds. The proceeds of the sale of the bonds will be loaned to Poseidon by Union Bank, N.A. as Trustee for the owners of the bonds and as assignee of the loan agreement to Poseidon. The Agreement and Consent to Encumbrancing of the Lease, if approved by the Commission, will expire on December 31, 2010 should Poseidon Resources (Channelside) fail to obtain approval of the I-Bank.
3. On August 22, 2008, the Commission approved an amendment to the existing lease to Cabrillo Power I, LLC (Cabrillo), Lease No. PRC 8727.1, to include Poseidon Resources (Channelside) LLC as a Co-Lessee. The amendment authorized the intake of sea water and the commingling of brine discharge for Poseidon's proposed desalination facility. Cabrillo, the operator of the upland power plant and Co-Lessee, is not a party to the Encumbrancing Agreement.
4. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of CEQA because it is not a "project" as defined by CEQA and the State CEQA Guidelines.

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Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060(c)(3) and 15378.

5. This activity involves lands which have NOT been identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et. seq. However, the Commission has declared that all lands are “significant” by nature of their public ownership (as opposed to “environmentally significant”). Since such declaration of significance is not based upon the requirements and criteria of Public Resources Code Sections 6370, et. seq., use classifications for such lands have not been designated. Therefore, the finding of the project’s consistency with the use classification as required by Title 2, California Code of Regulations, section 2954 is not applicable.

EXHIBIT:

- A. Location and Site Map

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

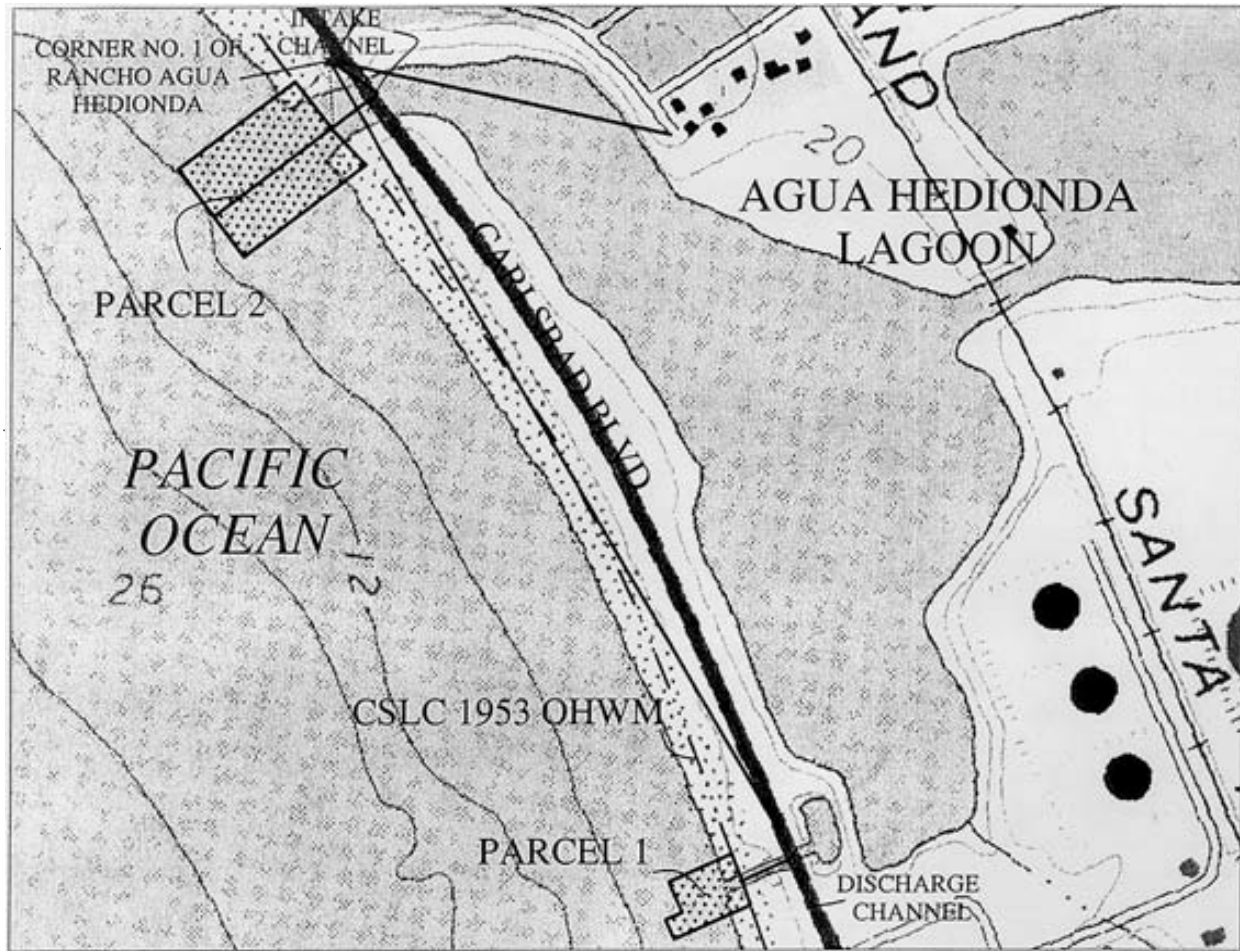
Find that the activity is not subject to the requirements of CEQA pursuant to Title 14, California Code of Regulations, Section 15060(c)(3) because the activity is not a project as defined by Public Resources Code Section 21065 and Title 14, California Code of Regulations, Section 15378.

AUTHORIZATION:

Authorize staff execution of the document entitled “Agreement and Consent to Encumbrancing of Lease” on file in the office of the California State Lands Commission by reference and made a part hereof, in favor of Union Bank, N.A. as Secured Party.

NO SCALE

SITE



EXISTING GROIN STRUCTURES, AGUA HEDIONDA LAGOON

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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.

Exhibit A

PRC 8727.1
CABRILLO POWER I, LLC &
POSEIDON RESOURCES
(CHANNEL SIDE) LLC
INDUSTRIAL LEASE
SAN DIEGO COUNTY

