

**CALENDAR ITEM
C91**

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S 18

09/20/13
W 26672
R. Collins

**GENERAL LEASE –
RECREATIONAL AND PROTECTIVE STRUCTURE USE**

APPLICANTS:

Michael J. Hilgert and Jacqueline D. Hilgert, Trustees, under the Hilgert Family Trust dated October 6, 2010

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Colorado River, adjacent to 1230 Beach Drive, city of Needles, San Bernardino County.

AUTHORIZED USE:

Construction, use, and maintenance of a gangway with aluminum railing, floating walkway, and floating boat dock; and use and maintenance of an existing stairway with aluminum railing, existing sun deck with aluminum railing, and existing riprap bankline.

LEASE TERM:

10 years, beginning August 23, 2013.

CONSIDERATION:

Gangway with Aluminum Railing, Floating Walkway, Floating Boat Dock, and Sun Deck with Aluminum Railing: Annual rent in the amount of \$412 per year, with the State reserving the right to fix a different rent periodically during the term of the lease, as provided in the lease.

Stairway with Aluminum Railing 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.

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Other: Applicants acknowledge 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. Applicants further acknowledge 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.

OTHER PERTINENT INFORMATION:

1. Applicants own the upland adjoining the lease premises.
2. The State of California had its fee ownership of the sovereign land located in the Colorado River at this location confirmed in 1991 as a result of a Boundary Line Agreement and Compromise Settlement entered into between the Commission and Kahala Needles Partners, Ltd., a Nevada Limited Partnership, recorded as AD 134 dated January 1, 1991, and recorded on August 11, 1992, document No. 92-333250, Official Records, San Bernardino County, California. Projects, including new development or maintenance of existing facilities, extending waterward of the Ordinary High Water Mark (OHWM) fixed in the abovementioned Agreement (AD 134) require a lease from the Commission pursuant to Public Resources Code section 6501.1. The Applicants' upland property is located along the Colorado River adjacent to the fixed OHWM.
3. Pursuant to AD 134, the State of California was granted a Public Pedestrian Access 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 1-40 of the Rio Buena Vista residential subdivision, one of which is the Applicants' property. Public access to the Easement is from the northern or southern end of the subdivision, or from the Colorado River.
4. The United States Department of the Interior, Bureau of Reclamation (Reclamation), Yuma Area Office conducted a review by boat of the riprap bankline on March 27, 2002, and also conducted a site visit on April 10, 2002. The inspection revealed that the bankline had been cleared of vegetation and that the federally applied riprap and federally constructed jetties were undisturbed and in good condition. By letter dated April 23, 2002, Reclamation acknowledged their capacity to apply additional riprap to the bankline location in the future was compromised due to the pending development of the upland residences and subsequently declared that

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Reclamation would not provide additional riprap to the bankline location in the future. Consequently, Reclamation decreed that the upland homeowner (Applicants) would be responsible for maintaining protection of their own banklines in the future, subject to the homeowners seeking approval and permitting of their riprap or bankline construction work from the United States Army Corps of Engineers under Section 10 of the Rivers and Harbors Act of 1899.

5. At its August 14, 2012 meeting, the Commission directed staff to suspend leasing for boat docks in the Rio Buena Vista (RBV) community for no longer than six months while staff conducted an investigation and report back to the Commission on the public trust needs in the area. On October 11, 2012, staff conducted a public meeting in nearby Laughlin, Nevada, to discuss the current conditions at the RBV community and to take comments from residents and interested parties. More than 50 people attended the public meeting and provided comment. Representatives from the U.S. Department of the Interior, Bureau of Reclamation (Reclamation) and the U.S. Army Corps of Engineers (Army Corps) were also in attendance to provide information on their areas of jurisdiction and to respond to questions. Commission staff also met onsite at the RBV community with Reclamation and Army Corps staff, as well as with RBV residents.

At its December 5, 2012 Commission meeting, the Commission directed staff to resume its processing of applications within the RBV community in Needles, California and to analyze all applications, including those for boat docks on a case-by-case basis and make recommendations to the Commission consistent with the staff report, the Commission's practices on leasing on inland waterways, and the public trust needs in the area.

6. The Applicants have applied for a General Lease – Recreational and Protective Structure Use for an existing stairway with aluminum railing, sun deck with aluminum railing, and existing riprap bankline; and to construct a gangway with aluminum railing, floating walkway, and floating boat dock. The proposed floating walkway and floating boat dock will be located directly off the riprap bankline and there will be no direct impact to the use of the beach by the public in the immediate area. The riprap bankline mutually benefits both the public and the Applicant, and will be maintained by the Applicant at no cost to the public.

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7. Construction of the improvements will begin by September 15, 2013, and will be completed by September 15, 2014.

8. **New Construction of Gangway with Aluminum Railing, Floating Walkway, and Floating Boat Dock:**
The 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 3, New Construction of Small Structures; California Code of Regulations, Title 2, section 2905, subdivision (c)(1).

9. **Existing Stairway with Aluminum Railing, Sun Deck with Aluminum Railing, and Riprap Bankline:**
The staff recommends that the Commission find 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; 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.

10. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

None

FURTHER APPROVALS REQUIRED:

U.S. Army Corps of Engineers
U.S. Bureau of Reclamation
California Department of Fish and Wildlife

EXHIBITS:

- A. Land Description
- B. Site and Location Map

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RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

New Construction of Gangway with Aluminum Railing, Floating Walkway, and Floating Boat Dock:

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 3, New Construction of Small Structures; California Code of Regulations, Title 2, section 2905, subdivision (c)(1).

Existing Stairway with Aluminum Railing, Sun Deck with Aluminum Railing, and Riprap Bankline:

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).

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Authorize issuance of a General Lease – Recreational and Protective Structure Use to Michael J. Hilgert and Jacqueline D. Hilgert, Trustees, under the Hilgert Family Trust dated October 6, 2010 beginning August 23, 2013, for a term of 10 years, for construction, use, and maintenance of gangway with aluminum railing, floating walkway, and floating boat dock, and for an existing stairway with aluminum railing, existing sun deck with aluminum railing, and existing riprap bankline as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration for the gangway with aluminum railing, floating walkway, floating boat dock, and sun deck with aluminum railing to be \$412 per year; consideration for stairway with aluminum railing and riprap bankline to be the 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; liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

W 26672

LAND DESCRIPTION

Two parcels of State owned land adjacent to Lot 5 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 5; 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 60° 42' 46" W 42.40 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 30° 31' 07" E 30.00 feet; thence S 60° 43' 19" E 41.60 feet to the intersection with the northeasterly prolongation of the southeasterly line of said Lot; thence southwesterly along said northeasterly prolongation S 29° 00' 17" W 30.00 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying waterward of the toe of revetment adjacent to said Lot 5.

PARCEL 2

BEGINNING at the easterly corner of said Lot 5; 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 60° 42' 46" W 30.00 feet; thence leaving said northeasterly line and said Agreed Boundary Line N 29° 00' 17" E 87.85 feet; thence S 60° 59' 43" E 30.00 feet to the intersection with the northeasterly prolongation of the southeasterly line of said Lot; thence southwesterly along said northeasterly prolongation S 29° 00' 17" W 88.00 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying within above described
PARCEL 1.

This description is based on Applicant provided design drawings for a proposed floating dock, floating walkway, gangway, landing and two existing stairways together with any and all appurtenances pertaining thereto, to build at a later date within the Lease time frame. This description is to be updated once as-built plans are submitted.

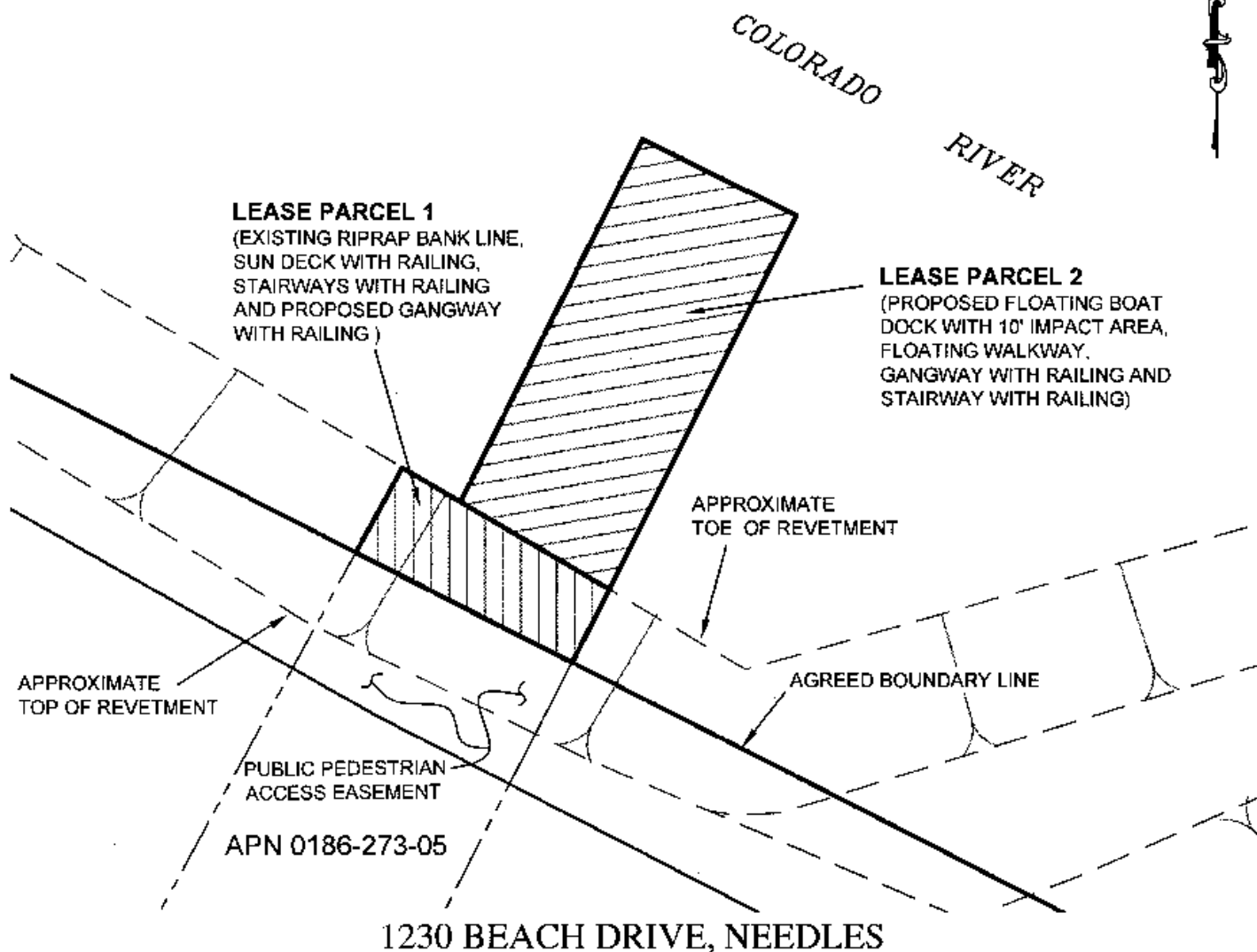
END OF DESCRIPTION

Prepared 07/15/13 by the California State Lands Commission Boundary Unit



NO SCALE

SITE



NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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 B

W 26672

MICHAEL & JACQUELINE
HILGERT TRUSTEES

APN 0186-273-05

GENERAL LEASE -
RECREATIONAL AND
PROTECTIVE STRUCTURE USE
SAN BERNARDINO COUNTY



TS 07/15/13