

**CALENDAR ITEM
C43**

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12/06/16
PRC 8997.1
R. Collins

ASSIGNMENT AND AMENDMENT OF LEASE

ASSIGNOR/LESSEE:

Kenneth D. Wheat and Edith J. Wheat, as Co-Trustees of the Wheat Family Trust, U/A Dated February 21, 2011

ASSIGNEE/APPLICANT:

Jeffrey Marsden and Christine Marsden

AREA, LAND TYPE, AND LOCATION:

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

AUTHORIZED USE:

Use and maintenance of existing stairs with railing and riprap bankline.

LEASE TERM:

10 years, beginning May 24, 2012.

CONSIDERATION:

Stairs with 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 State's best interests.

SPECIFIC LEASE PROVISIONS:

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

Other: 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.

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PROPOSED AMENDMENT:

Amend the Lease to:

1. Allow for the construction, use, and maintenance of an aluminum stairway and gangway with railing and a floating walkway and boat dock;
2. Prohibit the placement of gates on the aluminum stairway which would restrict public access to the Colorado River;
3. Include Special Provisions related to the construction of the improvements;
4. Revise consideration for the proposed improvements to include the public use and benefit for the aluminum stairway; pro rata rent of \$77 for the period from December 6, 2016 to May 23, 2017 and annual rent of \$168 beginning May 24, 2017 for the gangway with railing, and floating walkway and boat dock; effective December 6, 2016;
5. Delete Exhibit A and replace with new Exhibit A, Land Description; and Exhibit B, Site and Location Map.

All other terms and conditions of the lease shall remain in effect without amendment.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503.5; California Code of Regulations, title 2, section 2000, subdivision (b).

Public Trust and State's Best Interests Analysis:

On May 24, 2012, the Commission authorized a 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 existing stairs with railing and riprap bankline on the Colorado River in the Rio Buena Vista (RBV) community in the city of Needles ([Calendar Item C59, May 24, 2012](#)). The lease was subsequently amended and consideration was revised to account for public use of the

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stairs ([Calendar Item C74, February 22, 2013](#)), with new consideration being the public use and benefit for both the stairs and riprap bankline.

On December 15, 2015, the upland parcel was deeded to Jeffrey Marsden and Christine Marsden. The Applicant has applied for an assignment of the lease and to amend the lease to allow for the construction of an aluminum stairway and gangway with railing, and a floating walkway and boat dock. Similar to the existing stairway, the proposed aluminum stairway leading to the gangway and boat dock will also provide public access to the Colorado River, with the lease amendment prohibiting installation of a gate. Staff recommends that no rent be assessed to the aluminum stairway due the public benefit it will provide, consistent with similar leases in the community. The new gangway with railing, and floating walkway and boat dock will provide a purely private benefit, and will be assessed rent, also consistent with similar leases in the community. The Applicant anticipates installation of the proposed improvements prior to December 31, 2016, so staff recommends that rent become effective upon Commission authorization. Consideration for the existing stairs and riprap bankline will continue to be the public use and benefit.

Soon after the authorization of this lease, numerous comments were received concerning the issuance of boat dock leases in the RBV community. On August 14, 2012, the Commission suspended leasing activity for new boat docks and directed staff to conduct an analysis of the Public Trust needs in the area and report back to the Commission ([Calendar Item C64, August 14, 2012](#)). In October 2012, Commission staff visited the site, held a public meeting in the RBV community and took comments on issues of importance from the owners and residents.

At the December 5, 2012 Commission meeting, staff presented its report on the Public Trust needs ([Calendar Item 85, December 5, 2012](#)). The report recognized the existence of two sandy beaches that are used extensively throughout the year by both riverfront and inland residents of the community, as well as members of the public. The report also indicated that if boat docks were authorized for all beachfront owners, the Public Trust needs, values, and uses of the recognized beach areas would be significantly impacted. The Commission authorized staff to resume processing applications for boat docks in the RBV community on a case-by-case basis consistent with the Commission's practices on leasing on inland waterways and the Public Trust needs identified in the area.

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The subject property does not lie adjacent to one of the two recognized beach areas in the RBV community. The aluminum stairway has been designed to provide public access to the Colorado River. To ensure public access to the Colorado River, staff recommends the Commission prohibit the placement of gates on the aluminum stairway.

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 (Public Resources Code, section 6503.5). The proposed improvements, consisting of an aluminum stairway and gangway with railing and a floating walkway and boat dock, will be privately owned and maintained and located adjacent to the Applicant's upland property adjoining the lease premises. The proposed improvements facilitate recreational boating because they are used for the docking and mooring of recreational boats.

The lease includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 10 years and a non-exclusive use provision. The proposed improvements will not significantly alter the land, the lease does not alienate the State's fee simple interest, and neither permanently impairs public rights. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition. Based on the foregoing, Commission staff believes that the proposed improvements will not substantially interfere with Public Trust needs, at this location, at this time, or for the foreseeable term of the lease.

The 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. For all the reasons above, Commission staff believes the authorization for the lease assignment, amendment, and revised consideration to include rent is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

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OTHER PERTINENT INFORMATION:

1. This action promotes 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 of the Commission's Strategic Plan to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.

2. **Lease Assignment:** Assignment of the lease is not a project as defined by the California Environmental Quality Act (CEQA) 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).

3. **Stairs with Railing and Riprap Bankline:** Staff recommends that the Commission find that this activity is exempt from the requirements of 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).

4. **Construction of Aluminum Stairway and Gangway with Railing and a Floating Walkway and Boat Dock:** Staff recommends that the Commission find that this activity is exempt from the requirements of 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).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

5. 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 staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

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FURTHER APPROVALS REQUIRED:

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

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the activities are 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); and Class 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed lease amendment will not substantially interfere with public rights to navigation and fishing or with the Public Trust needs and values at this location at this time, is consistent with the common law Public Trust Doctrine, and is in the best interests of the State.

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:

1. Authorize the assignment of Lease No. PRC 8997.9, a General Lease – Recreational and Protective Structure Use, of sovereign land in the Colorado River as described in Exhibit A, Land Description, attached and by this reference made a part hereof and as shown on Exhibit B, Site and Location Map (for reference purposes only), 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.

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2. Authorize the amendment of Lease No. PRC 8997.9, a General Lease – Recreational and Protective Structure Use, to allow the construction, use, and maintenance of an aluminum stairway and gangway with railing and a floating walkway and boat dock; to prohibit the placement of gates on the aluminum stairway which would restrict public access to the Colorado River; to include special provisions related to the construction of the boat dock; to revise consideration for the proposed improvements to include the public use and benefit for the aluminum stairway; pro rata rent of \$77 for the period from December 6, 2016 to May 23, 2017, and annual rent of \$168 beginning May 24, 2017 for the gangway with railing, and floating walkway and boat dock, effective December 6, 2016; to replace the existing Exhibit A with the Exhibit A, Land Description, and Exhibit B, Site and Location Map (for reference purposes only), attached and by this reference made a part hereof.
3. All other terms and conditions of the lease will remain in effect without amendment.

EXHIBIT A

PRC 8997.1

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 southwestery 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

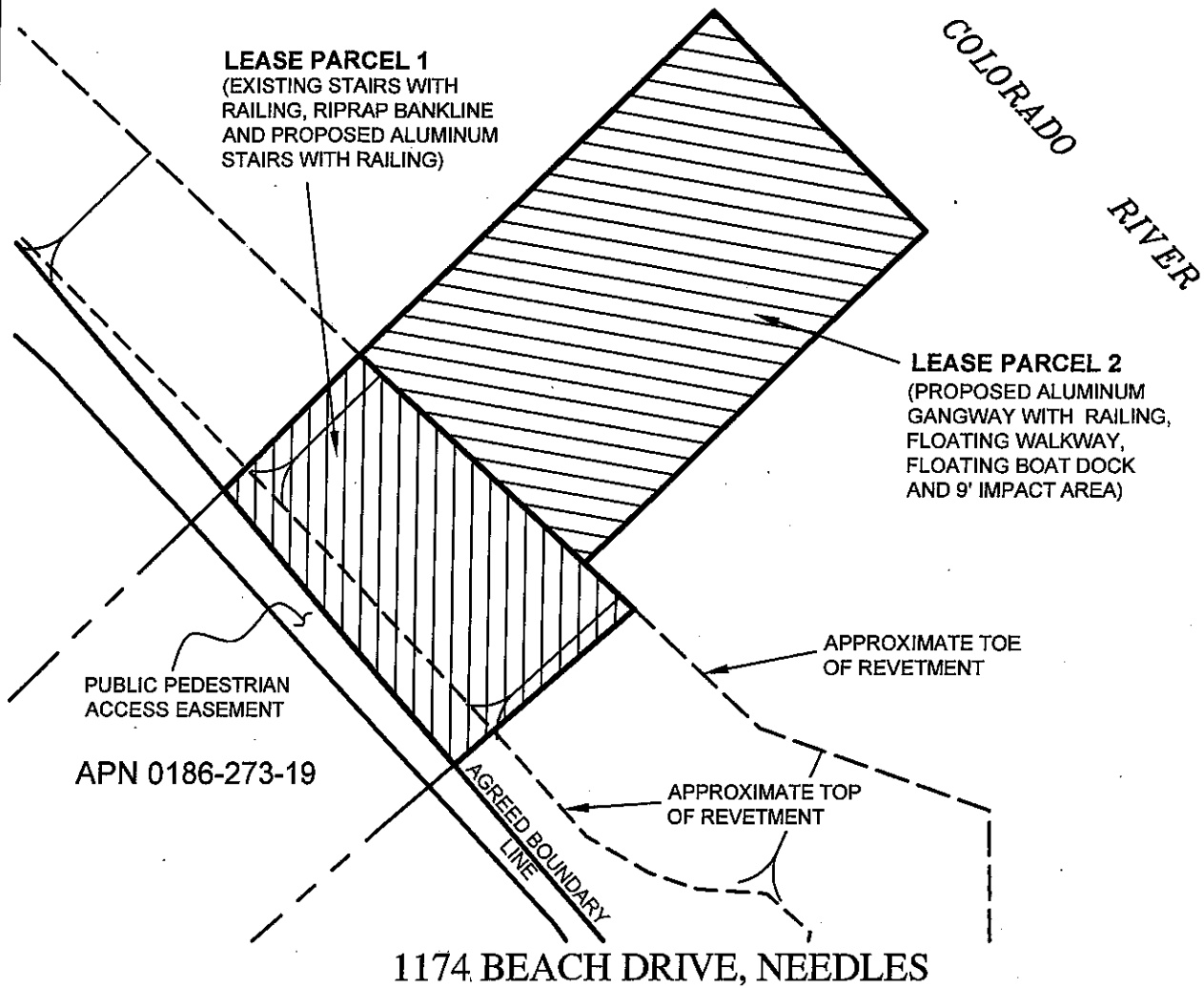
This description is based on Applicant provided design drawings for a proposed floating boat dock, gangway, walkway together with any and all appurtenances pertaining thereto, to build at a later date within the Lease time frame. This description is to be updated once as-built plans are submitted.

Prepared 09/02/16 by the California State Lands Commission Boundary Unit



NO SCALE

SITE



NO SCALE

LOCATION

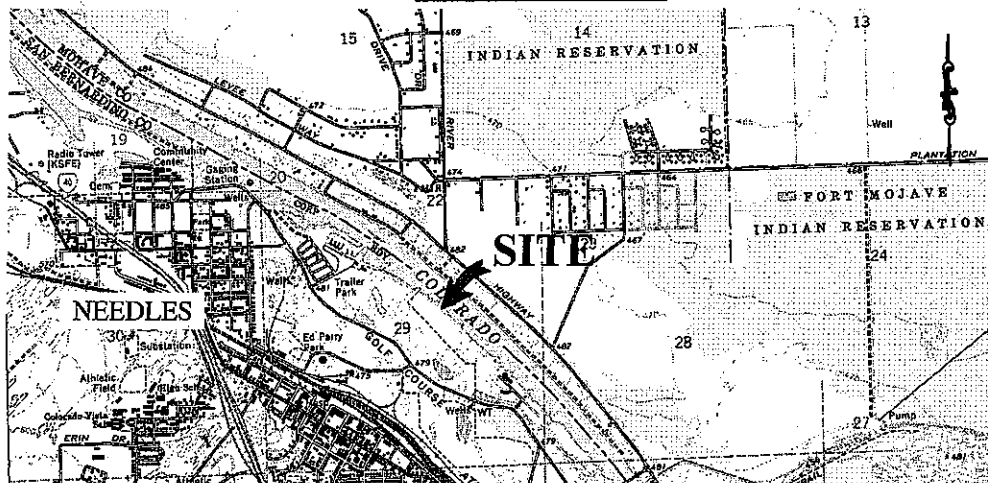


Exhibit B

PRC 8997.1
 MARSDEN
 APN 0186-273-19
 GENERAL LEASE -
 RECREATIONAL AND
 PROTECTIVE STRUCTURE USE
 SAN BERNARDINO COUNTY



TS 09/02/16

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.