

**STAFF REPORT
C26**

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04/05/19
PRC 6437.1
J. Holt

**CONSIDER WAIVER OF RENT, PENALTY, AND INTEREST;
TERMINATION OF LEASE; AND ISSUANCE OF A GENERAL LEASE –
RECREATIONAL AND PROTECTIVE STRUCTURE USE**

LESSEE:

Lino Catabran and Linda Catabran

APPLICANT:

Raul Aguirre

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Sacramento River, adjacent to 5291 Garden Highway, near Sacramento, Sacramento County.

AUTHORIZED USE:

Use and maintenance of an existing covered floating boat dock with slip, one gangway, three pilings, one dolphin, one boat lift, and bank protection previously authorized by the Commission, and utility conduit not previously authorized by the Commission.

LEASE TERM:

10 years, beginning April 27, 2018.

CONSIDERATION:

Covered floating boat dock with slip, one gangway, three pilings, one dolphin, one boat lift, and utility conduit: \$482 per year, with an annual Consumer Price Index adjustment.

Bank protection: 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.

SPECIFIC LEASE PROVISIONS:

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

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- Lessee agrees and acknowledges that the hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the lease premises.

STAFF ANALYSIS AND RECOMMENDATION:

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 Analysis:

On August 15, 2014, the Commission authorized a General Lease - Recreational and Protective Structure Use to Lino Catabran and Linda Catabran ([Item C22, August 15, 2014](#)). That lease will expire on April 29, 2023. On November 30, 2015, the upland was deeded to Sutter Capital Group LP. On June 20, 2017, the upland was deeded to Bank of the West. On April 27, 2018, the upland was deeded to Raul Aguirre. At some point during the title transfers, one gangway was removed from the lease premises. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use, for the use and maintenance of an existing covered floating boat dock with slip, one gangway, three pilings, one dolphin, one boat lift, and bank protection previously authorized by the Commission, and utility conduit not previously authorized by the Commission.

Staff recommends termination of the existing lease, Lease No. PRC 6437.1, based on the Lessee's abandonment of the lease area. The title transfer occurred without a lease quitclaim deed and notification to staff. The upland property was repossessed by the bank in November 2015, and subsequently sold to the Applicant in 2018. Staff mailed annual rent invoices to the address on file, which remained unpaid for several years. Based on the circumstances, staff believes it is not in the State's best interests to pursue collection of rent, penalty, and interest from the Lessee for the period of April 30, 2015, through April 26, 2018, since the Lessee was no longer the upland owner as of November 30, 2015. Furthermore, staff believes the cost of collection services far exceeds the past due rent. Staff also recommends that the Commission issue a new lease to the Applicant, effective April 27, 2018, the day the Applicant acquired title to the upland.

The proposed lease area contains similar facilities as in the prior lease. The lease facilities are designed for recreational boating and shoreline protection. The floating boat dock and appurtenant facilities have existed

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at this location for many years. Recreational boating is a water-dependent activity 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). The bank protection will maintain and improve the integrity of the Sacramento River channel, which will help protect the Public Trust resources of the Sacramento River for recreational and navigational use by the public.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust-consistent uses. 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:

Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The subject facilities are located on the Sacramento River, in a tidally influenced site vulnerable to flooding at current sea levels and at a higher risk of flood exposure given projected scenarios of sea-level rise. The lease premises consist of a floating boat dock, one gangway, three pilings, one dolphin, one boat lift, utility conduit, and bank protection.

The California Ocean Protection Council updated the State of California Sea-Level Rise Guidance in 2018 to provide a synthesis of the best available science on sea-level rise projections and rates. Commission staff evaluated the "high emissions," "medium-high risk aversion" scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The San Francisco tide gauge was used for the projected sea-level rise scenario for the region as listed in Table 1.

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Table 1. Projected Sea-Level Rise for San Francisco¹

Year	Projection (feet)
2030	0.8
2040	1.3
2050	1.9
2100	6.9

Source: Table 13, State of California Sea-Level Rise Guidance: 2018 Update

Note: ¹ Projections are with respect to a 1991 to 2009 baseline.

This effect could increase the Sacramento River’s inundation levels within the lease area. In addition, 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, drought, extreme heat, and storms (especially when coupled with sea-level rise). In rivers and tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris as well as decreased bank stability and structure. Conversely, climate-change induced droughts could decrease river levels and flow for extended periods of time. Climate change and sea-level rise will further influence riverine areas by changing erosion and sedimentation rates. Flooding and storm flow, as well as runoff, will likely increase scour and decrease bank stability at a faster rate.

The combination of these projected conditions could increase the likelihood of damage and affect access to structures within the lease premises during the term of the lease. For example, the potential for more frequent and stronger storm events may expose the lease area structures to higher flood risks and cause facilities to be damaged or dislodged, presenting hazards to public safety as well as dangers for navigation within the channel. Conversely, prolonged drought conditions could lower water levels, exposing previously submerged structures to the elements and potentially leading to increased wear-and-tear on the pilings and dock. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards and impacting the function and utility of the lease area structures.

The floating boat dock and adjustable gangway are adaptable to variable water levels, allowing them to rise and fall with storms and droughts and increasing their resiliency to some climate change impacts, but may require more frequent maintenance or replacement to ensure continued function during and after storm seasons and to avoid dislodgement of

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dock facilities. The fixed features may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events. For example, the pilings appear to be at a sufficient height to withstand projected changes in water levels, but additional fortification may be needed, because the pilings help anchor the mechanized boat lift and damage to these pilings could lead to a public safety hazard. The bank is vegetated, which provides additional stability and could partially reduce the amount of erosion and scour pressure experienced during future events because of the vegetation's underground root system, but remains at risk of accelerated deterioration from currents and floods. Exposed portions of the protective structure could be vulnerable to future events, and an alternative bank protection strategy, such as bank restoration, may be required to protect the anchoring points of the other structures and reduce flood impacts to the upland parcel (not within the lease area). Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement.

Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland (not within the lease area) are located in an area that may be subject to effects of climate change, including sea-level rise.

Conclusion:

For all the reasons above, staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This 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.
2. Termination 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. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of CEQA as a categorically exempt project.

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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:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that issuance of the lease 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:

Find that the termination of a lease; waiver of rent, penalty, and interest; and issuance of the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Waive annual rent, penalty, and interest due for the period of April 30, 2015 through April 26, 2018; and void annual rent invoice #36709, dated January 15, 2015; invoice #39149, dated February 1, 2016; invoice #41690, dated February 6, 2017; invoice #44350, dated February 14, 2018; and invoice #47030, dated February 9, 2019; and any associated penalty and interest associated with Lease No. PRC 6437.1.
2. Authorize termination of Lease No. PRC 6437.1, a General Lease – Recreational and Protective Structure Use, issued to Lino Catabran and Linda Catabran, effective April 26, 2018.
3. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning April 27, 2018,

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for a term of 10 years, for the use and maintenance of an existing covered floating boat dock with slip, one gangway, three pilings, one dolphin, one boat lift, utility conduit (not previously authorized), and bank protection, 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 covered floating boat dock with slip, one gangway, three pilings, one dolphin, one boat lift, and utility conduit: \$482 per year, with an annual Consumer Price Index adjustment; consideration for the bank protection: 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

PRC 6437.1

LAND DESCRIPTION

A parcel of tide and submerged land situate in the bed of the Sacramento River lying adjacent to Swamp and Overflow Survey 404, Sutter County, State of California, more particularly described as follows:

All those lands underlying an existing covered floating boat dock with slip, one gangway, three pilings, one dolphin, one boat lift, and utility conduit lying adjacent to that parcel as described in Exhibit "A" of that Grant Deed recorded April 27, 2018, in Document 201804270637 in Official Records of said County.

TOGETHER WITH that any applicable impact area(s).

ALSO TOGETHER WITH that land lying immediately beneath any bank protection structure adjacent to said parcel.

EXCEPTING THEREFROM any portion(s) lying landward of the Ordinary High Water Mark of the bank of the Sacramento River.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared March 18, 2019 by the California State Lands Commission Boundary Unit.



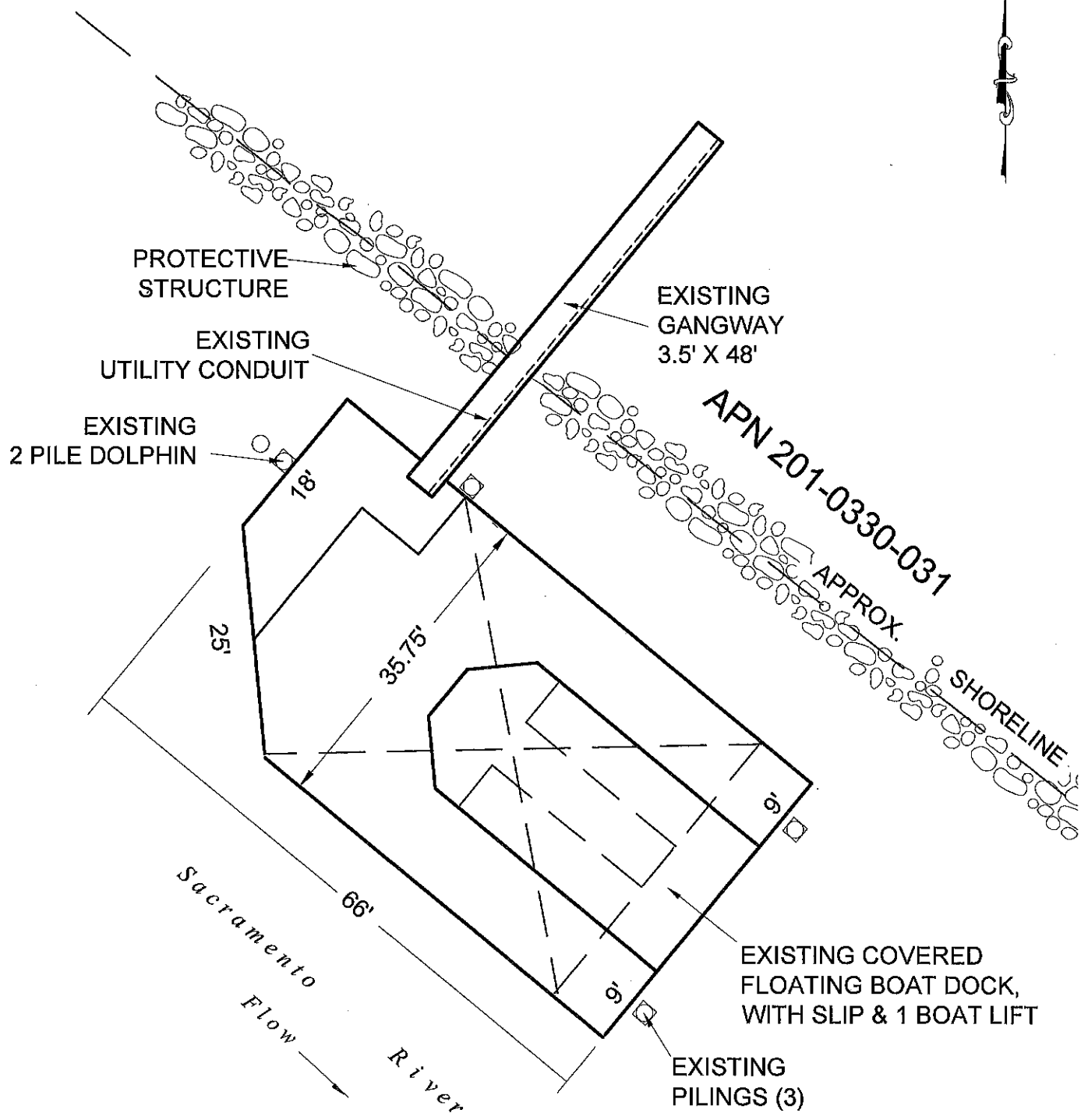


EXHIBIT A

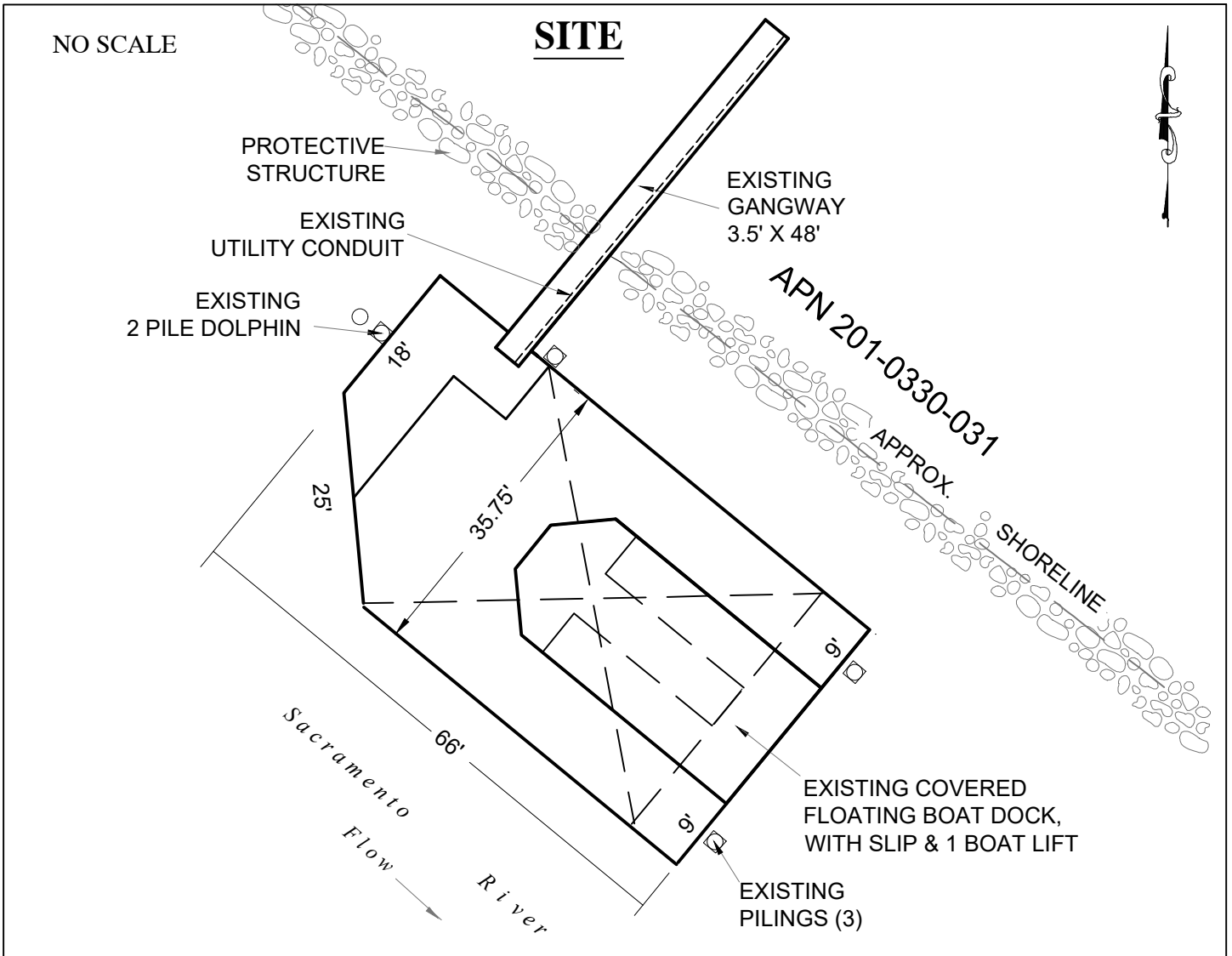
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LAND DESCRIPTION PLAT
 PRC 6437.1, AGUIRRE
 SACRAMENTO COUNTY

CALIFORNIA STATE
 LANDS COMMISSION





5291 GARDEN HWY., SACRAMENTO

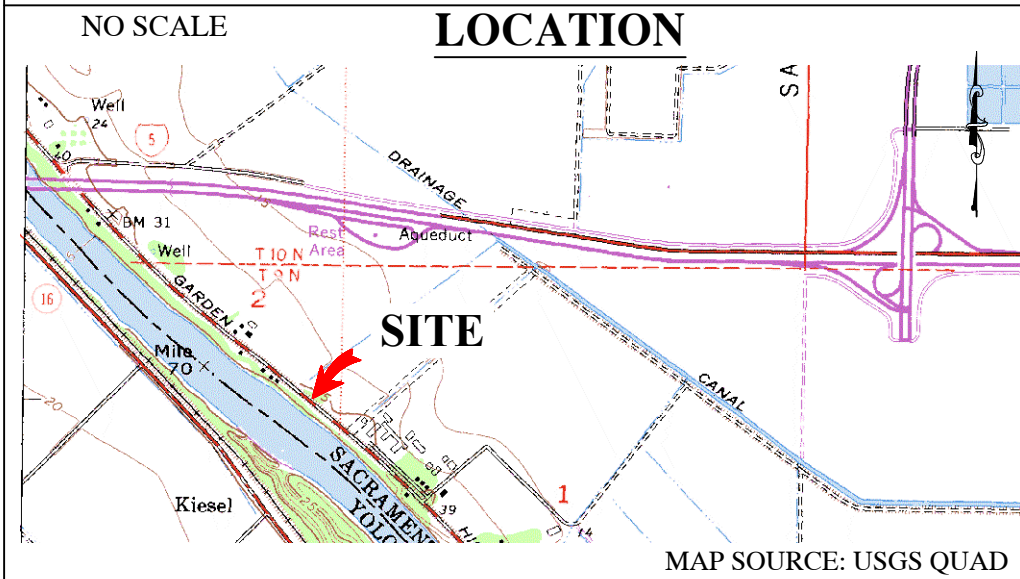


Exhibit B

PRC 6437.1
 AGUIRRE
 APN 201-0330-031
 GENERAL LEASE -
 RECREATIONAL &
 PROTECTIVE STRUCTURE USE
 SACRAMENTO COUNTY



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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.