

**CALENDAR ITEM
C58**

A 74

12/05/12
PRC 8727.1
A. Scott

S 38

**ASSIGNMENT OF LEASE INTEREST AND AGREEMENT AND CONSENT TO
ENCUMBRANCING OF LEASE INTEREST**

ASSIGNOR:

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

ASSIGNEE:

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

CO-LESSEE:

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

SECURED-PARTY LENDER:

Union Bank, N.A.
Attn: Jennifer Earle, Corporate Trust
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:

20 years, beginning December 14, 2006.

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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:

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. On August 22, 2008, the Commission authorized an amendment to Lease No. PRC 8727.1, a General Lease – Industrial Use, issued to Cabrillo Power I, LLC (Cabrillo), 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 proposed Encumbrancing Agreement.
2. On August 23, 2010, the Commission received notification that Poseidon Resources (Channelside) LLC changed its name to Poseidon Resources (Channelside) LP pursuant to the statutes of the State of Delaware, effective August 16, 2010. Pursuant to that notice and in accordance with the statutes of the State of Delaware all assets of the Limited Liability Company (LLC) were transferred to the Limited Partnership (LP) including the rights as Co-lessee under Lease No. PRC 8727.1.
3. Co-Lessee, Poseidon Resources (Channelside) LP, previously Poseidon Resources (Channelside) LLC, has the right to use the upland adjoining the lease premises.

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4. Poseidon Resources (Channelside) LP is requesting that the Commission approve an Agreement and Consent to Encumbrancing of the Lease (Agreement) with Union Bank, N.A., as the Secured Party for its interest in the lease premises. In connection with the financing of Poseidon's new Carlsbad desalination plant, the California Pollution Control Financing Authority (CPCFA) will consider the approval of the issuance of \$530 million in tax exempt private activity bonds for the desalination plant and \$235 million in municipal purpose bonds for construction of a water delivery pipeline. 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, 2013 should Poseidon Resources (Channelside) LP fail to obtain approval of the CPCFA.

5. The staff recommends that the Commission find that the subject assignment and consent to encumbrancing of lease do not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

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

6. 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

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It is recommended that the Commission

CEQA FINDING:

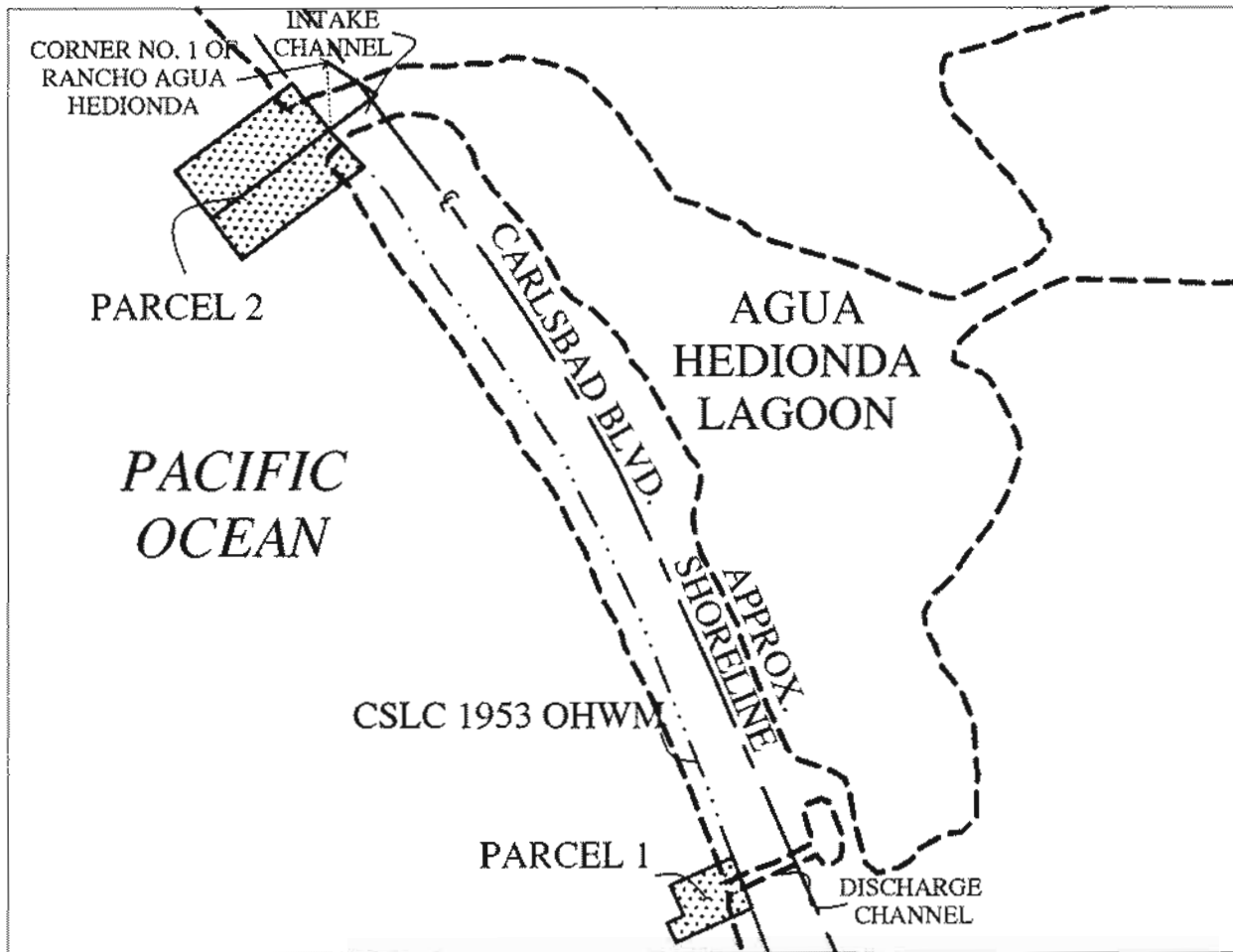
Find that the subject assignment and consent to encumbrancing of lease are not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activities are not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

AUTHORIZATION:

Approve the assignment of Poseidon Resources (Channelside) LLC's interest as Co-Lessee in Lease No. PRC 8727.1, to Poseidon Resources (Channelside) LP effective August 16, 2010 and 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 the Secured Party Lender.

NO SCALE

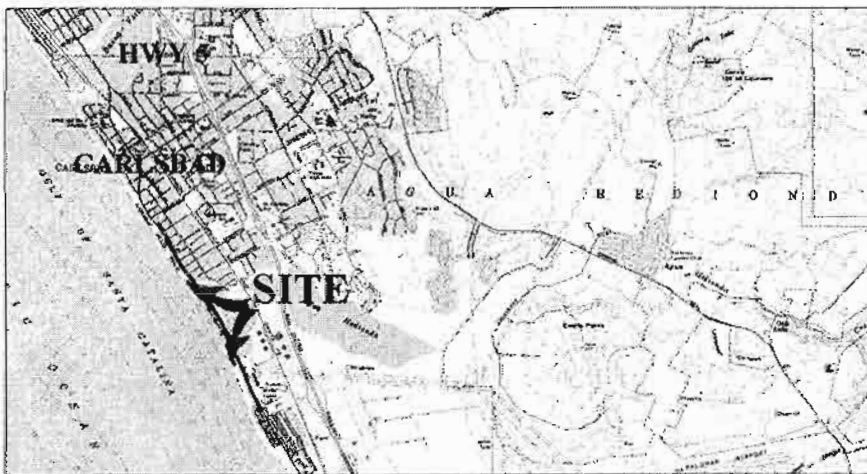
SITE



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
POSEIDON RESOURCES
(CHANNELSIDE LP)
GENERAL LEASE -
INDUSTRIAL USE
SAN DIEGO COUNTY

