

Staff Report 46

APPLICANT:

Michael V. Hammill and Kim E. Hammill

PROPOSED ACTION:

Issuance of a General Lease – Recreational and Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Colorado River, adjacent to 1130 Beach Drive, Needles, San Bernardino County.

AUTHORIZED USE:

Use and maintenance of existing concrete stairs, rock walls, concrete patio, retaining wall, and riprap bankline protection.

TERM:

10 years, beginning April 26, 2023.

CONSIDERATION:

Concrete Patio and Rock Retaining Wall: Annual rent in the amount of \$140 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

Concrete Stairs, Rock Walls, and Riprap Bankline: Public use and benefit, with the State Reserving the right to set a monetary consideration if it is determined to be in the best interest of the State.

SPECIFIC LEASE PROVISIONS:

- Insurance: Liability insurance in an amount no less than \$1,000,000 per occurrence.
- 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 homeowner's 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, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On April 26, 2013, the Commission authorized a General Lease – Recreational and Protective Structure Use to Michael V. Hammill and Kim E. Hammill for the use and maintenance of existing concrete stairs, rock walls, concrete patio, retaining wall, and riprap bankline protection, for a term of 10 years ([Item C80, April 26, 2013](#)). That lease will expire on April 25, 2023.

The existing facilities within the lease area consist of concrete stairs, rock walls, a concrete patio, a retaining wall, and riprap bankline protection. The improvements are privately owned and maintained and have existed at this location for many years.

The concrete patio area and retaining walls are generally not Public Trust consistent 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 stairway, rock walls, 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 high-flow events and water run-up, the concrete stairs and rock walls facilitate access by the public to the beach area and are maintained by the lessee, at no cost to the public. Additionally, the stairway, rock wall, and bankline protection are used primarily for the public to egress and ingress the River at this location for recreational purposes such as swimming and fishing. Swimming and fishing are water-dependent and are generally consistent with the common law Public Trust Doctrine.

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 existing concrete stairs, rock walls, concrete patio, retaining wall, and riprap bankline protection are fixed and are unable to move up and down as the water levels change.

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. The lessee has no right to a new lease or to a renewal of any previous lease.
2. This action is consistent with the "Leading Climate Activism" and the "Meeting Evolving Public Trust Needs" Strategic Focus Areas 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, 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 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; and
2. Find that the existing and, for a limited period, continuing use and maintenance of the existing rock walls, concrete patio, and retaining wall are not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the trust; and
3. Find that issuance of the proposed lease is in the best interests of the State.

AUTHORIZATION:

Authorized issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning April 26, 2023, for a term of 10 years, for the use and

maintenance of existing concrete stairs, rock walls, concrete patio, retaining wall, and riprap bankline protection, 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 \$140, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

LEASE 9060

LAND DESCRIPTION

A parcel of State owned land adjacent to Lot 32 of Tract No. 15640 as shown on Tract Map filed in Book 261, Pages 88 through 94, inclusive of Maps, in the Office of the County Recorder of San Bernardino County, State of California, more particularly described as follows:

BEGINNING at the easterly corner of said Lot 32; thence northwesterly along the northeasterly line of said Lot, said northeasterly 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 line, along the northeasterly prolongation of the northwesterly line of said Lot 32 N 47°51'55" E 70.00 feet; thence S 42°08'05" W 45.00 feet to the intersection with the northeasterly prolongation of the southeasterly line of said Lot 32; thence southwesterly along said northeasterly prolongation 70.00 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying waterward of the toe of revetment adjacent to said Lot 32.

END OF DESCRIPTION

Prepared 3/13/2013 by the California State Lands Commission Boundary Unit.

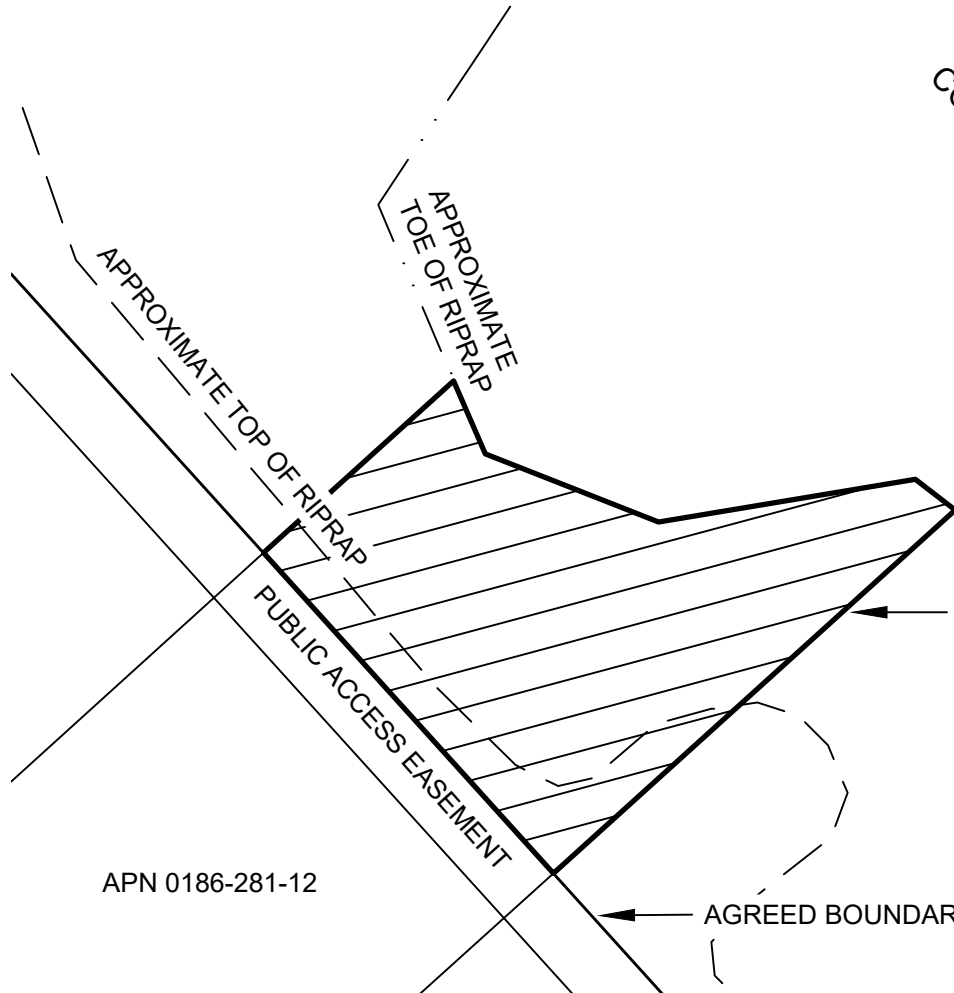


NO SCALE

SITE



COLORADO RIVER



LEASE PARCEL
 EXISTING RIPRAP,
 CONCRETE STAIRS,
 ROCK WALLS, AND
 CONCRETE PATIO WITH
 ROCK RETAINING WALL.

APN 0186-281-12

AGREED BOUNDARY LINE

1130 BEACH DRIVE, NEEDLES

NO SCALE

LOCATION

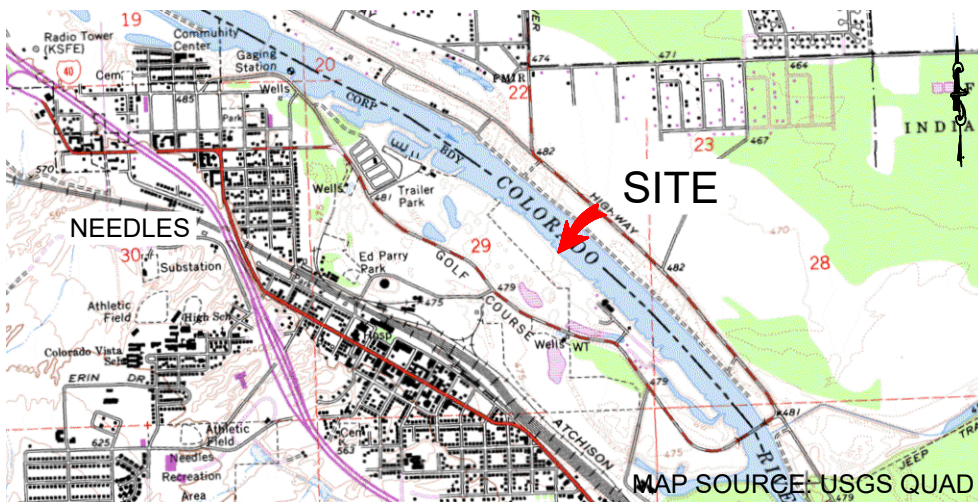


EXHIBIT B

LEASE 9060
 HAMMILL
 APN 0186-281-12
 GENERAL LEASE -
 RECREATIONAL AND
 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.

DJF 9/9/2022