

# Staff Report 45

## **LESSEE/TRUSTOR:**

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SE Athos I, LLC and SE Athos II, LLC

## **SECURED PARTY - LENDER:**

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MUFG Union Bank, N.A.

## **PROPOSED ACTION:**

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Consider authorization of an Agreement and Consent to Encumbrance of Lease Number PRC 9579.

## **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 two overhead 230-kilovolt (kV) transmission lines 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:**

34 years, beginning August 23, 2019.

## **CONSIDERATION:**

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

## **SPECIFIC LEASE PROVISIONS:**

- Insurance: Liability insurance in an amount no less than \$1,000,000 per occurrence.

- Lessee will take all reasonable and necessary actions to prevent, suppress, and control fires on the Lease Premises.
- No herbicidal chemical may be used for vegetation control without the prior written consent of Commission staff.
- Lessee acknowledges the hazards associated with climate change.
- Lessee to provide regular maintenance of vegetation to minimize the threat of fire hazard.

## **BACKGROUND:**

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On August 23, 2019, the Commission authorized a General Lease – Right- of-Way Use to IP Athos, LLC and IP Athos II, LLC for the 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 ([Item 61, August 23, 2019](#)).

On December 17, 2020, the Commission authorized an amendment of 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, extend the term of the lease from 20 years to 34 years beginning August 23, 2019, and ending August 22, 2053, and add Special Provisions to the lease requiring the Lessee to acknowledge the hazards associated with climate change and to require the Lessee to provide regular maintenance of vegetation to minimize the threat of fire hazard ([Item 52, December 17, 2020](#)).

## **PROJECT DESCRIPTION:**

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The Lessee is in the process of obtaining permanent financing or refinancing of existing debt in favor of MUFG Union Bank, the Secured-Party Lender. The Lessee has requested the Commission approve the Agreement and Consent to Encumbrance of Lease Number PRC 9579 (Agreement), effective no later than July 29, 2021, after which the proposed authorization will be void. SE Athos I, LLC requires and has obtained indebtedness not to exceed \$485,329,760.03 and SE Athos II, LLC requires and has obtained indebtedness not to exceed \$364,670,239.97. The Secured-Party Lender is requiring the Lessee to pledge its interest in Lease 9579 as additional security.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

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

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

The Agreement will allow the Secured-Party Lender to step into the role of Lessee for the lease premises under certain circumstances and offers the State additional protections such as:

- No subsequent encumbrance of the lease shall be allowed without prior written consent of the Commission.
- Any transfer of the lease to a third party shall be subject to prior written approval and consent of the Commission.
- If the Secured Party-Lender forecloses on the lease, it shall be bound by all terms and conditions of the lease.
- The duration of the Agreement is limited to the term of the lease.

In approving the Agreement, the Commission, through a delegation to the Executive Officer, retains the right to approve any transfer of the lease from the lending institution to a prospective lessee, should any foreclosure of the loan occur. The proposed Agreement provides that the Commission's Executive Officer make certain approvals as provided in the Agreement, including the approval of purchasers during a foreclosure sale. The existing lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

### **CONCLUSION:**

For all the reasons stated above, staff believes approval of the proposed Agreement will not result in a change in the use of, or impacts to, State-owned school lands and is in the best interests of the State.

## **OTHER PERTINENT INFORMATION:**

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1. Approval or denial of the authorization to execute the agreement and consent to encumbrance of the lease is a discretionary action by the Commission. Each time the Commission approves or rejects a use of school land (including

encumbrance of a lease for 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 the "Leading Climate Activism" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. The authorization of an agreement and consent to encumbrance of lease is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

## **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:

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

Find that the proposed agreement and consent to encumbrance of the lease is in the best interests of the State.

### **AUTHORIZATION:**

1. Authorize the Executive Officer or her designee to execute the document titled "Agreement and Consent to Encumbrance of Lease No. PRC 9579.2," allowing Lessee's right, title, and interest in Lease Number PRC 9579 to be pledged as partial security for a loan in the principal amount not to exceed \$485,329,760.03 for SE Athos I, LLC and in the principal amount not to exceed \$364,670,239.97 for SE Athos II, LLC, in favor of Secured Party in substantially the same form as that on file in the Sacramento office of the Commission; effective upon signature by all parties but no later than July 29, 2021, and to execute, acknowledge, accept, and record all related documents as may be reasonably necessary to complete the transaction, effective upon signature by all parties.

2. Authorize the Executive Officer or designee to give approval on behalf of the Commission of prospective purchases during a foreclosure sale and make any other approvals required of the Commission under the Agreement.

**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.

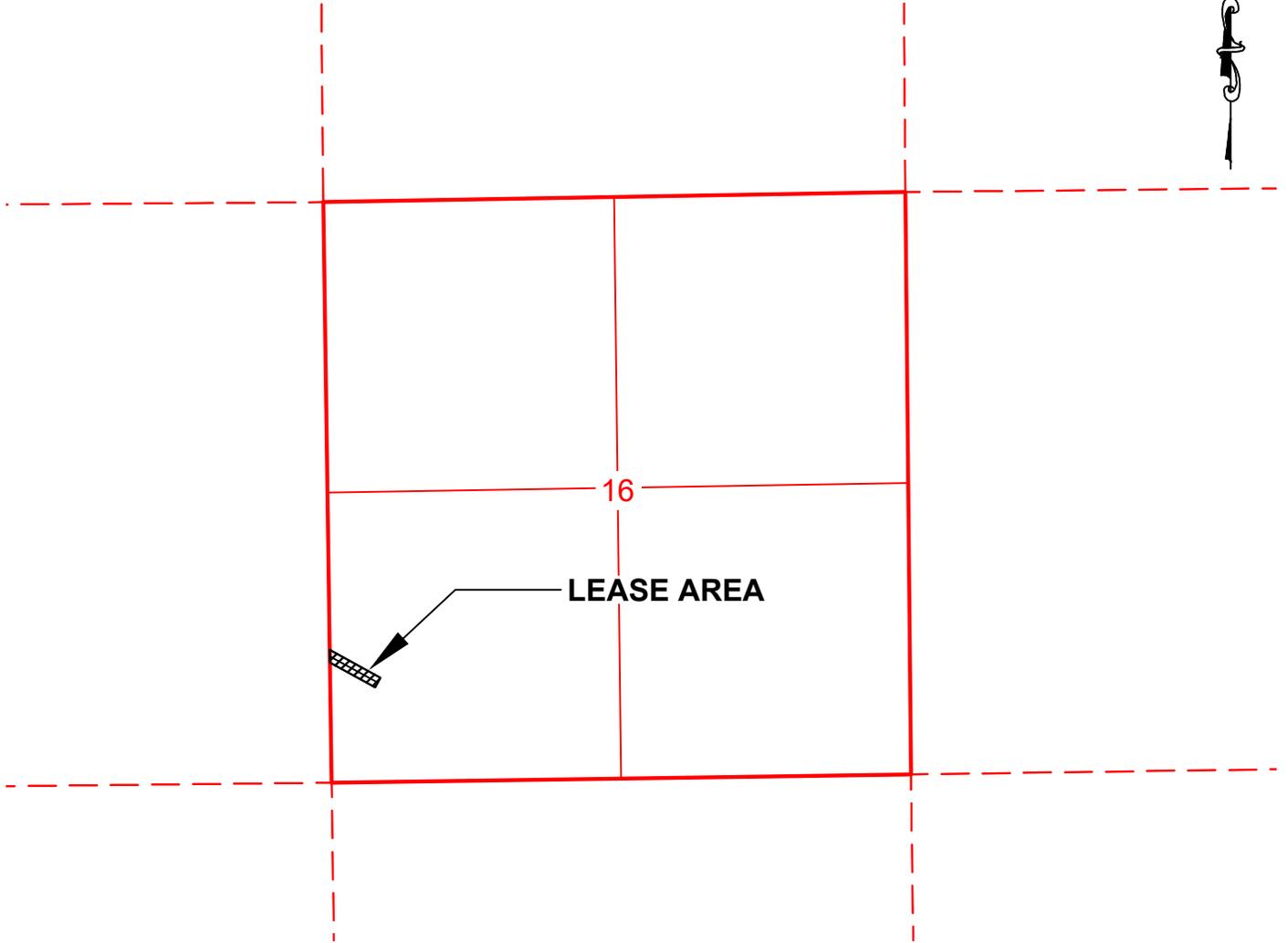
**END OF DESCRIPTION**

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



NO SCALE

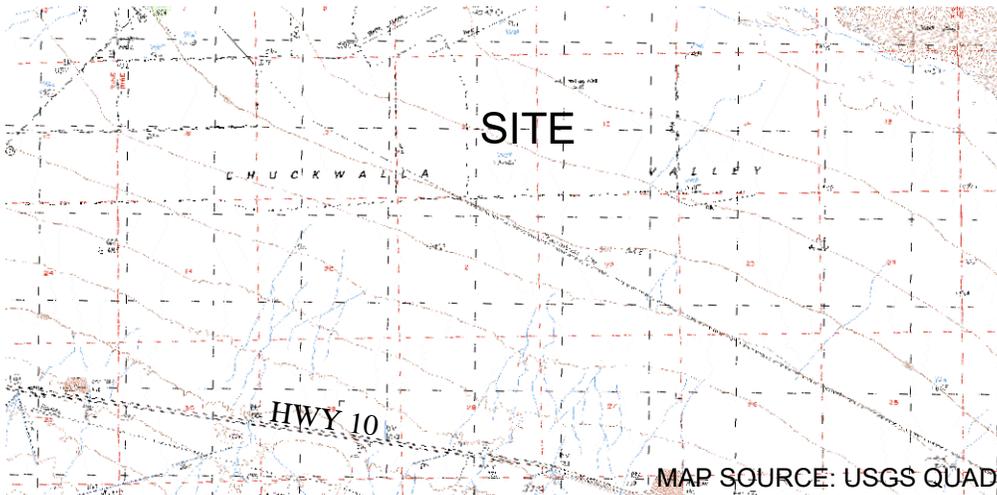
# SITE



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