

Staff Report 34

LESSEE:

Apolla Farthing and Art Acosta and Michelle Acosta

APPLICANT:

William Armstrong and Amanda Armstrong, Trustees of the William and Amanda Armstrong Revocable Trust dated July 13, 2020

PROPOSED ACTION:

Termination of Lease and Issuance of a General Lease – Recreational and Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Colorado River, adjacent to 1150 Beach Drive, Needles, San Bernardino County.

AUTHORIZED USE:

Use and maintenance of two planter areas with rock and concrete block retaining walls and electrical and irrigation appurtenances, concrete stairs, concrete patio, riprap bankline, aluminum stairway and gangway with railing, and a floating boat dock.

TERM:

10 years, beginning August 22, 2020.

CONSIDERATION:

Total per year: \$635 per year based on the following:

Two planter areas with rock and concrete block retaining walls and electrical and irrigation appurtenances, and concrete patio: \$248 per year, with an annual Consumer Price Index adjustment.

Aluminum stairway and gangway with railing, and a floating boat dock: \$387 per year, with an annual Consumer Price Index adjustment.

Concrete stairs and riprap bankline protection: The public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the best interests of the State.

SPECIFIC LEASE PROVISIONS:

- Insurance: Liability insurance in an amount no less than \$1,000,000 per occurrence.
- The Lessee acknowledges that the Public Pedestrian Access Easement shall remain open to the public and that no structures or improvements shall be erected, and no personal property placed so as to obstruct or prevent public access in and along the easement. Such improvements include, but are not limited to, fences, walls, railings, or landscaping. Lessee further acknowledges that they shall not place signs or advocate in any other manner in such a way as to prevent or discourage public use of the public pedestrian access easement.

BACKGROUND:

On December 12, 1990 ([Item 8, December 12, 1990](#)), the Commission authorized a Boundary Line Agreement and Compromise Settlement (AD 134) which confirmed the State's fee ownership of sovereign land located in the Colorado River at this location. Pursuant to Public Resources Code section 6501.1, projects in this location, including new development or maintenance of existing facilities, extending waterward of the ordinary high-water mark (OHWM) fixed by AD 134 require a lease from the Commission. The Applicant's upland property is located along the Colorado River adjacent to the fixed OHWM.

Pursuant to AD 134, the State of California was granted a Public Pedestrian Access Easement (Easement) running parallel to the fixed OHWM. The Easement is intended to provide public access to and along the bank of the Colorado River. The Easement affects lots 1 through 40 of the Rio Buena Vista residential subdivision, one of which is the Applicant's property. The Easement can be accessed by the public from the northern or southern end of the subdivision and from the Colorado River, providing access to the Colorado River.

The U.S. Department of the Interior, Bureau of Reclamation (Reclamation) conducted a review by boat of the riprap bankline on March 27, 2002 and conducted a site visit on April 10, 2002. The inspection revealed that the bankline

was cleared of vegetation and that the federally constructed riprap and jetties were undisturbed and in good condition.

By letter dated April 23, 2002, Reclamation declared that it would not place additional riprap on the bankline because of interference from the upland residential development. Reclamation stated that the upland homeowners would be responsible for maintaining protection of their own bankline in the future, subject to the homeowners seeking approval and permitting of their riprap or bankline construction work from the U.S. Army Corps of Engineers.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On June 19, 2014, the Commission authorized Lease No. PRC 9136, a 10-year General Lease – Recreational and Protective Structure Use, to Apolla Farthing and Art Acosta and Michelle Acosta, for the use and maintenance of two planter areas with rock and concrete retaining walls and electrical and irrigation appurtenances, concrete stairs, concrete patio, and riprap bankline; and the construction, use, and maintenance of an aluminum stairway and gangway with railing, and a floating boat dock. ([Item 64, June 19, 2014](#)). The lease will expire on June 18, 2024.

On August 22, 2020, ownership of the adjacent upland property was transferred from Apolla Farthing and Art Acosta and Michelle Acosta to William Armstrong and Amanda Armstrong, Trustees of the William and Amanda Armstrong Revocable Trust dated July 13, 2020 (Applicant). The Applicant is requesting termination of the existing lease and the issuance of a new 10-year lease.

The existing facilities within the lease area consist of two planter areas with rock and concrete block retaining walls and electrical and irrigation appurtenances, concrete stairs, concrete patio, riprap bankline, an aluminum stairway and gangway with railing, and a floating boat dock within the River. The improvements are privately owned and maintained and have existed at this location for many years.

The floating boat dock facilitates recreational boating because it is used for the docking and mooring of recreational boats. Recreational boating is water-dependent and is generally consistent with the common law Public Trust Doctrine.

The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust lands (Pub. Resources Code, § 6503.5). The aluminum staircase and gangway with railing are also generally consistent with Public Trust use and facilitate recreational use of water-dependent facilities.

The upland area with planters, rock retaining walls, and concrete patio are generally not Public Trust uses, but the Commission has issued leases on a limited basis for existing non-water dependent uses that encroach onto sovereign land where such encroachments do not significantly interfere with Public Trust needs and values.

Furthermore, the riprap bankline mutually benefits both the public and the Applicant because it prevents erosion and provides additional protection to the bank of the Colorado River and to maintain the integrity of the river channel. This benefit will not generate expenses for the state because the riprap bankline will be maintained by the Applicant. Additionally, the concrete stairway facilitates public access to the river.

Staff believes that the Public Trust needs, values, and uses of the two identified nearby public beach areas along the Colorado River will not be impacted by the proposed lease and continued use of the lease facilities. As an additional measure to ensure that the proposed use does not impair public access, the lease includes provisions protecting public use of the proposed lease area.

The proposed lease does not alienate the State's fee simple interest in the underlying land, nor will it permanently impair public rights. The proposed lease is limited to a 10-year term, does not grant the lessee exclusive rights to the lease premises, and protects public access to the Colorado River. Upon termination of the lease, the lessee may be required to remove all improvements from State land. The proposed 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.

CLIMATE CHANGE:

The lease area in the Colorado River is not tidally influenced and therefore would not be subject to sea-level rise. The water level near the existing improvement is regulated primarily by water released upstream from the Davis Dam. 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, extreme heat, drought, and storms. However, the existing improvements, as described in the authorized use above, are

not likely to be damaged by either storm-created flooding or prolonged droughts due to the floating nature of the dock. Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement.

CONCLUSION:

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the termination of a lease and issuance of a new lease are discretionary actions 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 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; and Strategy 1.3 of the Commission's Strategic Plan to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
3. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) 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).

4. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of 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 issuance of the lease 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:

1. Find that the existing and, for a limited period, continuing use and maintenance of the floating boat dock, aluminum stairway and gangway with railing, concrete stairs, and riprap bankline protection will not substantially interfere with Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine;
2. Find that the existing and, for a limited period, continuing use and maintenance of the planter areas with rock and concrete block retaining walls and concrete patio are not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the Trust; and
3. Find that termination of Lease No. PRC 9136 and issuance of Lease 9136 are in the best interests of the State.

AUTHORIZATION:

1. Terminate, effective August 22, 2020, Lease Number PRC 9136, a General Lease – Recreational and Protective Structure Use, issued to Apolla Farthing and Art Acosta and Michelle Acosta.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning August 22, 2020, for the term of 10 years, for the use and maintenance of two planter areas with rock and concrete block retaining walls and electrical and irrigation appurtenances, concrete stairs, concrete patio, riprap bankline, an aluminum stairway and gangway with

railing, and a floating boat dock on sovereign land, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$635 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 9136

LAND DESCRIPTION

Two parcels of State owned land adjacent to Lot 27 of Tract No. 15640 as shown on Tract Map recorded in Book 261, Pages 88 through 94, inclusive of Maps, in the Office of the County Recorder of San Bernardino County, lying in the bed of the Colorado River, County of San Bernardino, State of California, more particularly described as follows:

PARCEL 1

BEGINNING at the easterly corner of said Lot 27; thence northwesterly along the northeasterly line of said lot, said line also being the Agreed Boundary Line as described in Exhibit A of Document Number 92-333250, recorded on August 11, 1992, Official Records of said County, N 42° 08' 05" W 45.00 feet to the northerly corner of said lot; thence leaving said northeasterly line and said Agreed Boundary Line, along the northeasterly prolongation of the northwesterly line of said lot N 47° 51' 55" E 60.00 feet; thence S 42° 08' 05" E 45.00 feet to the intersection with the northeasterly prolongation of the southeasterly line of said lot; thence southwesterly along said northeasterly prolongation S 47° 51' 55" W 60.00 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying waterward of the toe of revetment adjacent to said Lot 27.

PARCEL 2

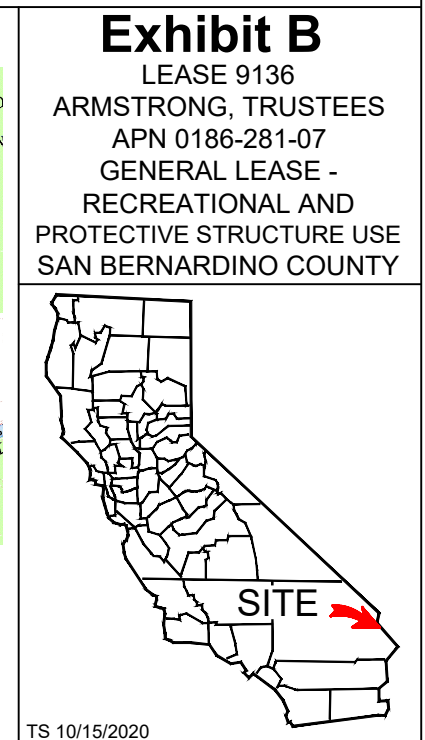
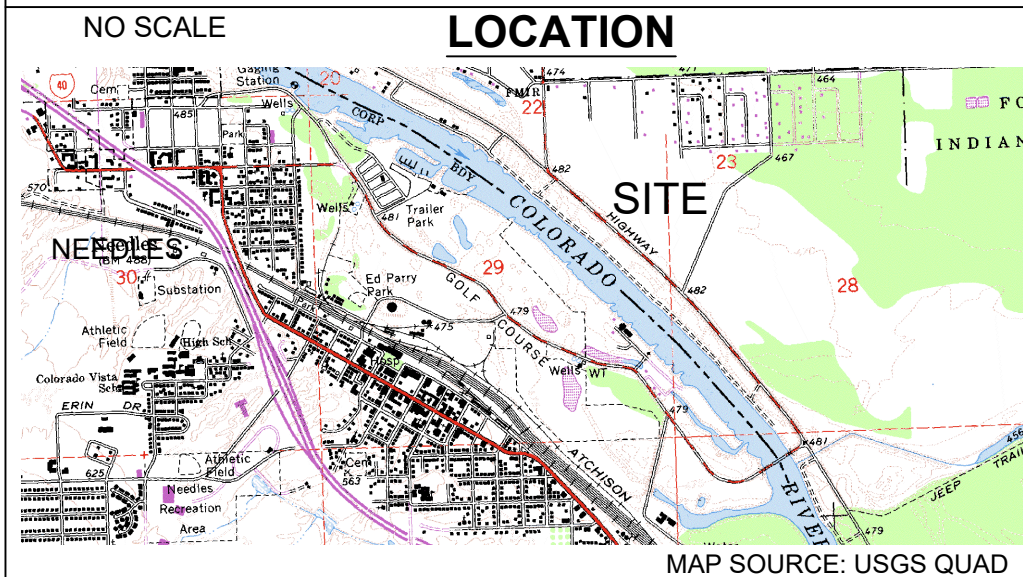
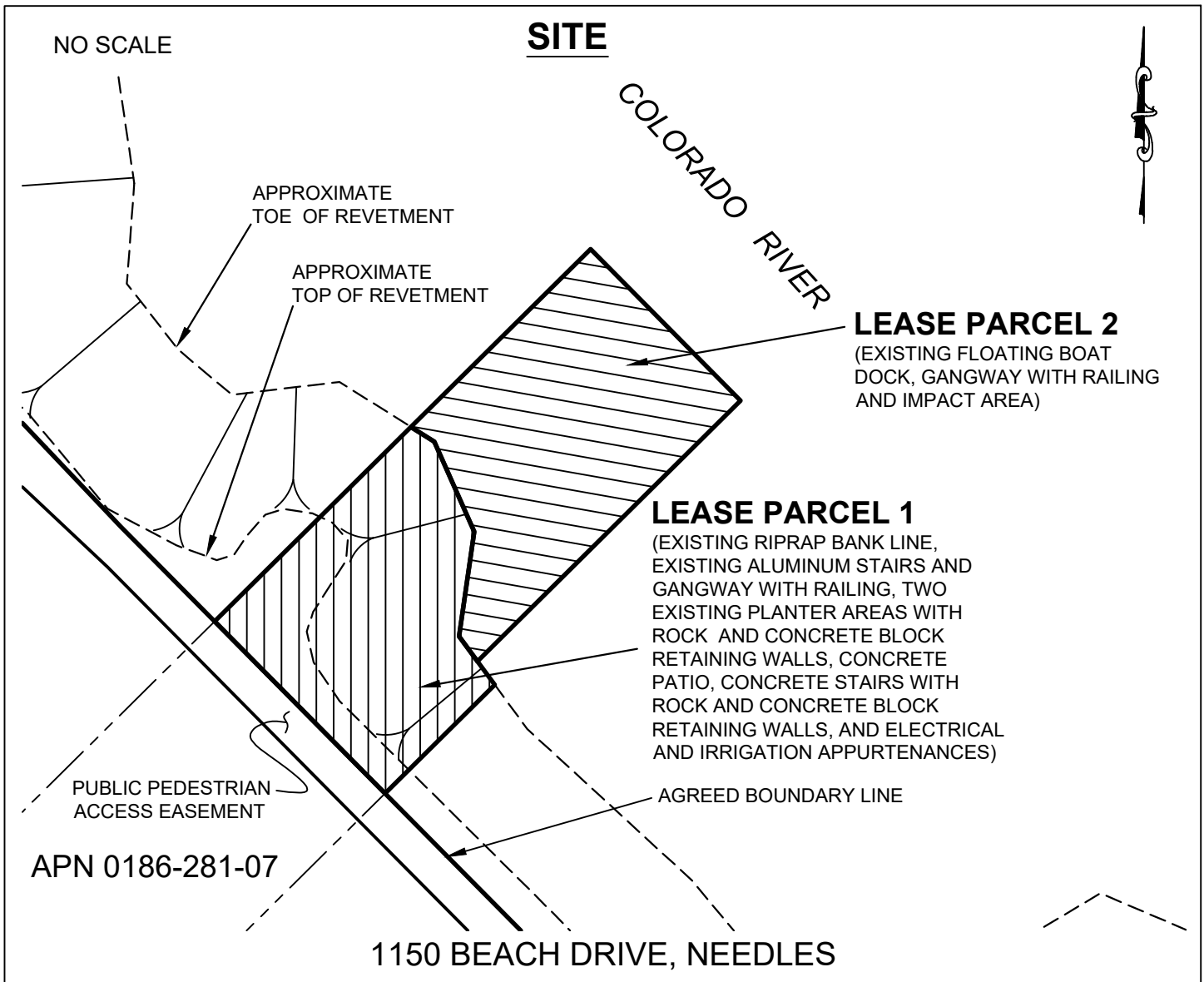
BEGINNING at a point on the northeasterly line of said Lot 27, said line also being the Agreed Boundary Line as described in Exhibit A of Document Number 92-333250, recorded on August 11, 1992, Official Records of said County, said point bears N 42° 08' 05" W 6.50 feet from the easterly corner of said Lot, N 42° 08' 05" W 38.50 feet to the northerly corner of said lot; thence leaving said northeasterly line and said Agreed Boundary Line, along the northeasterly prolongation of the northwesterly line of said lot N 47° 51' 55" E 97.05 feet; thence S 42° 08' 05" E 38.50 feet; thence N 47° 51' 55" E 97.05 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying within above described PARCEL 1.

END OF DESCRIPTION

Prepared 10/15/2020 by the California State Lands Commission Boundary Unit





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.