

STAFF REPORT

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02/28/20
PRC 791.1
A 2299
C. Hudson

AMENDMENT OF LEASE

LESSEE:

Cabrillo Power I, LLC

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Pacific Ocean, adjacent to Agua Hedionda Lagoon, Carlsbad, San Diego County.

AUTHORIZED USE:

Maintenance and removal of an out of service offshore marine terminal and appurtenant improvements.

LEASE TERM:

5 years, beginning March 24, 2015.

CONSIDERATION:

\$73,084 per year with an annual Consumer Price Index adjustment.

PROPOSED AMENDMENT:

Section 1, Basic Provisions is amended as follows:

- Extend the term of the lease by 5 years to March 23, 2025.

All other terms and conditions of the lease shall remain in effect without amendment.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503;
California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

On December 18, 2015, the Commission authorized a 5-year General Lease – Industrial Use, to Cabrillo Power I, LLC, for the continued maintenance and removal of an out of service offshore marine oil terminal

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and appurtenant improvements ([Item 97, December 18, 2015](#)). The Cabrillo Power I, LLC, Encina Marine Oil Terminal (MOT) Decommissioning Project consisted of removing the offshore components, including one 20-inch-diameter non-operational fuel oil pipeline, seven mooring anchors and attached chains, two pipeline end anchors, and other appurtenant improvements, along with temporary removal of a riprap groin and restoration of the groin after the underlying fuel oil pipeline was removed. The lease will expire on March 23, 2020.

Most of the improvements were successfully removed during the decommissioning project, except for approximately 540 feet of the existing offshore 20-inch-diameter fuel oil pipeline that remains in the surf zone. The Lessee made several unsuccessful attempts to remove the remaining portion of the pipeline from both the landward and waterward side.

The Lessee prepared an alternatives analysis for removing the remaining pipeline. The alternatives analysis determined that the most feasible removal alternative would be to construct a rock groin from the shoreline out to the buried pipeline, excavate and remove the remaining pipeline through the surf zone, and then remove the rock groin. However, the Lessee concluded that the corresponding amount of material required to build a temporary groin would be substantially greater to support the loads of the long-reach excavation equipment, which would result in greater environmental impacts than analyzed in the Mitigated Negative Declaration for the decommissioning project. The Lessee is analyzing other alternatives with fewer environmental impacts for full removal of the remaining portion of the pipeline in the surf zone.

The Lessee is now requesting the Commission to extend the lease term by 5 years to March 23, 2025. The extension of the lease term will allow the Lessee time for the completion of the upland Encina power plant demolition and the evaluation of other alternatives to address the remaining portion of the 20-inch-diameter fuel oil pipeline.

A 5-year extension will also align with the California Coastal Commission's (CCC) issuance of the July 12, 2019 Notice of Intent (NOI) to issue an amended Coastal Development Permit (CDP) 9-16-0560-A1 for an onshore rock stabilization platform, located landward of the ordinary high-water mark, outside of the Commission's leasing jurisdiction. The platform protects the sidewalk and Carlsbad Boulevard along the gap in the seawall where the MOT piping had existed. The platform was constructed using the remnants of the existing riprap groin.

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The NOI requires the Lessee to develop and implement work plans to monitor the stabilization platform located on the upland and associated changes to the shoreline in this area. It requires the Lessee to coordinate consultation with the CCC, U.S. Army Corp of Engineers, San Diego Regional Water Quality Control Board, California Department of Parks and Recreation, and the City of Carlsbad to develop a long-term strategy to address the gap in the seawall on the upland, adjacent to the sidewalk and Carlsbad Boulevard.

Full removal of the offshore MOT pipeline will be considered by the Commission at a later meeting once a plan for removal is completed. The amendment to extend the lease term retains the provisions requiring the lessee to maintain liability insurance and indemnify the State as well as requiring annual rent payments to compensate the people of the State for the lessee's use of public land.

Climate Change:

Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The lease area is located in the Pacific Ocean, offshore of Carlsbad, which is a tidally influenced site.

The California Ocean Protection Council updated the State of California Sea-Level Rise Guidance in 2018 to provide a synthesis of the best available science on sea-level rise projections and rates. Commission staff evaluated the "high emissions," "low risk aversion" scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The La Jolla tide gauge was used for the projected sea-level rise scenario for the lease area as listed in Table 1.

Table 1. Projected Sea-Level Rise for La Jolla¹

Year	Projection (feet)
2030	0.6
2040	0.9
2050	1.2
2100	3.6

Source: Table 31, State of California Sea-Level Rise Guidance: 2018 Update

Note: ¹ Projections are with respect to a 1991 to 2009 baseline.

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As stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms (especially when coupled with sea-level rise). The combination of these conditions will likely result in increased wave run-up, storm surge, and flooding in coastal and near coastal areas. In tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Climate change and sea-level rise will further influence coastal areas by changing erosion and sedimentation rates. Beaches and coastal landscapes will be exposed to increased wave force and run-up, potentially resulting in greater beach erosion than previously experienced.

Rising sea levels can lead to increased flooding through regular inundation and larger flooding events, when combined with tidal events and storm surges. These climate change and sea-level rise impacts can also affect erosion and sedimentation rates through increased wave action and scour, which in turn can lead to decreased shoreline stability and structure. The remaining pipeline lies immediately offshore for approximately 540 feet, with portions both exposed and buried. While the remaining pipeline segment could be vulnerable to the impacts from sea-level rise or frequent and intense storms that are the result of climate change, the 5-year lease term to plan and execute the pipeline's removal would ensure that no adaptation steps are required.

Conclusion:

For the reasons stated above, staff believes the lease amendment to extend the lease term does not alienate the State's fee simple interest or permanently impair public rights. The recommend action will not substantially interfere with the Public Trust needs at this location, as this time, and for foreseeable term of the lease as amended. For these reasons, staff recommends finding the proposed action is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the amendment to the lease is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease, including but not limited to extending the lease term.

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2. This proposed 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;
3. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of regulations, title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease amendment to extend the lease term will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

AUTHORIZATION:

Authorize the amendment of Lease No. PRC 791.1, a General Lease – Right-of-Way Use, to extend the term of the lease to March 23, 2025; all other terms and conditions of the lease will remain in effect without amendment.

EXHIBIT A

LAND DESCRIPTION

PRC 791.1

PARCEL "A"

A strip of tide and submerged land 60.00 feet in width, extending into the Pacific Ocean, and located approximately one mile south of the City of Carlsbad, San Diego County, California, and lying 30.00 feet on each side of the following described line:

COMMENCING at Corner Number 1 of Rancho Agua Hedionda, according to Map 823, filed in the Office of the County Recorder of San Diego County, California, November 16, 1896; thence S 26° 07' 53" E, 3,450.26 feet to the centerline of the existing 60.00-foot wide pipeline right-of-way and the TRUE POINT OF BEGINNING of the centerline herein described; thence S 66° 57' 20" W, 2,622.43 feet to a point herein designated Point "A".

The side lines of the above-described strip of land, shall be extended and shortened so that said lines form a continuous strip terminating in the west in a line passing through said Point "A" with a bearing of S 32° 48' 40" E.

PARCEL "B"

A parcel of submerged land lying within the Pacific Ocean approximately one mile south of the City of Carlsbad, San Diego County, California, more particularly described as follows:

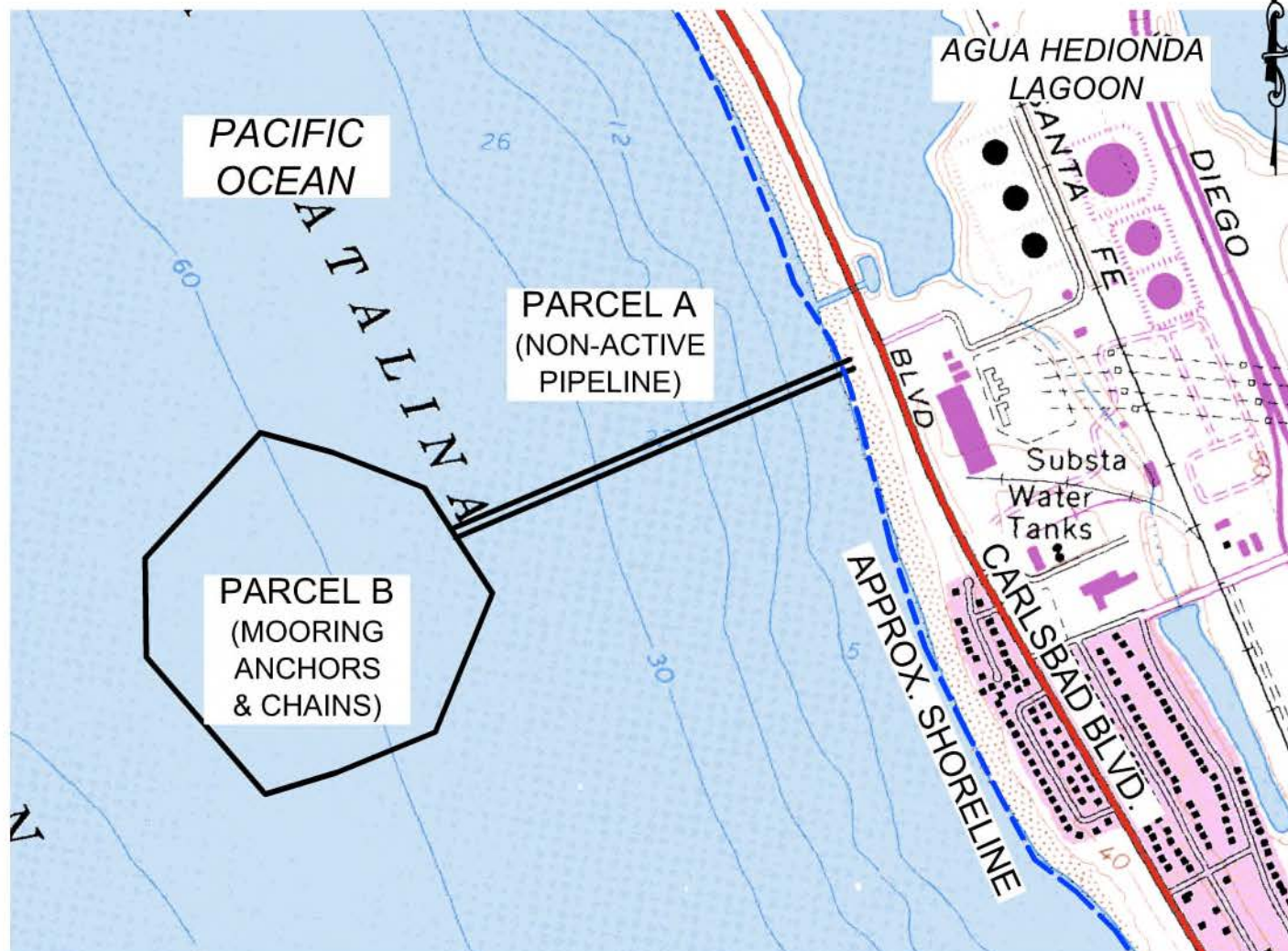
BEGINNING at the aforementioned Point "A" of Parcel "A", thence from said Point "A" the following 10 courses:

1. S 32° 48' 40" E 432.16 feet;
2. S 22° 22' 28" W 909.37 feet;
3. S 67° 45' 09" W 644.59 feet;
4. S 73° 09' 24" W 452.60 feet;
5. N 41° 00' 06" W 1099.62 feet;
6. N 00° 48' 40" W 600.00 feet;
7. N 42° 36' 15" E 1032.50 feet;
8. S 74° 46' 44" E 452.60 feet;
9. S 68° 52' 29" E 598.32 feet;
10. S 32° 48' 40" E 328.38 feet

to the point of beginning.

NO SCALE

SITE



4600 CARLSBAD BLVD., CARLSBAD NEAR AGUA HEDIONDA LAGOON - PACIFIC OCEAN

NO SCALE

LOCATION



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 B

PRC 791.1
CABRILLO POWER I, LLC
GENERAL LEASE -
INDUSTRIAL USE
SAN DIEGO COUNTY

