

Staff Report 34

APPLICANT:

Albert Avalos and Stacy Avalos, Trustees, or their successors in trust, under the Albert & Stacy Avalos Living Trust, dated November 27, 2000, and any amendments thereto

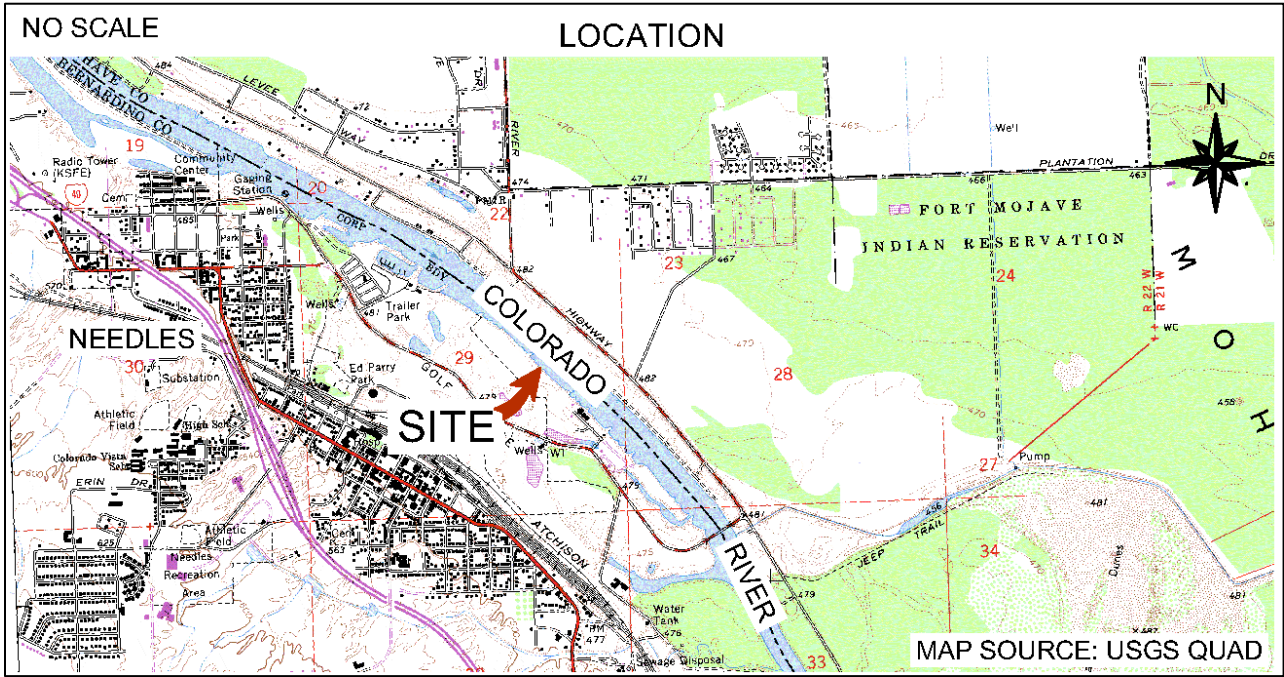
PROPOSED ACTION:

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

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Colorado River, adjacent to 1116 Beach Drive, Needles, San Bernardino County (as shown in Figure 1).

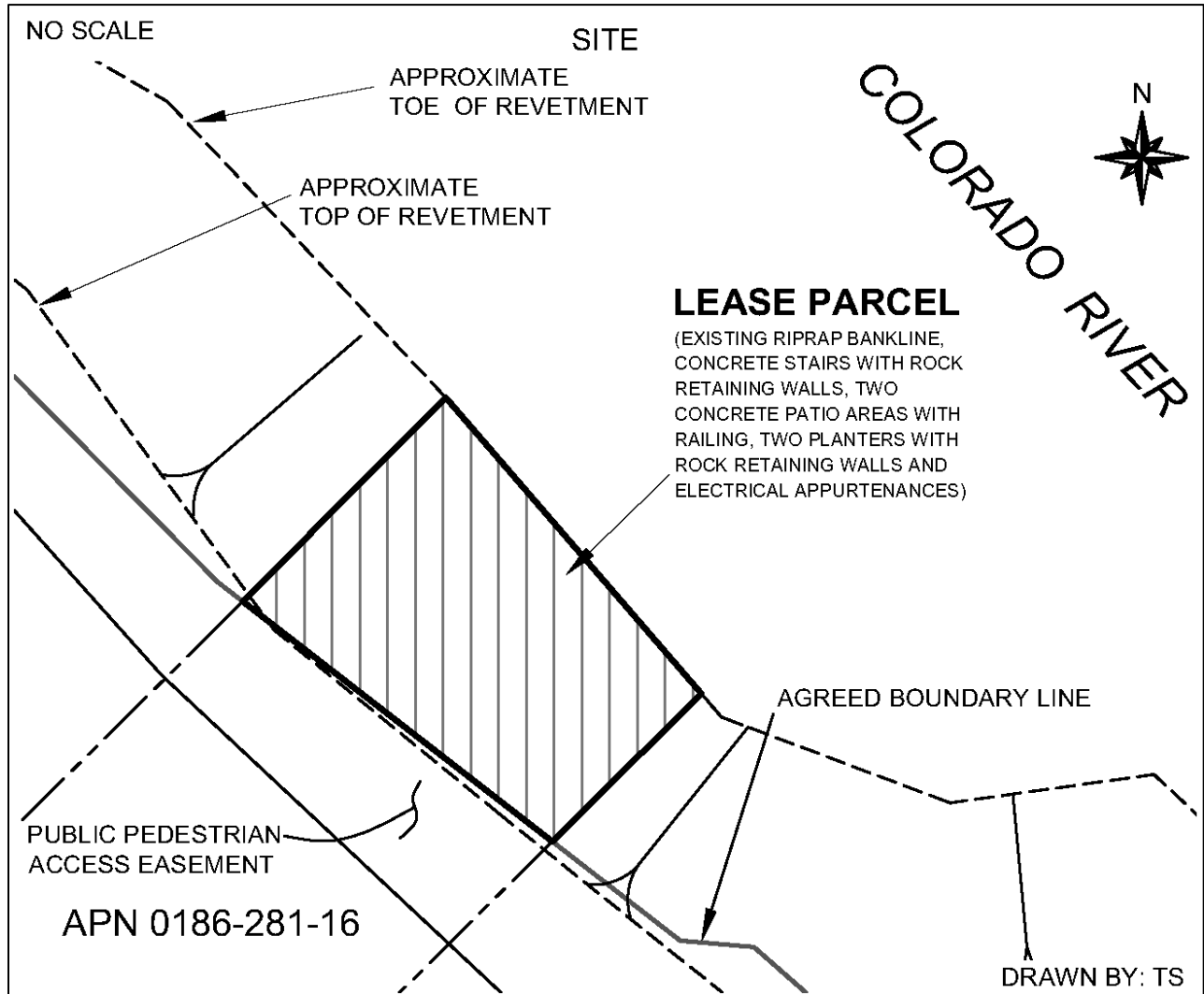
Figure 1. Location



AUTHORIZED USE:

Use of existing concrete stairs with rock retaining walls, electric lights, two concrete patios with railings and rock retaining walls, two planter areas with rock retaining walls, a shower, and a riprap bankline (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:

10 years, beginning August 23, 2023.

CONSIDERATION:

\$623 per year, with an annual Consumer Price Index adjustment

SPECIFIC LEASE PROVISIONS:

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee agrees that the Public Pedestrian Access Easement located on portions of Lessee's fee owned upland property shall remain open to the public and that no structures or improvements shall be erected, nor any personal property placed, that would obstruct or prevent public access to and within the Easement.
- Lessee shall not place signs or advocate in any other manner to prevent or discourage public use of the Public Pedestrian Access Easement.
- Lessee assumes responsibility for the maintenance of the riprap bankline within the Lease Premises.
- Lessee and the public shall have equal rights to access the stairs on the lease premises and Lessee shall not exclude the public from use of the stairs, install any structures to prevent public use of the stairs, nor post signage or advocate in any manner against public use of the stairs.
- Lessee agrees and acknowledges that the hazards associated with climate change may require additional maintenance or protection strategies regarding the improvements on the lease premises.

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), as 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. These inspections 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 September 20, 2013, the Commission authorized a General Lease – Recreational and Protective Structure Use to Albert Avalos and Stacy Avalos, Trustees, or their successors in trust, under the Albert & Stacy Avalos Living Trust, dated November 27, 2000, and any amendments thereto, for the use of existing concrete stairs with rock retaining walls, electric lights, two concrete patios with railings and rock retaining walls, two planter areas with rock retaining walls, a shower, and a riprap bankline, in the Colorado River, adjacent to 1116 Beach Drive, Needles, San Bernardino County ([Item 85, September 20, 2013](#)). This lease expired August 22, 2023.

Now the Applicant is applying for a General Lease – Recreational and Protective Structure Use for use of the existing concrete stairs with rock retaining walls, electric lights, two concrete patios with railings and rock retaining walls, two planter areas with rock retaining walls, a shower, and the riprap bankline in the Colorado River, adjacent to 1116 Beach Drive, Needles, San Bernardino County. Staff recommends issuance of a General Lease – Recreational and Protective Structure Use to the Applicant, to take effect on August 23, 2023.

The Applicant owns the uplands adjoining the lease premises and the subject facilities are located directly waterward of the upland property. The existing concrete stairs and electric lights on the lease premises serve to provide safe access to the river for both the Lessee and the public. As such, these improvements provide a benefit to the public and do not negatively impact Public Trust uses in this location. To ensure that these stairs remain available for public use, the proposed lease includes provisions protecting the public's right to access the stairs.

The riprap bankline and the rock retaining walls appurtenant to the concrete stairs on the lease premises are maintained by the Applicant and serve to stabilize the bank and support the integrity of both the river and the upland property. Loss or degradation of these structures could result in property damage and adverse impacts to Public Trust resources in the lease area and the surrounding waterway. As such, these improvements provide a benefit to both the public and the upland owner and do not negatively impact the Public Trust uses in this location.

The existing concrete patios with railings and rock retaining walls, planter areas with rock retaining walls, and the shower on the lease premises serve as an extension of the upland property and represent a private use of public land which is generally not consistent with the Public Trust. However, the Commission has issued leases on a limited basis for existing facilities that are not generally consistent with the Public Trust when such facilities do not significantly interfere with Public Trust needs and values. The existing concrete patios with railings and rock retaining walls, planter areas with rock retaining walls, and the shower on the lease premises meet these qualifications. They have existed for many years in this location, do not significantly interfere with Public Trust needs and values, and public access to the river is preserved by the Easement detailed above. Additionally, the lease includes provisions to ensure non-interference with public access to and within the Easement and the stairs that provide safe access to the River.

The proposed Lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land and restore the lease premises to their original condition.

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. Droughts could dramatically reduce river flow and water levels, leading to loss of public access and navigability. Climate change will further influence riverine areas by changing erosion and sedimentation rates; likewise, runoff from more frequent and severe storm events will likely increase scour and lead to a more rapid decrease in bank stability.

The combination of these projected conditions could increase the likelihood of damage to structures within the lease premises from floods or droughts during the term of the lease. All of the existing features are fixed and may need relocation or reinforcement in the future to withstand higher levels of flood exposure.

Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland are in an area that may be subject to the effects of climate change.

CONCLUSION:

For all the reasons above, staff believe approval of this lease will not substantially interfere with Public Trust needs at this location, at this time, nor for the term of the proposed lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is a 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 lease premises to their original condition. 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" and "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.

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 of the concrete stairs with rock retaining walls, electric lights, and riprap bankline is not inconsistent with the Public Trust Doctrine and does not substantially interfere with the trust.
2. Find that the existing and, for a limited period, continuing use of the two concrete patios with railings and rock retaining walls, two planter areas with rock retaining walls, and one shower is generally not consistent with the Public Trust Doctrine, but that this use does not substantially interfere with the Trust.
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 August 23, 2023, for a term of 10 years, for the use of existing concrete stairs with rock retaining walls, electric lights, two concrete patios with railings and rock retaining walls, two planter areas with rock retaining walls, a shower, and a riprap bankline; annual rent in the amount of \$623, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.