

Staff Report 39

LESSEE/ASSIGNOR:

Michael Shutt and Christine D. Shutt, as Trustees, or any Successor Trustee, under that certain declaration of Trust named Michael Shutt and Christine D. Shutt Family Trust, created by Michael Shutt and Christine D. Shutt, as Trustors, dated September 8, 2006.

APPLICANT/ASSIGNEE:

Eric Keating and Melissa Keating

PROPOSED ACTION:

Assignment of a General Lease – Recreational and Protective Structure Use

AREA, LAND TYPE, AND LOCATION

Sovereign land in the Colorado River, adjacent to 1170 Beach Drive, Needles, San Bernardino County.

AUTHORIZED USE:

Continued use and maintenance of an existing concrete stairway with railing and appurtenances, rock retaining walls, concrete patios and riprap bankline protection, landing, aluminum gangway with railing, and floating boat dock.

TERM:

10 years, beginning February 22, 2013.

CONSIDERATION:

\$470 per year, with an annual Consumer Price Index adjustment.

SPECIFIC PROVISIONS:

Liability insurance in an amount no less than \$1,000,000 per occurrence.

BACKGROUND:

The State of California's fee ownership of sovereign land located in the Colorado River at this location was confirmed in 1991 by 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 (Agreement). Projects, including new development or maintenance of existing facilities, extending waterward of the ordinary high-water mark (OHWM) fixed in the Agreement require a lease from the Commission pursuant to Public Resources Code section 6501.1. The Applicant's upland property is located along the Colorado River adjacent to the fixed OHWM.

Pursuant to the Agreement, 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 through 40 of the Rio Buena Vista residential subdivision, one of which is the Applicant's property. Public access to the easement is from the northern or southern end of the subdivision, or from the Colorado River.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, and 6503.5; California Code of Regulations, title 2, section 2000, subdivision (b).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On April 26, 2013, the Commission authorized Lease Number PRC 9039, a General Lease – Recreational and Protective Structure Use, to Michael Shutt and Christine D. Shutt, as Trustees, or any successor Trustee, under that certain declaration of trust named Michael Shutt and Christine D. Shutt Family Trust, created by Michael Shutt and Christine D. Shutt, as Trustors, dated September 8, 2006, for the use and maintenance of an existing concrete stairway with railing and appurtenances, rock retaining walls, concrete patios, and riprap bankline protection ([Item 78, April 26, 2013](#)).

On October 14, 2014, the Commission authorized an amendment of the lease to correct the description of existing improvements and allow for the construction, use, and maintenance of a landing, aluminum gangway with railing, and floating boat dock, effective October 14, 2014 ([Item 65, October 14, 2014](#)). The Lease will

expire on February 21, 2023. On June 30, 2020, ownership interest in the upland property was transferred from Lessee to Eric and Melissa Keating (Applicant). The Applicant is now applying for an assignment of the remaining lease term.

The facilities authorized under the current lease consist of an existing concrete stairway with railing and electrical appurtenances, rock retaining walls, concrete patios, riprap bankline protection, a landing, an aluminum gangway with railing, and a floating boat dock.

The proposed assignment of lease does not alienate the State's fee simple interest in the underlying land, nor will it permanently impair public rights. The proposed assignment is limited to the remaining term of the 10-year lease, does not change the nature or use of the lease premises or grant the Applicant exclusive rights to the lease premises, and protects public access to the Colorado River. Upon termination of the lease, the Applicant may be required to remove all improvements from State land. The assignment will require the Applicant to insure the lease premises and indemnify the State for any liability incurred as a result of the Applicant's activities thereon.

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, and 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 term of the lease. The lease is a 10-year General Lease – Recreational and Protective Structure Use that began on February 22, 2013 and may be subject to the climate change effects provided above. Regular maintenance and implementing best management practices, as required by the terms of the lease, will help reduce the likelihood of severe structural degradation and dislodgement. Further climate change impact analyses on the leased facilities will be assessed at the time the lease expires in 2023 if an application is submitted for a new lease and would be based on climate change data at that time.

CONCLUSION:

Assignment of this lease will not result in a change in the use of or impacts to Public Trust resources. Commission staff believes approval of this assignment is consistent with the common law Public Trust Doctrine 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. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
3. Assignment of lease is not a project as defined by the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBIT:

- A. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed assignment of the lease will not substantially interfere with Public Trust needs and values at this location, at this time, and for the remaining term of the lease; and is in the best interests of the State.

AUTHORIZATION:

Authorize the assignment of Lease Number PRC 9039, a 10-year General Lease – Recreational and Protective Structure Use, of sovereign land located in the

Colorado River, as shown on Exhibit A (for reference purposes only) attached and by this reference made a part hereof, from Lessee to Applicant; effective June 30, 2020.

NO SCALE

SITE

LEASE PARCEL 2

(EXISTING FLOATING BOAT DOCK, ALUMINUM GANGWAY WITH RAILING AND 9' IMPACT AREA)

APPROXIMATE TOE OF REVETMENT

APPROXIMATE TOP OF REVETMENT

COLORADO RIVER

AGREED BOUNDARY LINE

PUBLIC PEDESTRIAN ACCESS EASEMENT

LEASE PARCEL 1

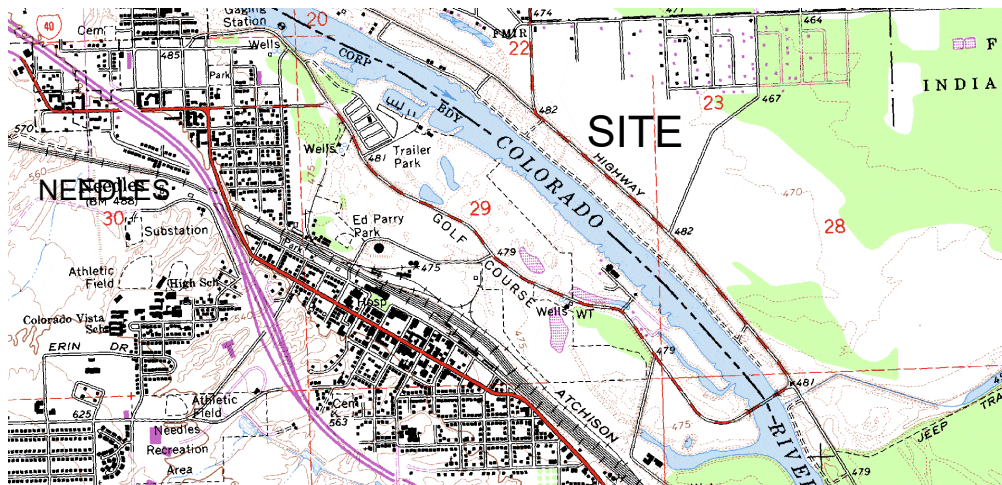
(EXISTING RIPRAP BANKLINE, TWO CONCRETE PATIOS WITH ROCK RETAINING WALLS, SINGLE SMALL PATIO, CONCRETE STAIRS WITH ROCK WALLS, CONCRETE LANDING AND EXISTING ALUMINUM GANGWAY WITH RAILING)

APN 0186-281-02

1170 BEACH DRIVE, NEEDLES

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 A

PRC 9039
KEATING
APN 0186-281-02
GENERAL LEASE -
RECREATIONAL AND
PROTECTIVE STRUCTURE USE
SAN BERNARDINO COUNTY



TS 05/25/2021