

Staff Report 61

LESSEE/TRUSTOR:

SE Athos I, LLC; SE Athos II, LLC; and ATHOS STORAGE, LLC

SECURED PARTY-LENDER:

Truist Bank

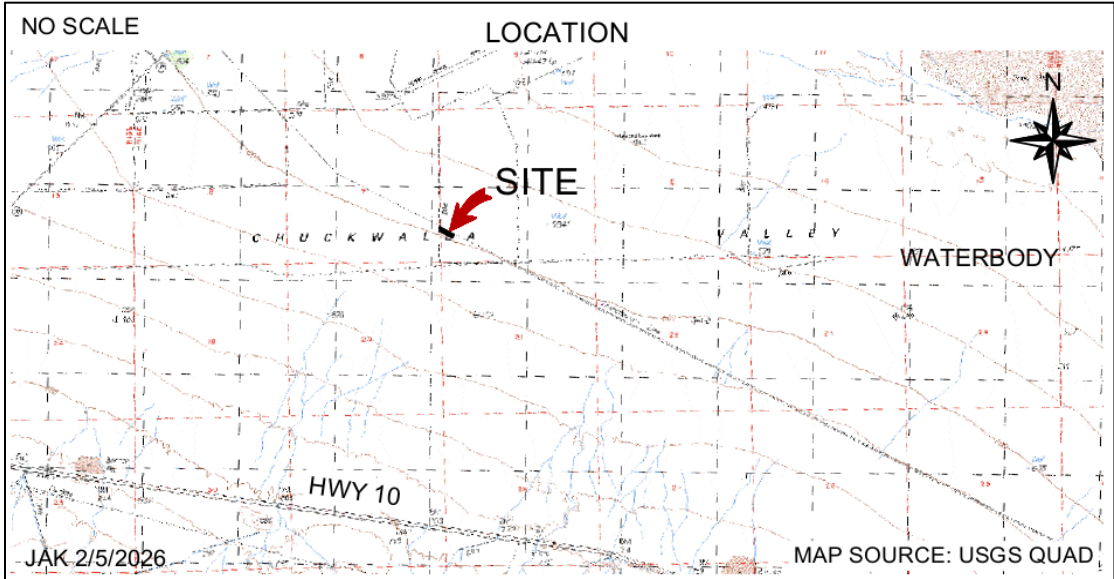
PROPOSED ACTION:

Consider authorization of an Agreement and Consent to Encumbrance of Lease 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 (as shown in Figure 1).

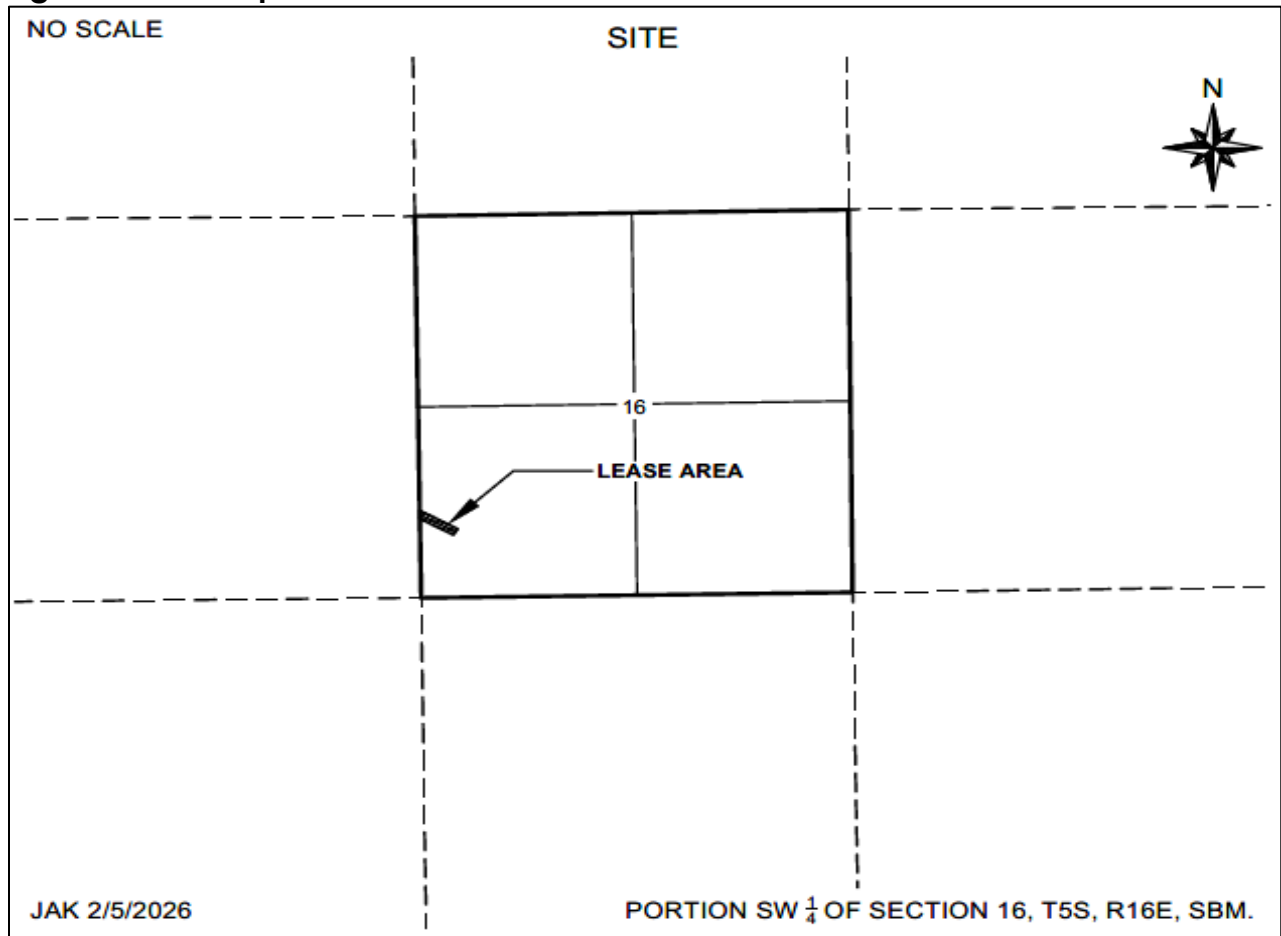
Figure 1. Location



AUTHORIZED USE:

Construction, operation, 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 (as shown in Figure 2).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the Applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

TERM:

34 years, beginning August 23, 2019, and ending August 22, 2053.

CONSIDERATION:

\$503 per year established in 2019, with an annual Consumer Price Index adjustment.

SPECIFIC LEASE PROVISIONS:

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

BACKGROUND:

On August 23, 2019, the Commission authorized a General Lease – Right-of-Way Use for construction, use, and maintenance of one overhead 230-kilo-volt (kV) transmission line, 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](#)).

The lease was subsequently amended on December 17, 2020, to change the name of the Lessee, add a second overhead 230-kilovolt (kV) transmission line, extend the term of the lease from 20 to 34 years and add climate-related 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](#)). On June 29, 2021, the Commission authorized an Agreement and Consent to Encumbrance of Lease 9579 ([Item 45](#)). In 2021, the Lessee sought and obtained Commission approval of an Agreement and Consent to Encumbrance of Lease 9579 to secure permanent financing or refinance of existing debt with MUFG Union Bank. SE Athos I, LLC obtained up to \$485,329,760.03 and SE Athos II, LLC obtained up to \$364,670,239.97, for a combined total financing amount of approximately \$850 million. The MUFG Union Bank required the Lessee to pledge its lease interest as additional security.

PROJECT DESCRIPTION:

Athos Renewable Energy Project includes construction, operation, maintenance, and decommissioning of a solar facility of up to 500 megawatts (MW) of electricity generation, electrical storage equipment, and portions of a generation intertie line (gen-tie) in Riverside County.

ATHOS STORAGE, LLC (ATHOS STORAGE) has now obtained construction and permanent financing or refinancing in favor of Truist Bank, the Secured-Party Lender in an amount not to exceed \$723,000,000 for construction, maintenance, repairs, or reconstruction of the battery energy storage system.

The Secured Party-Lender requires ATHOS STORAGE to pledge its interest in Lease 9579 as additional security. The Lessee has requested the Commission approve the

Agreement and Consent to Encumbrance of Lease 9579, substantially similar in form to the encumbrance agreements previously approved by the Commission for the Athos projects in 2021. The Athos projects are large solar energy facilities near Desert Center in Riverside County. Lease PRC 9579 authorizes a right-of-way across State school lands for transmission lines, underground electrical circuits, fiber-optic cables, and access infrastructure that connects the Athos solar facilities to the regional electric grid. The 2021 Agreements allowed SE Athos I, LLC and SE Athos II, LLC to use Lease PRC 9579 as part of the collateral to secure financing from a different Bank. The current agreement allows project financing while ensuring the Commission retains full control over the lease and State school lands.

Although the Athos Battery Energy Storage System facility is located on non-State land, the transmission lines, fiber-optic cables, and access road located on State school lands within Lease 9579 are critical infrastructure supporting the project. As part of construction and permanent financing for the ATHOS STORAGE project, the lender requires assurance of continued access and use of these lease improvements.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6501.1, 6503, and 8705; California Code of Regulations, title 2, sections 2000 and 2003.

STATE'S BEST INTERESTS:

The proposed Agreement will allow the Secured-Party Lender to step into the role of Lessee for Lease 9579 under limited circumstances while preserving the Commission's full oversight authority. The Agreement provides additional protections to the State, including:

- No subsequent encumbrance 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 Agreement's duration 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, ensuring continued Commission control over use of State school lands. Approval of the Agreement will not result in a change in authorized use or physical impacts to State lands and ensures continued compensation and liability protection for the State.

CONCLUSION:

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

OTHER PERTINENT INFORMATION:

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 the 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 Areas of the Commission's 2021-2025 Strategic Plan as the Lessee proposes to use adjacent lands for development of renewable energy.
3. Approving an agreement and consent to encumber a 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, sections 15060, subdivision (c)(3), and 15378, subdivision (b)(5).

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND 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 designee to execute the "Agreement and Consent to Encumbrance of Lease No. 9579.2", allowing Lessee's interest in the lease to be pledged as partial security for a loan in the principal amount not to exceed \$723,000,000, 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, 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.