

# Staff Report 59

## **APPLICANT:**

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Jeffrey Glenn Marsden and Christine Joan Marsden, Trustees of The Marsden Family Trust dated September 10, 2020, and any amendments thereto.

## **PROPOSED ACTION:**

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Issuance of a General Lease – Recreational and Protective Structure Use

## **AREA, LAND TYPE, AND LOCATION**

Sovereign land in the Colorado River, adjacent to 1174 Beach Drive, Needles, San Bernardino County.

## **AUTHORIZED USE:**

Use and maintenance of existing rock stairs with railing, aluminum stairs with railing, aluminum gangway with railing, floating walkway, floating boat dock, and riprap bankline protection.

## **TERM:**

10 years, beginning May 24, 2022.

## **CONSIDERATION:**

**Gangway with railing, floating walkway, and boat dock:** Annual rent in the amount of \$197 per year, with an annual Consumer Price Index adjustment.

**Rock stairs with railing, aluminum stairs with railing, and riprap bankline protection:** Public benefit with the State reserving the right to set a monetary consideration if it is determined to be in the best interests of the State.

## **LEASE PROVISIONS:**

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

- Applicant acknowledges 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. Applicant further acknowledges 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.
- Rock stairs with railing and aluminum stairway must remain open and available for use by the public.

## **BACKGROUND**

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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) 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 acquired a Public Pedestrian Access Easement (Easement) running parallel to the fixed OHWM. The Easement provides 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, including 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 a site visit on April 10, 2002. The inspection 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:**

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### **AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

On May 24, 2012, the Commission authorized the issuance of Lease No. PRC 8997, a 10-year General Lease – Recreational and Protective Structure Use, to Kenneth D. Wheat and Edith J. Wheat, as Co-Trustees of The Wheat Family Trust, U/A Dated February 21, 2011, for the use and maintenance of existing rock stairs with railing and riprap bankline protection, beginning May 24, 2012 ([Item 59, May 24, 2012](#)).

On February 22, 2013, the Commission authorized an amendment of the lease to include a provision requiring stairs be available to the public for use, effective May 24, 2012 ([Item 74, February 22, 2013](#)).

On December 6, 2016, the Commission authorized an amendment for the construction, use, and maintenance of aluminum stairs, an aluminum gangway with railing, floating walkway, and floating boat dock; the inclusion of a lease provision requiring stairs to be available for use by the public; and the Assignment of the lease from Kenneth D. Wheat and Edith J. Wheat, as Co-Trustees of The Wheat Family Trust, U/A Dated February 21, 2011, to Jeffrey Marsden and Christine Marsden, effective December 6, 2016 ([Item 43, December 6, 2016](#)). The lease will expire on May 23, 2022. The Applicant is applying for a new lease.

The existing facilities within the lease area consist of rock stairs with railing, an aluminum stair with railing, aluminum gangway with railing, floating walkway, floating boat dock, and riprap bankline protection along the Colorado River. The Improvements are privately owned and maintained and have existed at this location for many years.

The existing gangway with railing, floating walkway, and boat dock facilitate recreational boating because they are used for docking and mooring recreational boats. Recreational boating is water-dependent and is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust lands (Pub. Resources Code, § 6503.5).

Furthermore, the existing rock stairs with railing, aluminum stairs with railing, and the riprap bankline protection mutually benefit both the public and the Applicant. The riprap bankline protection provides additional protection for the integrity of the

river channel from wave action, and the rock stairs with railing and aluminum stairs both facilitate access by the public to the beach area. All improvements are maintained by the lessee at no cost to the public.

Staff believes that the Public Trust needs, values, and uses of the two identified nearby public beach areas along the Colorado River will not be impacted by the proposed lease and continued use of the lease facilities. As an additional measure to ensure that the proposed use does not impair public access, the lease includes provisions protecting public use of the proposed lease area.

The proposed lease does not alienate the State's fee simple interest in the underlying land, nor will it 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 protects 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 these public lands.

#### **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. The aluminum gangway with railing, floating walkway, and floating boat dock would be able to move up and down as the water levels change during the next 10 years of the lease. The existing rock stairs with railing, aluminum stairway with railing, riprap bankline, and pilings would not be able to move up and down as the water levels change. During a severe drought within the next 10 years, the boat dock would not be functional since a boat would not be able to float to the boat dock due to low water levels in the river. Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement.

#### **CONCLUSION:**

For all the reasons above, Commission staff believes 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:**

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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 or a revision of rent, 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 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. 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.

## **EXHIBITS:**

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

## **RECOMMENDED ACTION:**

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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 rock stairs with railing, aluminum stairs with railing, and riprap bankline protection will not substantially interfere with Public Trust

needs and values at this location and are generally 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 existing gangway with railing, floating walkway, and boat dock will not substantially interfere with Public Trust needs and values at this location and are consistent with the common law Public Trust Doctrine; and
3. Find that 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 May 24, 2022, for a term of 10 years, for the use and maintenance of an existing rock stairs with railing, aluminum stairs with railing, aluminum gangway with railing, floating walkway, floating boat dock, and riprap bankline protection on sovereign land, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$197 with an annual Consumer Price Index adjustment; additional consideration being the public use and benefit; and liability insurance in an amount no less than \$1,000,000 per occurrence.

## **EXHIBIT A**

**LEASE 8997**

### **LAND DESCRIPTION**

Two parcels of State owned land adjacent to Lot 20 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, described as follows:

#### **PARCEL 1**

BEGINNING at the easterly corner of said Lot 20; 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 40° 58' 03" W 49.73 feet to the northerly corner of said lot; thence leaving said northeasterly line and said Agreed Boundary Line, northeasterly along the northeasterly prolongation of the northwesterly line of said lot N 45° 33' 31" E 26.40 feet; thence leaving said line S 47° 37' 07" E 51.68 feet to the intersection with the northeasterly prolongation of the southeasterly line of said lot; thence southwesterly along said northeasterly prolongation S 49° 01' 57" W 32.34 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying waterward of the toe of revetment adjacent to said Lot 20.

#### **PARCEL 2**

BEGINNING at a point on the northeasterly line of Lot 20, which bears N 40° 58' 03" W 7.40 feet from the easterly corner of said lot; thence northwesterly along said 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 40° 58' 03" W 42.33 feet; thence leaving said northeasterly line and said Agreed Boundary Line, northeasterly along the northeasterly prolongation of the northwesterly line of said lot N 45° 33' 31" E 93.66 feet; thence leaving said line S 44° 26' 29" E 42.25 feet; thence S 45° 33' 31" W 96.20 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying within above described PARCEL 1.

## END OF DESCRIPTION

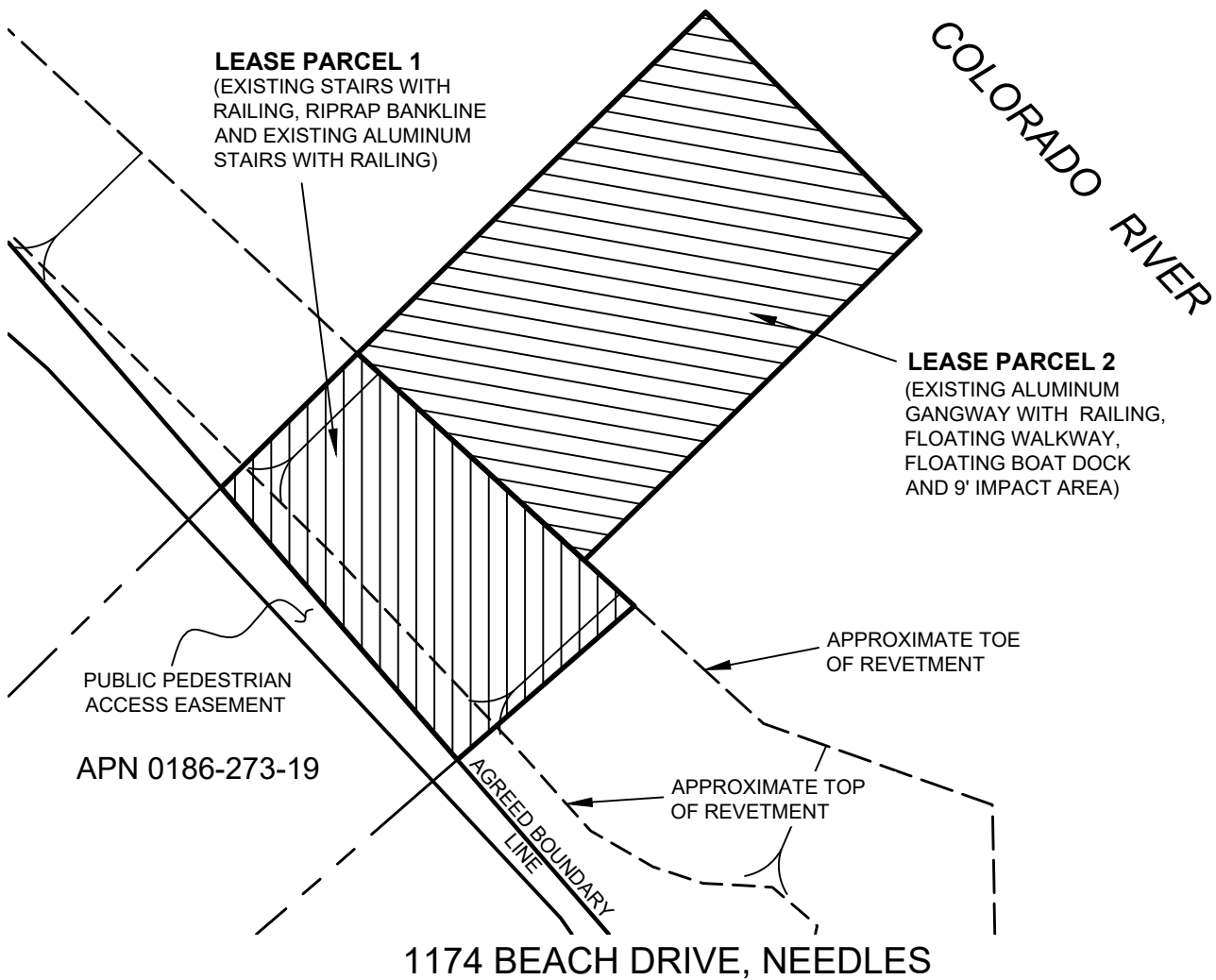
Revised 10/20/2021 by the California State Lands Commission Boundary Unit





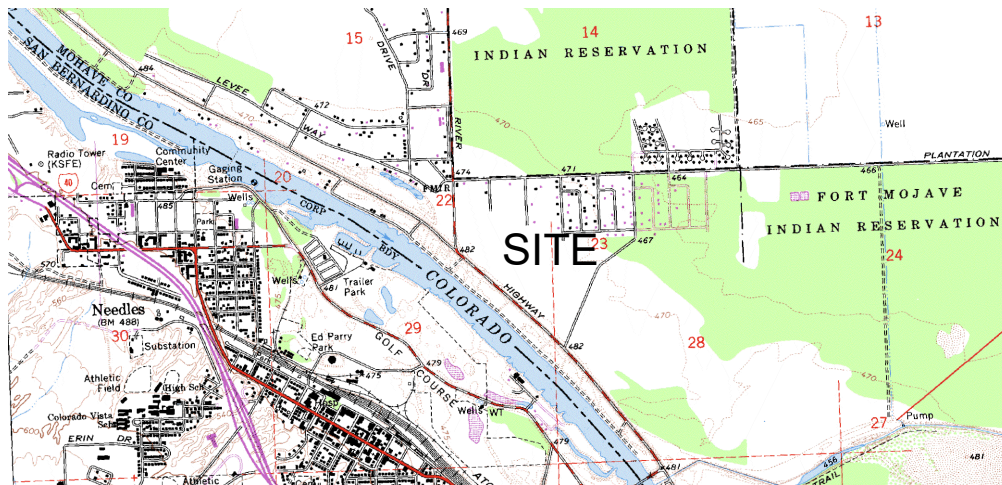
NO SCALE

## SITE



NO SCALE

## LOCATION



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

LEASE 8997  
MARSDEN TRUST  
APN 0186-273-19  
GENERAL LEASE -  
RECREATIONAL AND  
PROTECTIVE STRUCTURE USE  
SAN BERNARDINO COUNTY



TS 10/20/2021