

CALENDAR ITEM

85

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**CONSIDER LEASING PRACTICES ON PUBLIC TRUST LANDS
IN AND ADJACENT TO THE COLORADO RIVER
LOCATED WITHIN THE RIO BUENA VISTA COMMUNITY,
CITY OF NEEDLES, SAN BERNARDINO COUNTY**

PARTY:

California State Lands Commission

BACKGROUND:

In 1991, the California State Lands Commission (Commission) entered into a Boundary Line Agreement and Compromise Settlement (AD 134) with Kahala Needles Partners, Ltd, a Nevada Limited Partnership. AD 134 was recorded on August 11, 1992, as document No. 92-333250, Official Records, San Bernardino County. AD 134 confirmed the State of California's fee ownership of the sovereign land within the Colorado River and granted an approximately 10-ft-wide public access (pedestrian) easement to the State of California, acting by and through the Commission, adjacent to the Rio Buena Vista (RBV) community, on and along the top of the bank of the Colorado River.

The United States Department of the Interior, Bureau of Reclamation (Reclamation or BOR) applied riprap in the Colorado River adjacent to the RBV community. By letter dated April 23, 2002, Reclamation stated their future ability to apply additional riprap to the river bankline at this location was compromised due to development of the upland residences and that Reclamation would not place additional riprap on the river bank. Reclamation also stated that the upland homeowners would be responsible for maintaining protection of the river bank in the future, subject to the homeowners seeking approval and permitting of their riprap or bank construction work from the United States Army Corps of Engineers (Army Corps) under Section 10 of the Rivers and Harbors Act of 1899. It is unclear at this time, under what authority Reclamation initially constructed the jetties and applied the riprap on the State's sovereign land. Reclamation has never applied for, or come under, lease with the Commission for the improvements.

CURRENT STATUS:

Staff has recently been made aware of a number of unauthorized improvements placed on the State's property, as well as within the public access easement at the RBV

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community. These unauthorized improvements include, but are not limited to: bank protection, landscaping, patios, fire pits, fences, and stairs. On January 27, 2012, staff sent letters to the RBV Homeowners' Association (HOA) and the upland property owners adjacent to the State's property. These letters identified the location of the boundary line, the Commission's jurisdiction, and the requirement to obtain a lease from the Commission for any new or existing facilities waterward of the boundary line.

Staff has since received applications for leases from approximately half of the 37 upland riverfront lot owners. These applications include requests for leases for the construction of new boat docks, an existing boat dock, riprap, wingdams, stairs, fire pits, and many other improvements and facilities. Additionally, staff received numerous telephone calls and written correspondence from the upland homeowners, HOA representatives, and other interested parties expressing concerns about proposed boat docks, the impacts these proposed boat docks would have on beach access, and other activities within and along the Colorado River at this location.

Staff participated in discussions with RBV residents and the HOA on the necessity of a lease from the Commission. Initial discussions included the possibility of the HOA submitting an application to lease the entirety of the riverfront within the RBV community. The HOA would then act in the capacity of a master lessee and also manage the public access easement along the Colorado River.

At the August 14, 2012 Commission meeting (Calendar Item 64), the Commission directed staff to suspend leasing for boat docks in the RBV community for no longer than six months while staff conducted an investigation and reported back to the Commission on the Public Trust needs in the area. Staff has conducted that investigation, and this calendar item and accompanying staff presentation serve as staff's report to the Commission.

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 Reclamation and the 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.

Areas of concern raised at the public meeting included: the HOA as a lessee; public access; unauthorized improvements; and boat docks.

HOA as a Master Lessee: At the public meeting, there were numerous comments opposing the HOA as a possible Master Lessee. There was uniformity among riverfront owners who commented that they would prefer to be a direct lessee of the State. No

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one spoke in support of the HOA as a Master Lessee. Commission staff is in receipt an the application from the HOA for the entirety of the waterfront. The HOA representatives have stated that the HOA will not withdraw its application until such time as the Commission prohibits the leasing of boat docks on public beaches.

Public Access: There was not any concern expressed among the RBV residents about access to and along the public access easement. Riverfront residents did not express any issue with having the public pass along the easement, and none of the inland residents present at the meeting complained that they were blocked from access to the river. Staff has received only one email stating that riverfront owners have restricted access to the river by the placement of gates between residences.

- There are some large objects within the public access easement (picnic tables, fountains), but they do not effectively block access along the easement. Additionally, some owners indicated that the objects were placed strategically to create a protective barricade between the easement and the riprap as the riprap is steep and could be a fall hazard.
- While on site, staff was able to walk the entire length of the public access easement within the community on foot. A few homes have fences or gates on the walkway or stairs. Some residents explain the fences and gates are necessary to keep children and pets secure. All fences and gates were open at the time of the site visit. Leases will require that gates remain unlocked and appropriately signed to notify the public of its right to pass along the easement.

Unauthorized Improvements: There are a variety of improvements on the riprap banklines and wingdams. The general statements by the residents were that they had no issue at all with the improvements on the riprap bankline and actually appreciated the improvements as enhancing the community as a whole.

- Much of the existing riprap has been so heavily modified by the upland residents that it no longer resembles what the BOR initially installed. BOR staff stated that, although they do not like the fixed improvements on the riprap bankline, removal of the existing fixed improvements may do more damage to the integrity of the riprap bankline than leaving it intact. Consequently, BOR staff recommended maintaining the riprap bankline in its current state.
- Due to the nature of the development, BOR is unable to access the site to provide maintenance of the riprap. Consequently, BOR indicates that responsibility to maintain the site rests with the upland homeowners. BOR does not want to come under lease for the riprap, but wants to retain some approval authority over the riprap bankline. BOR would consider providing Letters of Concurrence for any proposed improvements or future maintenance.

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- Staff recommends treating the riprap bankline consistent with the Commission’s leasing practices for inland waterways throughout the State. No consideration is recommended to be charged for unimproved bankline protection or stairs that provide public access to the water as such uses provide a public benefit. Improvements not related to the protection of the bankline or public access will be subject to consideration

Boat Docks: There are several residents who are opposed to any boat docks within the community, but the majority of the community seems to support the idea that some docks are acceptable so long as access to the public beaches is protected. There are two recognized “beaches” within the community. These beaches are relatively small and are only about 10 feet wide at high water. Other beach areas can appear in front of other properties along the community during low water, but exposure is intermittent at best and no one recognizes these areas as beaches.

- Staff conducted an unofficial email survey of the residents within the RBV community (both inland and riverfront owners). There are 136 lots within the RBV community. 120 of these lots are developed. The initial email list compiled by staff included 55 contacts. Subsequently, the HOA has forwarded the email survey to all residents of the community. As of November 27, 2012, staff has received a total of 59 responses to the survey. Results of the survey are as follows:

Option	Number of Votes
I do not oppose docks anywhere within the Rio Buena Vista community	11
I oppose docks on the public beach areas within the Rio Buena Vista community, but do not oppose docks that will not impact the public beach areas. For example, docks that come straight off the riprap banklines or jetties	29
I oppose docks anywhere within the Rio Buena Vista community	19

The results of the survey were consistent with and confirmed testimony from the public meeting. Results show that the majority of residents were comfortable with allowing boat docks as long as they did not encroach upon the two recognized “beaches” in the RBV community.

PUBLIC TRUST NEEDS AND USES:

The public trust needs and uses in the RBV community are unique due to the density and nature of the RBV development along the Colorado River, the physical

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configuration of the Colorado River at this location, including the wingdams and riprap structures, beach access, and the existence of the public access easement along the community. There are two recognized sandy beaches within the stretch of river comprising the RBV community. These two beaches are used extensively throughout the year by both riverfront and inland residents of the community as well as members of the public. Staff has been provided photographic evidence of the popularity of the beaches for recreational use. The general premise of users within the community has been a "first come, first serve" basis. Users bring towels, chairs and shade structures to reserve their space on the beach. Others will pull their boats directly up onto the beach. There is a publicly-owned beach immediately adjacent to the RBV community; however, the quality of the beach at that location is questionable and, unlike the RBV beaches, there is not much evidence of regular use.

There are 40 riverfront lots with 10 homeowners fronting the beach portions of the shore along the Colorado River within the RBV community. Many of the beachfront owners have indicated they will not seek a lease from the Commission for a boat dock. However, this is just a snapshot of the current situation. If the Commission were to authorize boat docks for the beachfront owners, the public trust needs and uses of the recognized beach areas would be significantly impacted.

Overall, the riprap bankline at RBV is steep and the only access to the river is via the stairs installed by the upland owners. The riprap bankline exists to provide stabilization of the bank. Boat docks that do not encroach on the recognized beaches would not significantly impact the public trust needs and uses of the area.

Each application received will be analyzed by staff on a case-by-case basis and a recommendation will be made to the Commission consistent with the Commission's practices for leasing on inland waterways, as well as the public trust needs and values in the area.

OTHER PERTINENT INFORMATION:

1. On January 26, 2012, the Commission authorized staff to issue a lease to Ronnie R. Ridenour and Georgia H. Frousiakis for the use and maintenance of an existing boat dock, gangway, platform, stairs, and riprap bankline located on Public Trust lands. Also on January 26, 2012, the Commission authorized staff to issue a lease to Randy A. Baker, Trustee or his successor(s), for the benefit of the TCOB, Trust under declaration of trust dated December 29, 1999, for the construction, use, and maintenance of a boat dock and gangway, and the use and maintenance of an existing fire pit and riprap bankline located on Public Trust lands. Shortly after this January 26 Commission meeting, staff received comments and obtained additional information relating to the

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above-described applications and beach access from persons within the RBV community. Because of these comments and the additional information obtained, neither of the two leases were executed. The comments and information received were the basis for the August 14, 2012 Commission action suspending leasing activity for boat docks at the RBV community until staff could conduct an investigation into the Public Trust needs in the area.

2. The Commission has broad discretion in all aspects of leasing when acting in the best interest of the State. Pursuant to Public Resources Code sections 6301, 6501.1, and 6005 and California Code of Regulations, Title 2, section 2000, the Commission is authorized to lease or suspend leasing public trust lands in and adjacent to the Colorado River within the RBV community.
3. The staff recommends that the Commission find that the subject authorization of staff to process boat dock applications in the Rio Buena Vista community and make recommendations to the Commission does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

EXHIBIT:

- A. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING: Find that the subject authorization of staff to process boat dock applications in the Rio Buena Vista community is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

AUTHORIZATION:

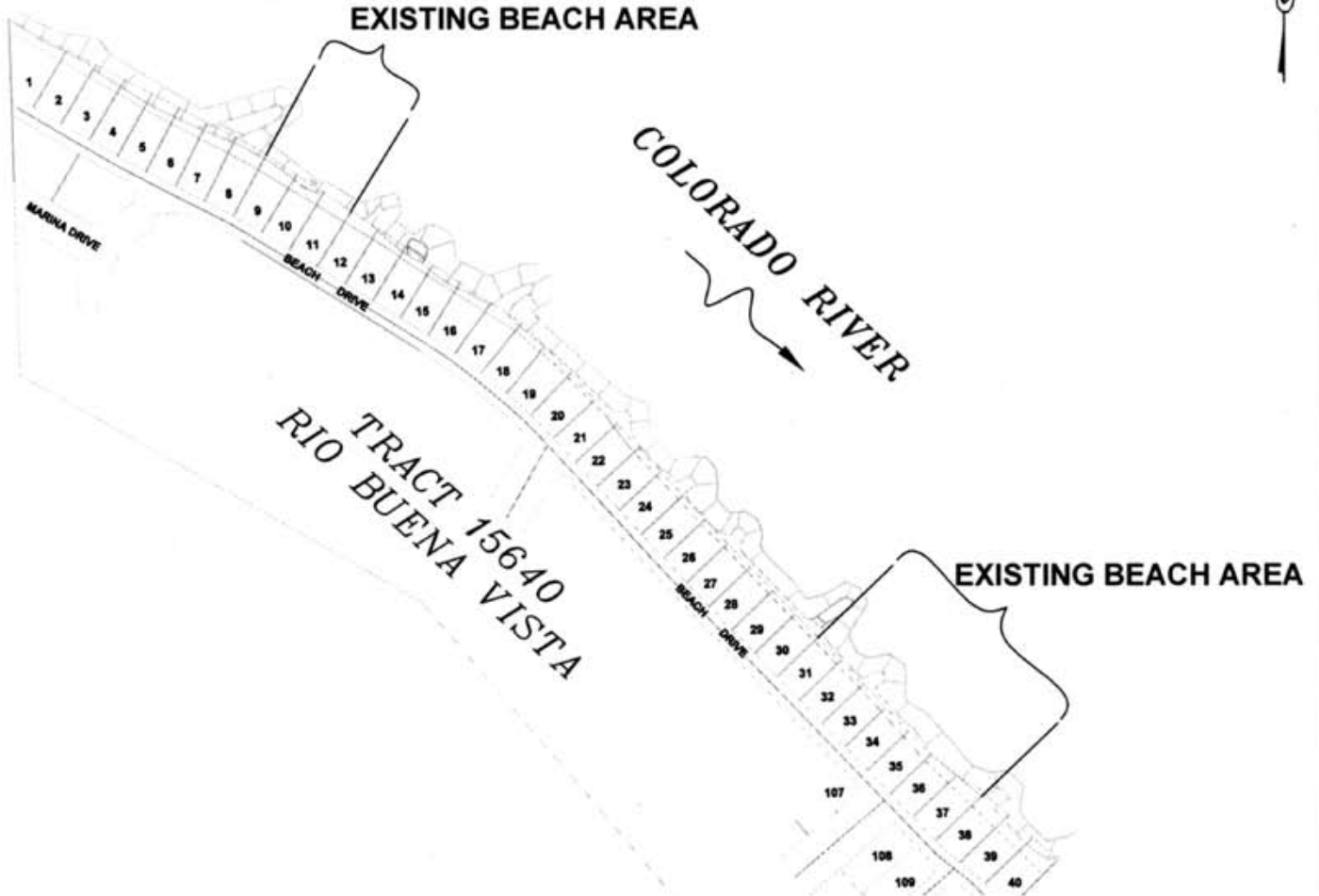
1. Authorize staff to resume its processing of applications for boat docks at the Rio Buena Vista community in Needles, California.

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2. Authorize staff to analyze all applications, including those for boat docs, in the Rio Buena Vista community on a case-by-case basis and make recommendations to the Commission consistent with this staff report, the Commission's practices on leasing on inland waterways, and the public trust needs in the area.

NO SCALE

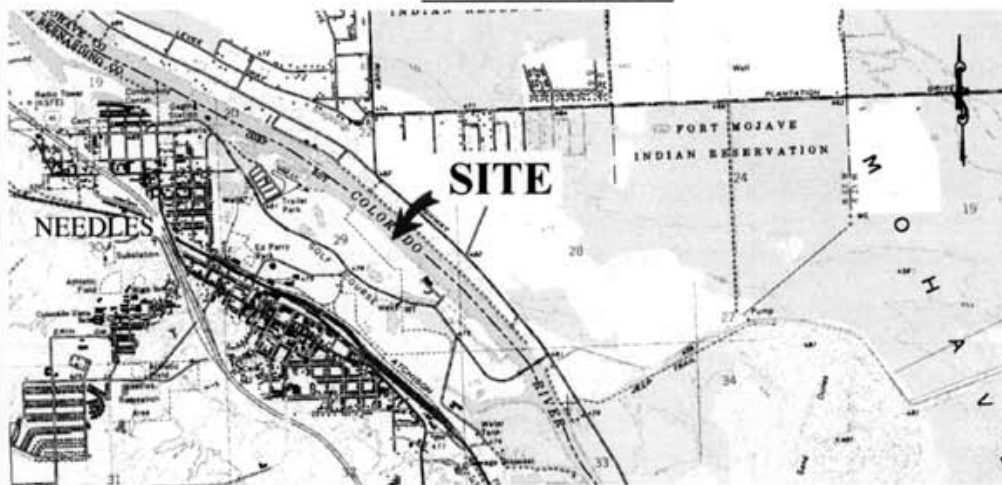
SITE



RIO BUENA VISTA SUBDIVISION, COLORADO RIVER

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit A

RIO BUENA VISTA
SUBDIVISION
CITY OF NEEDLES
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.