

# Staff Report 52

## **APPLICANT:**

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IP Athos, LLC and IP Athos II, LLC

## **PROPOSED ACTION:**

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Amendment of Lease

## **AREA, LAND TYPE, AND LOCATION:**

1.31 acres, more or less, of State-owned school land within Section 16, Township 5 South, Range 16 East, SBM, northeast of Desert Center, Riverside County.

## **AUTHORIZED USE:**

Construction, use, and maintenance of one overhead 230-kilovolt (kV) transmission line and up to three steel poles; up to 12, 34.5-kV underground circuits; one 12-kV underground distribution circuit; up to 14 underground fiber-optic cables, and an unpaved access road.

## **TERM:**

20 years, beginning August 23, 2019.

## **CONSIDERATION:**

\$503 per year, with an annual Consumer Price Index adjustment.

## **PROPOSED AMENDMENT:**

Section 1, Basic Provisions:

- Change the name of the Lessee from IP Athos, LLC and IP ATHOS II, LLC to SE Athos I, LLC and SE Athos II, LLC.
- LAND USE OR PURPOSE: Add a second overhead 230-kilovolt (kV) transmission line.
- TERM: Extend the term of the lease from 20 years to 34 years beginning August 23, 2019 and ending August 22, 2053.

Section 2, Special Provisions:

- Add a Special Provision to the lease requiring the Lessee to acknowledge the hazards associated with climate change.
- Add a Special Provision to the lease requiring the Lessee to provide regular maintenance of vegetation to minimize the threat of fire hazard.

Lease Exhibits:

- Replace Exhibit A, Land Description.
- Replace Exhibit B, Site and Location Map.

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

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

Public Resources Code sections 6005, 6216, 6217.5, 6501.1, 6503, and 8701; California Code of Regulations, title 2, sections 2000 and 2003.

### **STATE'S BEST INTERESTS ANALYSIS:**

On August 23, 2019, the Commission authorized issuance of Lease No. PRC 9579.2, a General Lease – Right-of-Way Use (Lease) to IP Athos, LLC (Athos) and IP Athos II, LLC (Athos II) for the construction, use, and maintenance of one overhead 230-kilovolt (kV) transmission line and up to three steel poles; up to twelve 34.5-kV underground circuits; one 12-kV underground distribution circuit; up to 14 underground fiber-optic cables; and an unpaved access road ([Item 61, August 23, 2019](#)).

The Lessee has applied for an amendment to the Lease to change the name of the Lessee from IP Athos, LLC and IP ATHOS II, LLC to SE Athos I, LLC and SE Athos II, LLC; add a second overhead 230-kilovolt (kV) transmission line; and change the term of the lease to 34 years. On May 13, 2020, the Lessee filed a Certificate of Amendment with the Delaware Secretary of State changing the names of the limited liability companies to SE Athos I, LLC and SE Athos II, LLC respectively. The change of name was not related to a change in control.

The Lessee is requesting authorization to add a second overhead 230-kilovolt (kV) transmission line because the National Electric Safety Code requires minimum spacing between circuits. When the 230-kilovolt (kV) transmission line makes a 90-degree turn, which it does just north and south of the crossing of the Lease Area,

the spacing between the circuits decreases, so the lines need to be separated horizontally onto two separate structures to maintain the minimum spacing.

The Lessee has also requested the term of the lease be increased to 34 years to ensure that the term of the lease is consistent with the useful life of the project, and other real property agreements and real estate rights held by the Lessee. Similarly, the financing partners on the project will require the same timing alignment between the term of the lease and the useful life of the improvements.

The proposed lease amendment has a 34-year term, does not alienate the State's fee simple interest, and does not grant the lessee exclusive rights to the lease premises. The lease requires the lessee to insure and indemnify the State for any liability incurred as a result of the lessee's activities on the lease premises and maintain the electrical transmission lines and circuits, fiber-optic cables, and access road at its sole expense. The lease also requires the payment of annual rent, generating revenue for the California State Teachers' Retirement System, consistent with Public Resources Code section 6217.5.

**CLIMATE CHANGE:**

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, fire, drought, extreme heat, and storms. The lease area is primarily open land with moderate to low vegetation fuels and is vulnerable to the above events including drought and the threat of wildland fires. Regular maintenance of vegetation within the lease premises will help minimize the threat of fire hazards to the lease premises.

**CONCLUSION:**

For all the reasons stated above, staff believes the proposed amendment is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

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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 school land, it exercises legislatively delegated authority and responsibility as trustee of the State's school lands as authorized by law. Upon expiration or prior termination of the lease, the lessee has no right to a new lease or to renewal of any previous lease.

2. This 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. An Environmental Impact Report (EIR), State Clearinghouse No. 2018051021, was prepared by Riverside County (County) for this project and certified on June 18, 2019. The County adopted Findings and a Mitigation Monitoring Program (MMP). A previous lease authorization was approved by the Commission on August 23, 2019 ([Item 61](#)), relying on the County's certified EIR and the Commission adopted Findings and an MMP. Commission staff reviewed the County's EIR and the Commission's previously adopted MMP that remains in full force. Commission staff recommends that no additional CEQA analysis is required.
4. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq. At the time the Commission considered the EIR in August 2019, staff concluded that such activity would not affect those significant lands, and the Commission found the activity to be consistent with its use classification pursuant to Public Resources Code section 6370 et seq.

## **EXHIBITS:**

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

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

Find that an EIR, State Clearinghouse No. 2018051021, was prepared by the County and certified on June 18, 2019, for this project. The County adopted Findings and an MMP. The Commission has reviewed and considered the information contained therein; that in the Commission's independent judgment, the scope of activities to be carried out under the lease amendment have been adequately analyzed; that none of the events specified in Public Resources Code section 21166 or the State CEQA Guidelines section 15162 resulting in any new or substantially more severe significant impact has occurred; and, therefore no additional CEQA analysis is required.

The Commission previously adopted the MMP on August 23, 2019 ([Item 61](#)), and it remains in full force.

**STATE'S BEST INTERESTS:**

Find that the proposed lease amendment is in the best interests of the State.

**AUTHORIZATION:**

Authorize amendment of Lease No. 9579, a General Lease – Right-of-Way Use, effective December 17, 2020, to change the name of the Lessee to SE Athos I, LLC and SE Athos II, LLC; add a second overhead 230-kilovolt (kV) transmission line; increase the term of the lease to 34 years; add Special Provisions to the lease requiring the Lessee to acknowledge the hazards associated with climate change and requiring the Lessee to provide regular maintenance of vegetation to minimize the threat of fire hazards; replace the existing lease Exhibit A, Land Description, with the attached Exhibit A, Land Description, and the existing lease Exhibit B, Site and Location Map, with the attached Exhibit B, Site and Location Map (for reference purposes only); all other terms and conditions of the lease will remain in effect without amendment.

**EXHIBIT A**

**LEASE 9579**

**LAND DESCRIPTION**

A portion of the S ½ of the SW ¼ of Section 16, Township 5 South, Range 16 East, San Bernardino Meridian, according to the Official Township Plat approved July 12, 1856, County of Riverside, State of California, and more particularly described as follows:

That portion of a strip of land, one hundred (100) feet in width, being described as an exception in the patent from the State of California to Frederick R. Stowell Recorded in Book 2327 at Page 494 on September 4, 1958 in Official Records of said Riverside County, lying within the West 500.00 Feet of said S ½ of the SW ¼.

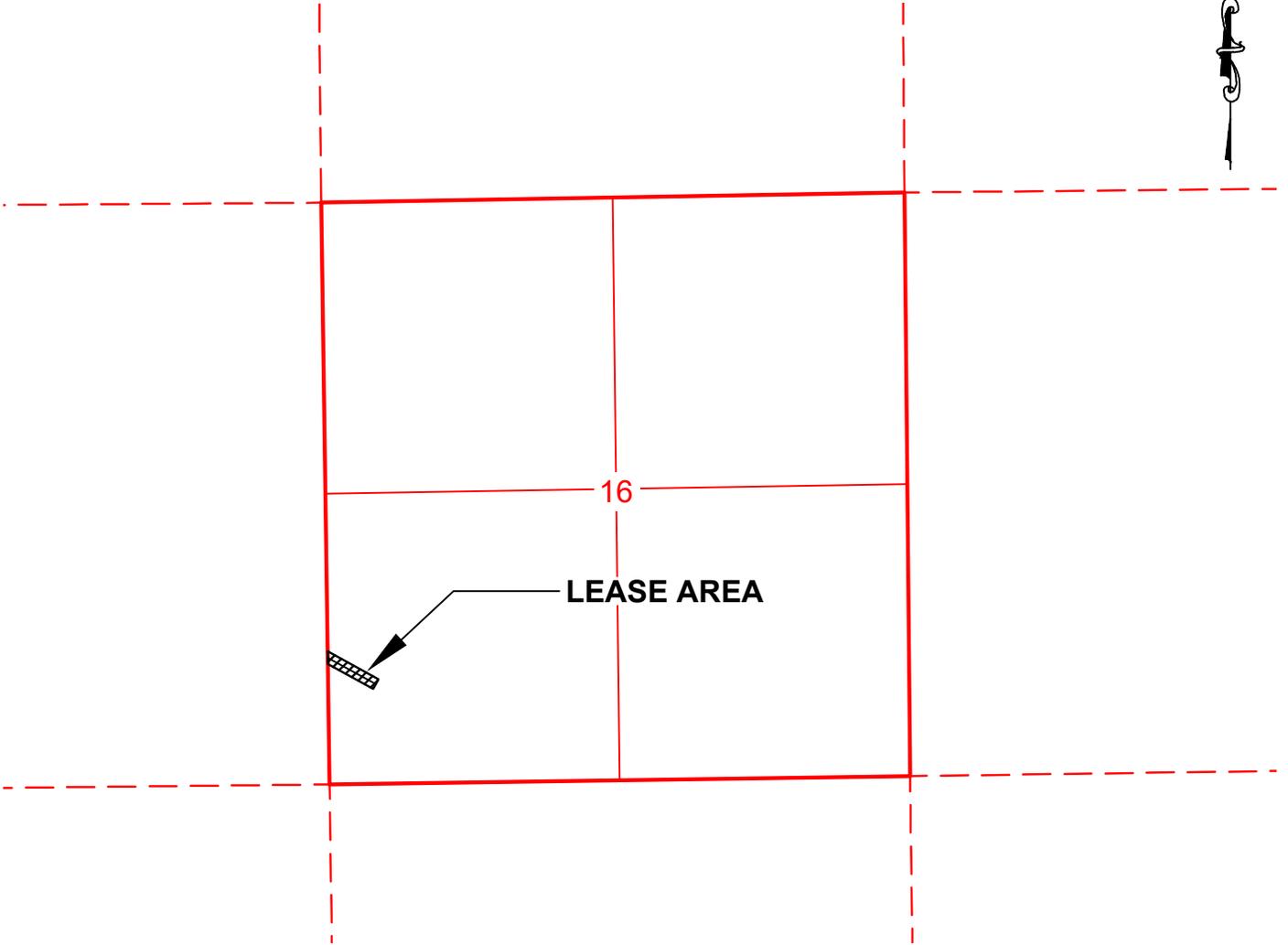
**END OF DESCRIPTION**

Prepared 11/6/2020 by the California State Lands Commission Boundary Unit.



NO SCALE

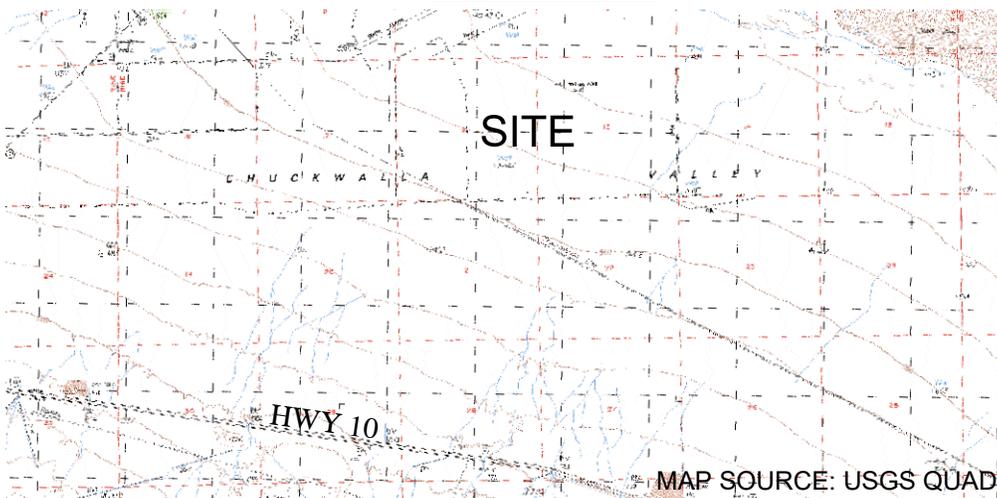
# SITE



PORTION OF THE SW  $\frac{1}{4}$  OF SECTION 16, T5S, R16E, SBM.

NO SCALE

## LOCATION



## EXHIBIT B

LEASE 9579  
 SE ATHOS I, LLC &  
 SE ATHOS II, LLC  
 APN 811-180-027  
 GENERAL LEASE -  
 RIGHT-OF-WAY USE  
 RIVERSIDE COUNTY



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.

JAK 11/20