# DEFERRED

## Minute Item
## 41

**02/05/07**
**PRC 871, PRC 1409**
**A. Scott**
**J. Brown**

## CABRILLO POWER I LLC
## (APPLICANT)

**Regular Item 41:** After listening to staff's report and testimony from proponents concerning a lease application to Cabrillo Power I LLC, the Commission decided to put the item over until the next meeting.

## CALENDAR ITEM
## 41

A 74 | 02/05/07
PRC 871 and 1409
S 38 | A. Scott

### GENERAL LEASE - INDUSTRIAL USE

**APPLICANT:**

Cabrillo Power I, LLC
4600 Carlsbad Boulevard
Carlsbad, California 92008

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

5.548 acres, more or less, of sovereign lands in the Pacific Ocean, city of Carlsbad, adjacent to Agua Hedionda Lagoon, San Diego County.

**AUTHORIZED USE:**

Continued use and maintenance of existing intake and outfall structures, used as part of an existing upland electric generating plant, each of which is comprised of two rock groins seperated by an open water channel. The structures are used as components of a once-through cooling system associated with the upland Encina Power Plant.

**LEASE TERM:**

20 years, beginning December 14, 2006.

**CONSIDERATION:**

First year's rent of $123,000, referred to as the "Base Rent". 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, as provided in the lease.

**SPECIFIC LEASE PROVISIONS:**

Insurance:
$5,000,000 combined single limit
Bond:
$500,000

Other:

1) The authorized facilities are to be used exclusively for the intake and discharge of cooling water for an upland electric generating plant and for the discharge of water from an existing permitted upland desalination test facility. No other uses are allowed without the prior written approval of the Commission, specifically the intake or discharge of water from any future desalination project.

2) The Commission reserves the right to modify the Lease to require Cabrillo Power I, LLC (Cabrillo) to implement an alternative, environmentally superior technology, such as an alternative cooling system, should such system become feasible and be required by another permitting Federal or State agency.

3) Cabrillo is required to provide an annual detailed written report to the Commission identifying conditions imposed upon it by other agencies pursuant to Federal and State laws including the Federal Clean Water Act, section 316(b) and California's Porter-Cologne Water Quality Act. The report shall indicate and provide evidence of Cabrillo's full compliance or engagement in an agency-directed process to achieve full compliance with the identified imposed conditions. The Commission will conduct a public hearing five years after the effective date of the lease in order to publicly review and evaluate Cabrillo's compliance with the terms of the lease.

4) The annual reports will be available to the public on the Commission's website.

**OTHER PERTINENT INFORMATION:**

1. Cabrillo owns the uplands adjoining the lease premises.

2. The Commission has expressed concerns regarding Once-Through Cooling (OTC) of power plants and the environmental impacts to the waters of California that maybe caused by OTC systems. As a result of the Commission's concerns, this lease contains special language that will assure that Cabrillo will be in compliance with various regulations governing OTC. The lease requires compliance with both Federal and State regulations including the Clean Water Act, Section 316(b) and California's Porter-Cologne Water Quality Control Act. The lease also will allow the Commission to modify the terms and conditions of the lease should that become necessary based on changes to the technology of

cooling for power plants that maybe required in their authorized capacities by other governmental regulatory agencies.

3. **California Energy Commission:**
The California Energy Commission (CEC) is the State's primary energy policy and planning agency. In addition to forecasting energy needs, developing energy technologies and promoting energy efficiency, the CEC licenses thermal power plants having a capacity of 50 megawatts or more. This power plant was licensed in 1954.

4. **State Water Resources Control Board and the Regional Water Quality Control Board:**
The State Water Resources Control Board (SWRCB) is developing a Statewide 316(b) Policy (Policy) with requirements for both new and existing OTC power plants. The requirements will be implemented through the National Pollutant Discharge Elimination System (NPDES) permitting process enforced by the SWRCB's Regional Water Quality Control Boards (Boards). The proposed Policy will be implemented on a statewide basis in order to assure consistency throughout the various Boards.

   Cabrillo received a renewal of their NPDES Permit from the San Diego Regional Water Quality Control Board with an effective date of October 1, 2006. However, this action by the Regional Board has been challenged by the Surfriders Foundation who has petitioned the State Board to review the issuance of the Regional Board's permit. Surfriders petition is in the process of being reviewed by the State Board. Regardless of the outcome of the petition to the State Board, Cabrillo is required, under the terms of the Commission's lease, to be in compliance with all necessary permits issued by other regulatory agencies. The Commission's lease contains provisions that authorize the lease to be amended by Commission action should Cabrillo's NPDES permit be modified by future action of the State or Regional Board.

5. This is an existing facility with no construction activities planned for the intake or outfall structures. Current discharges through the outfall include brine water from a desalination test facility which is currently regulated under the NPDES permit issued by the San Diego Regional Water Quality Control Board.

6. The proposed new lease contains language which prohibits the use of the structures for any use other than once through cooling, specifically prohibiting the comingling of brine from a future desalination facility without the prior approval of the Commission. As mentioned, above, there is an existing permitted desalination test facility located at the electric generating plant and a minimal amount of brine from that test facility is currently being disposed of through the cooling water system. Pursuant to provisions in the proposed lease, no additional brine beyond that from the existing test facility is allowed in the cooling water system without prior approval of the Commission.

7. This transaction involves the merging of two separate leases into one lease. Lease No. PRC 871.1 is for the rock groin structures protecting the entrance to Agua Hedionda Lagoon, which is the source of the power plants cooling water. Lease No. PRC 1409.1 is for the rock groin outlet structures crossing the beach in front of the Encina Power Plant for return of the cooling water to the ocean. Both of these structures are used in conjunction with an existing cooling water system that uses sea water for once-through cooling of the Encina Power Plant. These two lease areas will be combined into a single lease.

   PRC 871.1 expired December 13, 2002, and had no specific language for holding over after expiration, but is considered to be in holdover pending the issuance of a replacement lease. The lease had a one-time payment of $300 for the entire 49-year lease term.

   PRC 1409.1 expired July 7, 1999, and contains provisions for holding over beyond the expiration of the lease term. Cabrillo has continued to pay the annual rent of $14,490 during the holdover period of July, 1999, through December 13, 2006, while processing an application for a replacement lease.

   These two leases will be combined into a single lease with a beginning date of December 14, 2006. Cabrillo has agreed to pay rent in the amount of $256,440 for the combined holdover period of July 7, 1999, through December 13, 2006.

8. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of

the CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; Title 2, California Code of Regulations, section 2905 (a)(2).

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

9. 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 state school lands and submerged 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.

**APPROVALS OBTAINED:**

Los Angeles Regional Water Quality Control Board (NPDES Permit)
California Energy Commission (Licensed 1954)

**EXHIBITS:**

A. Site Map
B. Land Description

**RECOMMENDED ACTION:**

IT IS RECOMMENDED THAT THE COMMISSION:

**CEQA FINDING:**

FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES; TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 2905 (a)(2).

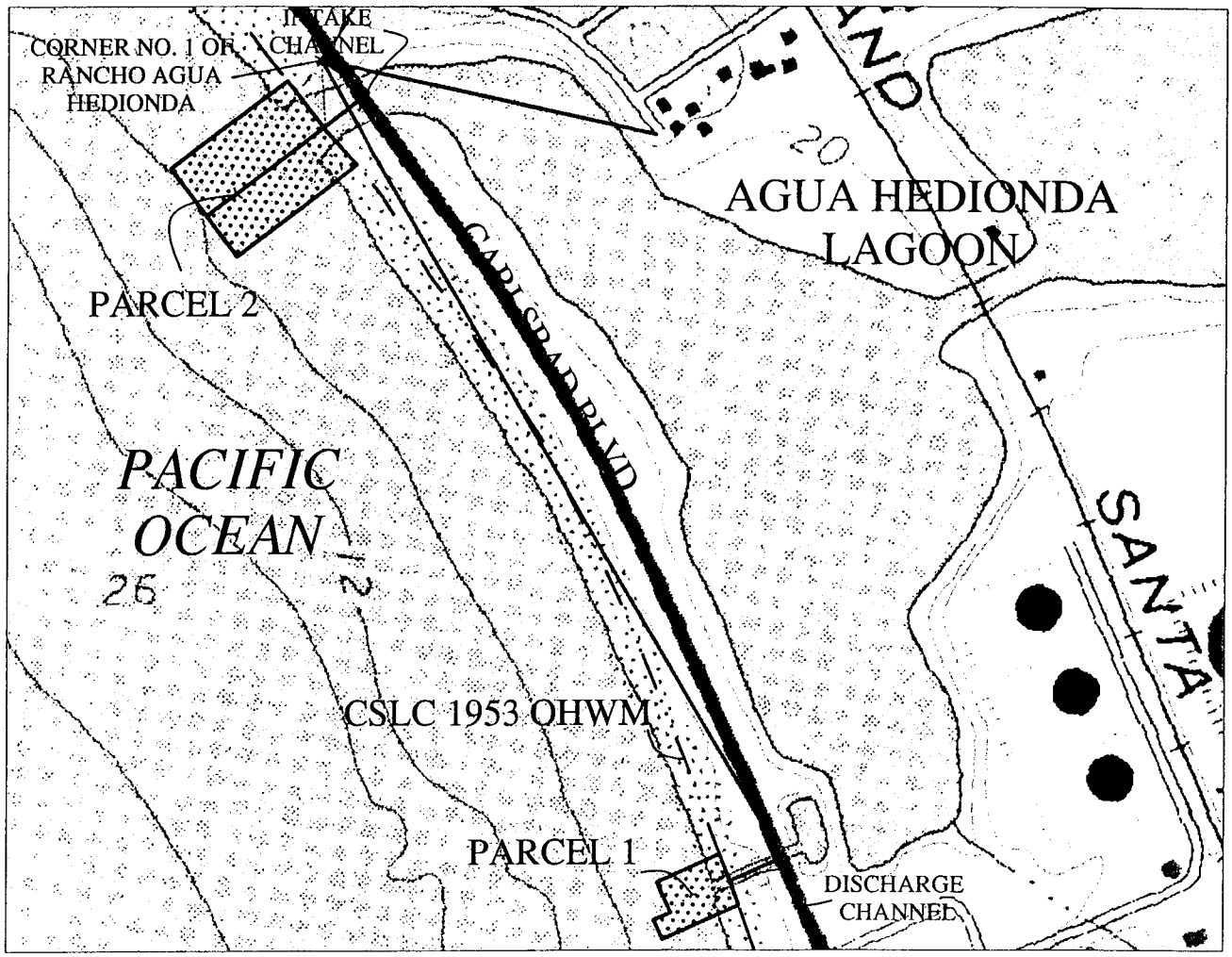
**AUTHORIZATION:**

ACKNOWLEDGE THAT LEASE NO. PRC 871.1 HAS BEEN IN HOLDOVER BEGINNING DECEMBER 12, 2002, AND LEASE NO. PRC 1409.1 HAS BEEN IN HOLDOVER BEGINNING JULY 6, 1999, AND ACCEPT $256,440 AS RENT FOR THE COMBINED HOLDOVER PERIOD.

AUTHORIZE ISSUANCE TO CABRILLO POWER I, LLC OF A GENERAL LEASE - INDUSTRIAL USE, BEGINNING DECEMBER 14, 2006, FOR A TERM OF 2O YEARS, FOR THE CONTINUED USE AND MAINTENANCE OF INTAKE AND OUTFALL STRUCTURES EACH COMPRISED OF TWO ROCK GROINS SEPARATED BY AN OPEN WATER CHANNEL AS SHOWN ON EXHIBIT A ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF; A BASE RENT FOR THE FIRST YEAR OF THE LEASE IN THE AMOUNT OF $123,000, WITH THE STATE RESERVING THE RIGHT TO ADJUST THE BASE RENT ANNUALLY BY THE CONSUMERS PRICE INDEX AND FURTHER RESERVING THE RIGHT TO PERIODICALLY FIX A NEW BASE RENT DURING THE TERM OF THE LEASE, AS PROVIDED IN THE LEASE; COMBINED SINGLE LIMIT LIABILITY INSURANCE WITH COVERAGE OF NO LESS THAN $5,000,000; SURETY BOND IN THE AMOUNT OF $500,000.

NO SCALE

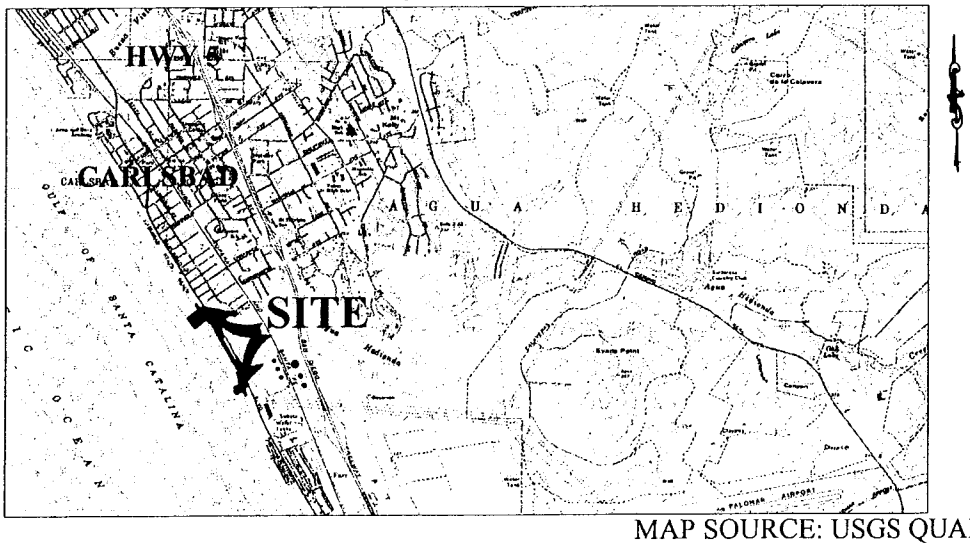
## SITE




EXISTING GROIN STRUCTURES, AGUA HEDIONDA LAGOON

NO SCALE

## LOCATION




MAP SOURCE: USGS QUAD

# Exhibit A

PRC 8727
CABRILLO POWER, LLC.
INDUSTRIAL LEASE
SAN DIEGO 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.

CALENDAR PAGE

MINUTE PAGE

MJF 12/1/06

**EXHIBIT B**

**PRC 8727**

**LEGAL DESCRIPTION**

**PARCEL 1** *(Formerly PRC 1409)*

A parcel of tide and submerged land lying within the Pacific Ocean, City of Carlsbad, County of San Diego, State of California, described as follows:

COMMENCING at Corner No. 1 of Rancho Agua Hedionda according to map number 823, filed November 16, 1896 in the Office of the County Recorder of said County, said Corner No. 1 having CCS27, Zone 6 coordinates of N = 358,014.6 feet, E = 1,665,348.0 feet per the October 1953 survey of the ordinary high water mark by the California State Lands Commission, and shown on map CB 512 on file in the Office of said Commission; thence S 30°17'50" E 3060.36 feet; thence S 65°53'36" W 187.10 feet to said survey of the ordinary high water mark and TRUE POINT OF BEGINNING; thence N 21°09'41" W 95.13 feet along said survey of the ordinary high water mark; thence leaving said survey of the ordinary high water mark the following five (5) courses:

1. S 65°52'36" W 226.46 feet;
2. S 24°07'24" E 110.00 feet;
3. S 65°52'36" W 60.00 feet;
4. S 24°07'24" E 70.00 feet;
5. N 65°52'36" E 275.00 feet to said survey of the ordinary high water mark;

thence along said survey of the ordinary high water mark N 19°18'03" W 66.23 feet; and N 21°09'41" W 19.03 feet to the point of beginning.

TOGETHER WITH any tide and submerged lands lying between the 1953 survey of the ordinary high water mark and the ordinary high water mark.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the Pacific Ocean.

The description of Parcel 1 is based on the California Coordinate System 1927, Zone 6.

**PARCEL 2** *(Formerly PRC 871)*

A strip of tide and submerged land 364 feet wide in the City of Carlsbad, County of San Diego, State of California, extending into the Pacific Ocean from the ordinary high water mark as established in the October 1953 survey by the California State Lands Commission, and shown on map CB 511 – 513, on file in the Office of said Commission, the side lines of which lie 197 feet northwesterly and 167 feet southwesterly, measured at right angles from and parallel with the following described line:

**EXHIBIT B**

**PRC 8727**

**LEGAL DESCRIPTION**

BEGINNING at a point which bears S 56°18'37" E a distance of 197.37 feet from Corner No. 1 of Rancho Agua Hedionda, according to Partition Map thereof number 823, filed November 16, 1896 in the Office of the County Recorder of said County; thence from said point of beginning S 53°05'45" W a distance of 680.00 feet.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the Pacific Ocean.

**END OF DESCRIPTION**

This description shall not be construed as a waiver or limitation of State sovereign land interests in the event that the ordinary high water mark is determined to be landward of said 1953 survey of the ordinary high water mark.

Prepared December 19, 2006 by the California State Lands Commission Boundary Unit

James E. DeGraff, LS 7339

PROFESSIONAL LAND SURVEYOR
JAMES E. DeGRAFF
Exp. 12/31/07
L.S. 7339
STATE OF CALIFORNIA