

Staff Report 61

APPLICANT:

John Tesoriero and Kimberly Tesoriero, Trustees of The Tesoriero Family Trust, Dated November 8, 2004

PROPOSED ACTION:

Issuance of a General Lease - Recreational and Protective Structure Use

AREA, LAND TYPE, AND LOCATION

Sovereign land in the Colorado River, adjacent to 1134 Beach Drive, Needles, San Bernardino County.

AUTHORIZED USE:

Use and maintenance of an existing concrete stairway, concrete boardwalk, two planter areas with rock retaining walls, riprap bankline protection, aluminum stairway and gangway with railing, and a floating boat dock with railing.

TERM:

10 years, beginning May 24, 2022.

CONSIDERATION:

Two planter areas with rock retaining walls, aluminum stairway and gangway with railing, and floating boat dock with railing: Annual rent in the amount of \$384 per year, with an annual Consumer Price Index adjustment.

Concrete stairway, concrete boardwalk, and riprap bankline protection: Public benefit, with the State reserving the right to set a monetary consideration if it is determined to be in the best interests of the State.

LEASE PROVISIONS:

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

- Other: Applicant 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. Applicant 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 provides access to the Colorado River and can be accessed by the public from the northern or southern end of the subdivision or from 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 May 24, 2012, the Commission authored the issuance of Lease Number PRC 8996, a 10-year General Lease - Recreational and Protective Structure Use, to John Anthony Tesoriero and Kimberly Joan Tesoriero, Trustees of The John and Kimberly Tesoriero Family Trust (Applicant), for the use and maintenance of an existing stairway, concrete boardwalk, and riprap bankline, beginning May 24, 2012 ([Item 58, May 24, 2012](#)). On December 18, 2015, the Commission authorized an amendment of the lease for the construction, use, and maintenance of an aluminum stairway and gangway with railing, and a floating boat dock with railing, and two existing planter areas with rock retaining walls not previously authorized by the Commission, effective December 18, 2015 ([Item 88, December 18, 2015](#)). The lease will expire on May 23, 2022.

The existing facilities within the lease area consist of a concrete stairway, concrete boardwalk, two planter areas with rock retaining walls, riprap bankline protection, aluminum stairway and gangway with railing, and a floating boat dock with railing. The Improvements are privately owned and maintained and have existed at this location for many years.

The aluminum stairway, gangway, and floating boat dock facilitate recreational boating because they are 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 upland area containing the two planter areas with rock retaining walls is generally not a Public Trust use, 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 concrete stairway, boardwalk, and bankline protection mutually benefit both the public and the Applicant. The riprap bank protection provides additional protection for the integrity of the river channel from wave action. The

concrete stairs and boardwalk facilitate access by the public to the beach area, and are maintained by lessee, at no cost to the public.

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. The gangway with railing and floating boat dock with railing would be able to move up and down as the water levels change during the next 10 years of the lease. The concrete stairway, concrete boardwalk, two planter areas with rock retaining walls, riprap bank line protection, and aluminum stairway would not be able to move up and down as the water levels change. During a severe drought within the next 10 years, the floating boat dock would not be functional due to low water levels in the river that may prevent boat access. Regular maintenance, as referenced in the lease, may 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 a lease is discretionary action 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. If the Commission denies the application, the Applicant may be required to remove the improvements and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (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 the activity 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 riprap bankline protection, aluminum stairway and gangway with railing, and floating boat dock with railing will not substantially interfere with Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine; and
2. Find that the existing and, for a limited period, continuing use and maintenance of the existing concrete stairway, concrete boardwalk, and planter areas with rock retaining walls are not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with Public Trust needs and values at this location, at this time; and
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning May 24, 2022, for a term of 10 years, for the use and maintenance of an existing concrete stairway, concrete boardwalk, two planter areas with rock retaining walls, riprap bankline protection, aluminum stairway and gangway with railing, and a floating boat dock with railing, 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 \$384, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

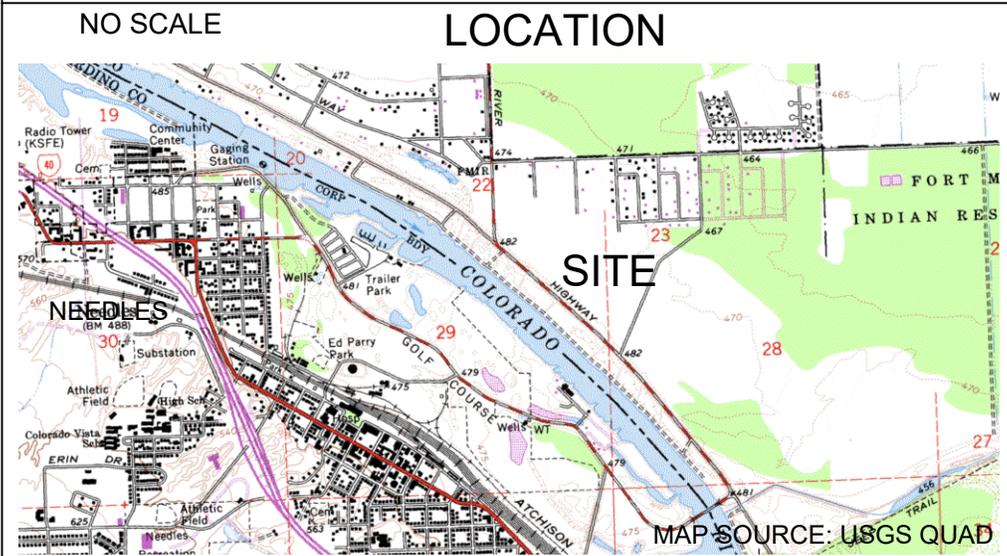
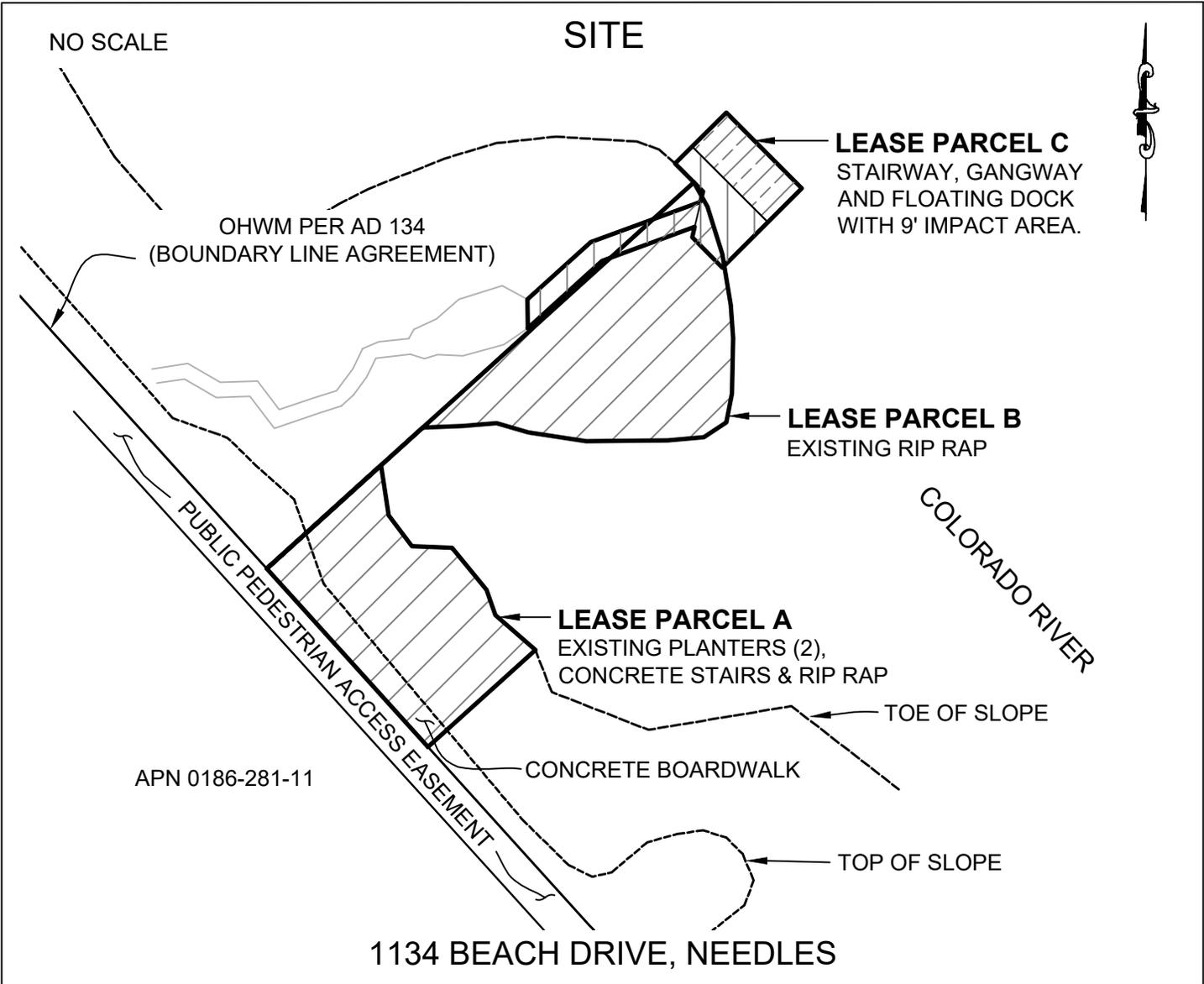


EXHIBIT B
LEASE 8996
TESORIERO
APN 0186-281-11
GENERAL LEASE -
RECREATIONAL & PROTECTIVE
STRUCTURE USE
SAN BERNARDINO COUNTY



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.

EXHIBIT A

LEASE 8996

LAND DESCRIPTION

Three parcels of State owned land adjacent to Lots 30 and 31 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, State of California, described as follows:

PARCEL A

BEGINNING at the northerly corner of said Lot 31; thence along the following eight courses:

- 1) N 47°51'55" E 28.85 feet;
- 2) S 8°44'59" E 9.45 feet;
- 3) S 36°31'24" E 7.22 feet;
- 4) S 87°59'48" E 7.53 feet;
- 5) S 39°07'15" E 10.17 feet;
- 6) S 19°13'09" E 5.03 feet;
- 7) S 49°06'18" E 9.96 feet;
- 8) S 47°51'55" W 27.06 feet to the easterly corner of said Lot 31;

thence along the northeasterly line of said Lot 31 N 42°08'05" W 45.00 feet to the POINT OF BEGINNING.

PARCEL B

COMMENCING at the northerly corner of said Lot 31; thence N 47°51'55" E 39.34 feet to the POINT OF BEGINNING; thence along the following fourteen courses:

- 1) N 47°51'55" E 68.40 feet;
- 2) S 29°16'28" E 5.22 feet;
- 3) S 17°28'47" E 9.24 feet;
- 4) S 8°56'06" E 9.70 feet;
- 5) S 4°24'32" E 6.19 feet;
- 6) S 1°03'46" W 10.39 feet;
- 7) S 11°13'20" W 5.50 feet;
- 8) S 56°35'06" W 4.99 feet;
- 9) S 84°54'22" W 6.78 feet;
- 10) S 89°34'23" W 15.32 feet;
- 11) N 81°37'04" W 10.95 feet;
- 12) N 73°35'24" W 6.14 feet;
- 13) S 85°04'03" W 6.30 feet;

14) S 87°44'37" W 7.54 feet to the POINT OF BEGINNING.

PARCEL C

COMMENCING at the northerly corner of said Lot 31; thence N 47°51'55" E 66.41 feet; thence N 42°08'05" W 0.67 feet to the POINT OF BEGINNING; thence along the following twelve courses:

- 1) N 0°25'48" W 5.36 feet;
- 2) N 47°51'55" E 15.98 feet;
- 3) N 69°51'28" E 21.83 feet;
- 4) N 13°19'33" E 2.02 feet;
- 5) N 44°58'17" W 7.37 feet;
- 6) N 45°01'43" E 13.50 feet;
- 7) S 44°58'17" E 20.00 feet;
- 8) S 45°01'43" W 21.00 feet;
- 9) N 44°58'17" W 8.00 feet;
- 10) N 13°19'33" E 2.00 feet;
- 11) S 69°51'28" W 18.41 feet;
- 12) S 47°51'55" W 18.77 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Mark as described in Exhibit A of Boundary Line Agreement recorded August 11, 1992 as document Number 92-333250 in Official Records of said County.

END OF DESCRIPTION

Prepared 12/3/2015 by the California State Lands Commission Boundary Unit.