

**STAFF REPORT
C93**

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08/23/18
W 26822
R. Collins

GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE

APPLICANT:

Alan Zimmer and Diana Zimmer

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Colorado River, adjacent to 1240 Beach Drive, Needles, San Bernardino County.

AUTHORIZED USE:

Use and maintenance of an existing concrete stairway with rock retaining wall, raised planter area with concrete retaining wall, and riprap bankline.

LEASE TERM:

10 years, beginning August 23, 2018.

CONSIDERATION:

Raised Planter Area with Concrete Retaining Wall: \$125 per year, with an annual Consumer Price Index adjustment.

Concrete Stairway with Rock Retaining Wall and Riprap Bankline:

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 State's best interests.

SPECIFIC LEASE PROVISIONS:

1. Liability insurance in an amount no less than \$1,000,000 per occurrence.
2. The lease requires that the Public Pedestrian Access Easement remain open to the public with no structures, improvements, or personal property being placed to obstruct or prevent public access along the Easement.
3. The lease includes a prohibition on posting signage or erecting any gates to discourage, obstruct, or prevent public access on the

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concrete stairway between the Public Pedestrian Access Easement and the Colorado River.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

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

Public Trust and State's Best Interests Analysis:

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. The Applicant's upland property is located along the Colorado River adjacent to the fixed Ordinary High-Water Mark (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 1-40 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, or from the Colorado River, and provides 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 also conducted a site visit on April 10, 2002. The inspection revealed that the bankline was 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 its 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 Reclamation would not provide additional riprap to the bankline location in the future. Consequently, Reclamation decreed that the upland homeowners 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 U. S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act of 1899.

The Applicant has applied for a General Lease – Recreational and Protective Structure Use for use and maintenance of an existing concrete

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stairway with rock retaining wall, raised planter area with concrete retaining wall, and riprap bankline.

The raised planter area with concrete retaining wall 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.

The concrete stairway with rock retaining wall provides public access from the Easement to the Colorado River. The stairway and the riprap bankline mutually benefit both the public and the Applicant. The bank of the Colorado River will have additional protection for the river channel from wave action provided at no cost to the public and the riprap bankline will be maintained by the Applicant at no cost to the public.

The improvements in the proposed lease do not significantly alter the land, alienate the State's fee simple interest in the underlying land, or 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 ensures 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 Analysis:

The lease area in the Colorado River is not tidally influenced and, therefore, is not subject to sea-level rise. The water level near the existing improvements is regulated primarily by water released upstream from the Davis Dam. However, as stated in *Safeguarding California* (California Natural Resources Agency 2014), climate change is projected to increase the frequency and severity of natural disasters related to flooding, fire, extreme heat, drought, and storms. The existing improvements (fixed concrete stairway with rock retaining wall, fixed raised planter area with concrete retaining wall, and riprap bankline) could be damaged from both storm-created debris or prolonged droughts. Droughts could dramatically reduce river flow, water levels, and navigability. Climate change will further influence riverine areas by changing erosion and sedimentation rates, and

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runoff by likely increasing scour and decreasing bank stability at a faster rate.

The combination of these projected conditions could increase the likelihood of damage to structures within the lease premises from floods or droughts during the next 10 years of the lease. There are no floating structures that could be adaptable to variable water levels allowing them to rise and fall with storms and droughts and increasing their resiliency to some climate change impacts. The fixed structures should always be maintained because regular maintenance, as required by the lease, will reduce the likelihood of severe structural degradation or dislodgement.

Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are located in an area that may be subject to the effects of climate change.

Conclusion:

For the reasons above, staff believes that 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. The proposed 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 to promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
2. 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.

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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 stairway with rock retaining wall and rip rap bankline 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 raised planter area with concrete 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 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 Alan Zimmer and Diana Zimmer beginning August 23, 2018, for a term of 10 years, for use and maintenance of an existing concrete stairway with rock retaining wall, raised planter area with concrete retaining wall, and 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 raised planter area with concrete retaining wall: \$125 per year, with an annual Consumer Price Index adjustment; consideration for the concrete stairway with rock retaining wall and riprap bankline to be 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 State's best interests; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

W 26822

LAND DESCRIPTION

A parcel of State owned land adjacent to Lot 2 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:

BEGINNING at the easterly corner of said Lot 2; 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 45.07 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 32° 26' 33" E 40.00 feet; thence S 60° 42' 46" E 45.07 feet to the intersection with the northeasterly prolongation of the southeasterly line of said Lot; thence southwesterly along said northeasterly prolongation S 32° 26' 33' W 40.00 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying waterward of the toe of revetment adjacent to said Lot 2.

END OF DESCRIPTION

Prepared 06/18/18 by the California State Lands Commission Boundary Unit



NO SCALE

SITE

COLORADO RIVER



AGREED
BOUNDARY
LINE

APPROXIMATE
TOE OF REVETMENT

LEASE PARCEL

(EXISTING RIPRAP BANK LINE,
CONCRETE STAIRWAY, RAISED
PLANTER AREA WITH
CONCRETE RETAINING WALL)

APPROXIMATE
TOP OF
REVETMENT

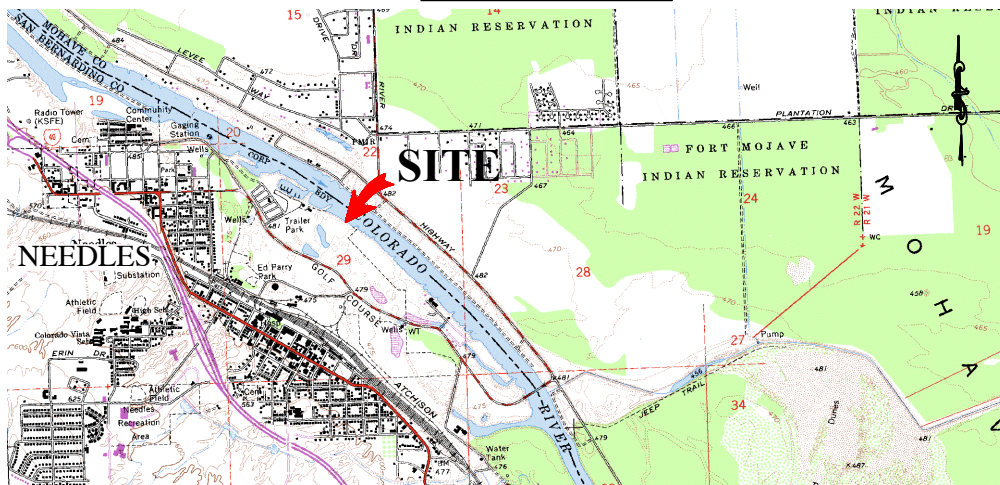
PUBLIC PEDESTRIAN
ACCESS EASEMENT

APN 0186-273-02

1240 BEACH DRIVE, NEEDLES

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

W 26822
ZIMMER
APN 0186-273-02
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.