

**STAFF REPORT**

**17**

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02/28/20  
Lease 7692.1

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G. Asimakopoulos

**CONSIDER DELEGATION OF AUTHORITY TO THE EXECUTIVE OFFICER  
FOR CONSIDERATION OF AN APPLICATION FOR A  
GENERAL LEASE – RECREATIONAL USE**

**APPLICANT:**

John R. Areias and Julie Noel Sandino

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land located in the Sacramento River, adjacent to 13950 State Highway 160, near Walnut Grove, Sacramento County.

*AUTHORIZED USE:*

Continued use and maintenance of an existing boat dock, gangway, personal watercraft float, and three pilings.

*LEASE TERM:*

10 years, beginning February 28, 2020.

*CONSIDERATION:*

\$631 per year, with an annual Consumer Price Index adjustment.

*SPECIFIC LEASE PROVISIONS:*

1. Liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Lessee agrees and acknowledges hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the Lease Premises.
3. Lessee to pay compensation for the unauthorized occupation of State land in the amount of \$2,654 for the period beginning December 16, 2015, through February 27, 2020.

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4. Lessee agrees to indemnify the Lessor for any liabilities arising from the period of unauthorized occupation of the State lands (prior to the issuance of the lease).

**STAFF ANALYSIS:**

**Authority:**

Public Resources Code sections 6005, 6216, 6301, 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 December 21, 1994, the Commission authorized a 10-year Recreational Pier Permit to James J. Cordano, Jr. and Caroline Cordano, Trustees of the James J. Cordano, Jr. and Caroline Cordano Joint Family Trust, for the proposed construction, use, and maintenance of a floating boat dock with a finger pier, gangway, and three pilings ([Item C10, December 21, 1994](#)). That lease expired on April 19, 2004. On December 16, 2015, the upland parcel was deeded to John R. Areias and Julie Noel Sandino. The Applicant is now applying for a General Lease – Recreational Use, for the use and maintenance of an existing boat dock, gangway, personal watercraft float, and three pilings. Staff recommends issuance of a new lease beginning February 28, 2020. Staff also recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$2,654 for the period beginning December 16, 2015, the day ownership of the upland parcel was deeded to the Applicant, through February 27, 2020, the day preceding issuance of the proposed lease.

The prior lease was for a 50-foot dock with a finger pier, but it does not appear that the finger pier was ever constructed. However, in 2012, the dock was extended to a length of 100 feet, and later a personal watercraft float was added. These additions were already in place when the Applicant took ownership of the upland. The subject dock and appurtenant facilities are privately owned and maintained and are for the docking and mooring of recreational boats. 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 existing boat dock and appurtenant facilities have existed at this location for many years, and are located directly adjacent to the Applicant's upland property.

The proposed lease includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 10 years and

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a non-exclusive use provision. The facilities do not significantly alter the land, and the lease does not alienate the State's fee simple interest, nor permanently impair 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.

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. Furthermore, the lessee agrees to indemnify the Commission for any liabilities arising from the period of unauthorized occupation of the State lands (prior to the issuance of the lease). 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 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.

**Table 1. Projected Sea-Level Rise for San Francisco<sup>1</sup>**

<b>Year</b>	<b>Projection (feet)</b>
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: <sup>1</sup> Projections are with respect to a 1991 to 2009 baseline.

Rising sea levels can lead to more frequent flood inundation in low-lying areas and larger tidal events, and could increase the Sacramento River's

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inundation levels within the lease area over the term of the lease. 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 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 dock and 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 to ensure continued functionality during and after storm seasons and to avoid dislodgement. The fixed pilings may need reinforcement to withstand higher levels of flood exposure and more frequent storm events. 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.

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### **Conclusion:**

For all the reasons above, 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; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

### **STAFF RECOMMENDATION:**

Commissioner Kounalakis has identified a conflict of interest which requires her disqualification from participating in the decision on this proposed lease pursuant to Government Code section 84308. She has reported the receipt of campaign contributions in an amount greater than \$250 from Applicant Julie Noel Sandino.

Chair Yee has identified the likelihood of an appearance of a financial conflict of interest. She has reported that Applicant Julie Noel Sandino is her political fundraiser to whom Controller Yee's campaign committee occasionally makes payments for services.

Due to the existence or appearance of conflicts of interest identified above, staff understands that both Chair Yee and Commissioner Kounalakis intend to abstain from consideration of this lease application. Therefore, the Commission will be unable to form a quorum to make a decision on this application and proposed lease. Accordingly, staff recommends delegating the authority to approve or deny this proposed lease to the Executive Officer, subject to making the required CEQA finding, and making the required findings that 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; the proposed lease is consistent with the common law Public Trust Doctrine; and that the proposed lease is in the State's best interests. Staff further recommends that the Commission delegate the authority whether to accept compensation from the Applicant in the amount of \$2,654 for the unauthorized occupation of State land for the period beginning December 16, 2015, through February 27, 2020 to the Executive Officer.

### **OTHER PERTINENT INFORMATION:**

1. Approval or denial of the application is a discretionary action. Any time the Commission, or its delegate, 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. If the application is denied, the Applicant may be required to remove the existing boat dock, gangway, personal watercraft float, and three pilings and restore the

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premises to their original condition. 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 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.
3. The delegation of authority to the Executive Officer is not a project as defined by the California Environmental Quality Act (CEQA) because it is an organizational 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).

4. Staff recommends that the Executive Officer find pursuant to this delegation of authority that the pending application 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).

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:

**AUTHORIZATION:**

1. Delegate to the Executive Officer the authority to decide whether to accept compensation from the Applicant in the amount of \$2,654 for the unauthorized occupation of State land for the period beginning December 16, 2015, through February 27, 2020.
2. Delegate to the Executive Officer the authority to approve or deny issuance of a General Lease – Recreational Use to the Applicant beginning February 28, 2020, for a term of 10 years, for the

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continued use and maintenance of an existing boat dock, gangway, personal watercraft float, and three pilings; as described in Exhibit A, Land Description, and as shown on Exhibit B, Site and Location Map (for reference purposes only), attached and by this reference made a part hereof; annual rent in the amount of \$631 per year, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence, subject to making the required CEQA finding, and making the required findings that 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; the proposed lease is consistent with the common law Public Trust Doctrine; and that the proposed lease is in the State's best interests.

**EXHIBIT A**

**LEASE 7692.1**

**LAND DESCRIPTION**

A parcel of tide and submerged land situate in the bed of the Sacramento River, lying adjacent to Swamp and Overflowed Land Survey 306 patented September 2, 1872, County of Sacramento, State of California and more particularly described as follows:

All those lands underlying an existing floating boat dock, gangway, personal watercraft float and three pilings lying adjacent to that parcel described in Grant Deed, recorded December 16, 2015 in Book 20151216 at Page 0024 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the right bank of said river.

Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

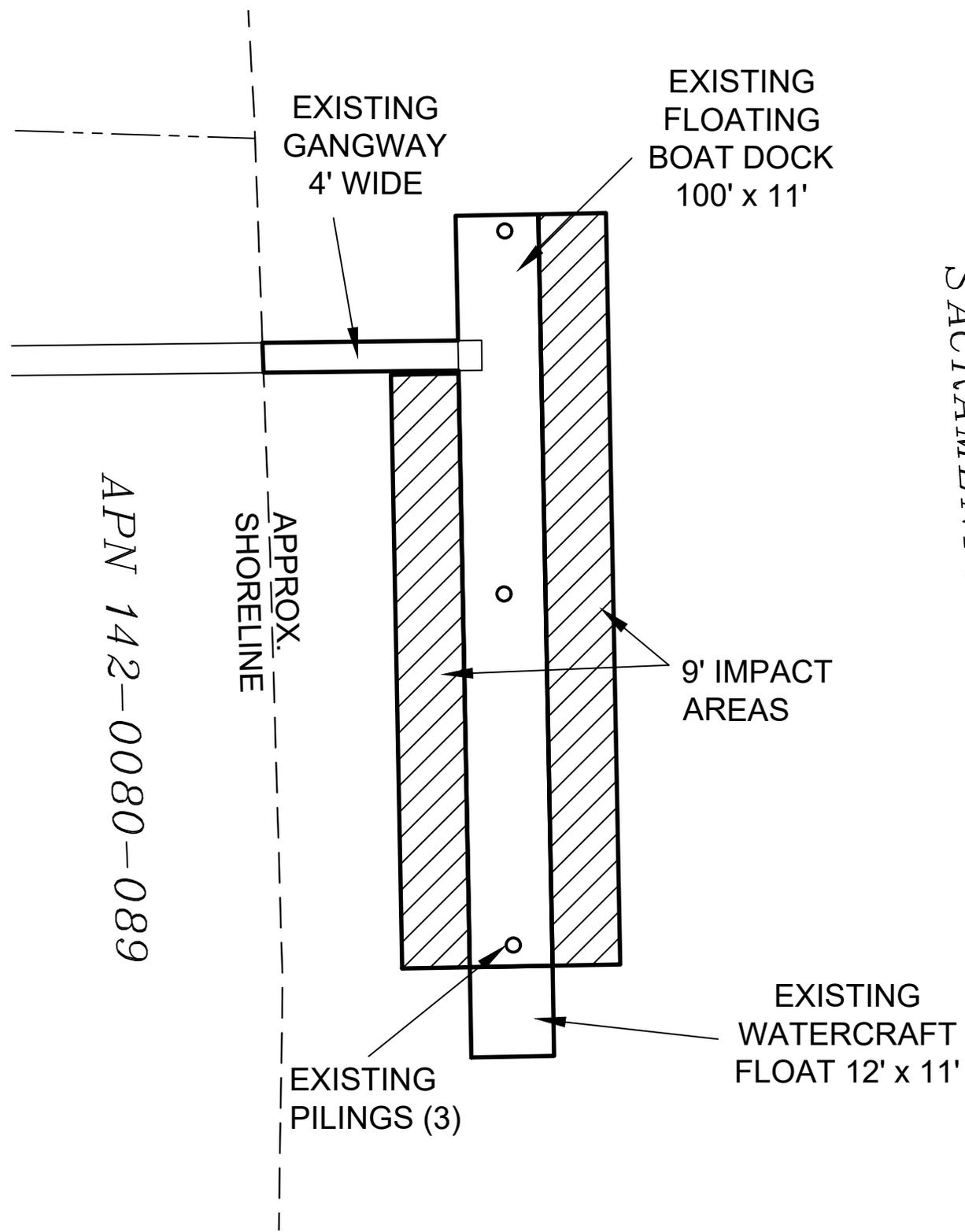
Prepared 10/30/19 by the California State Lands Commission Boundary Unit





SACRAMENTO

RIVER



### EXHIBIT A

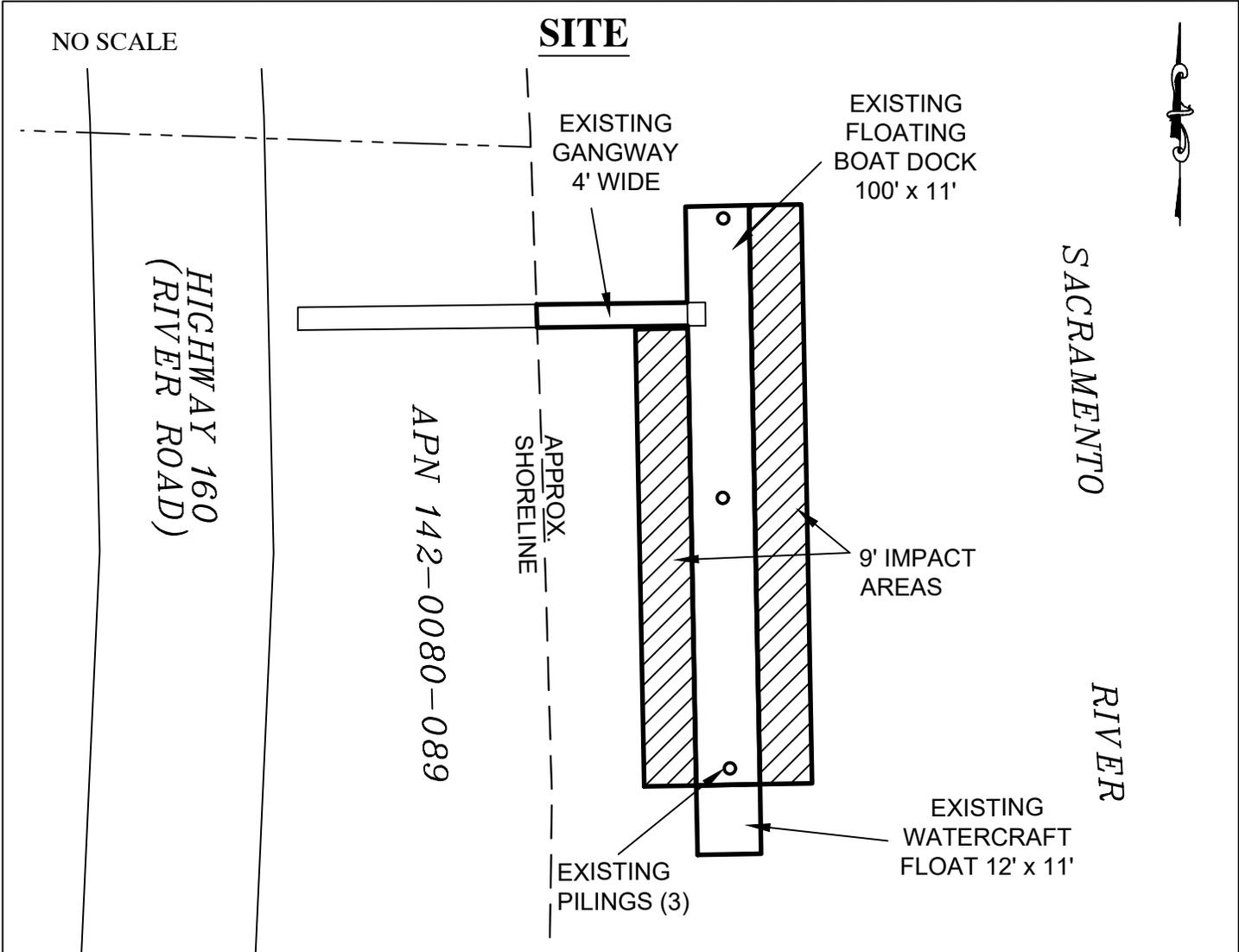
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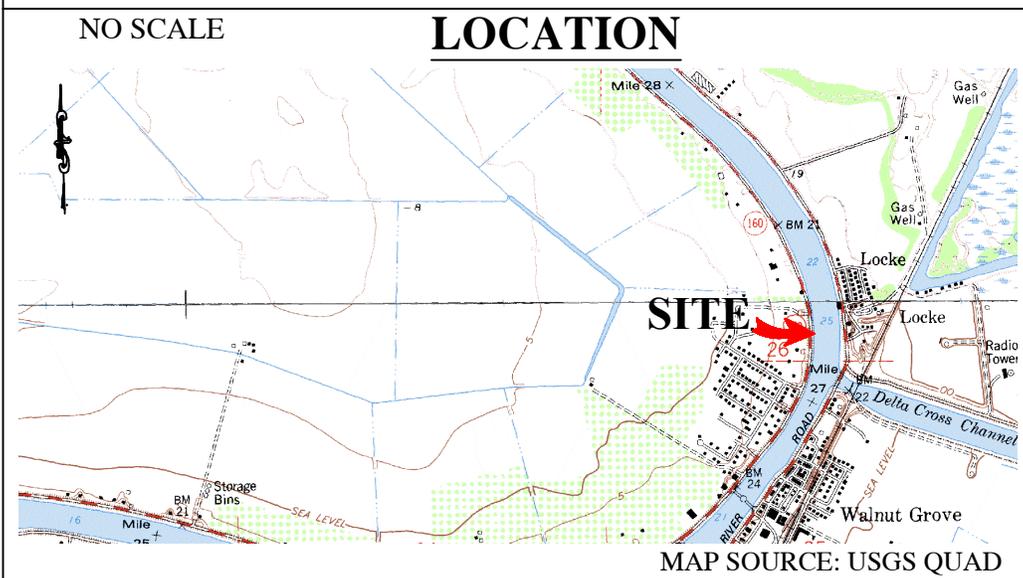
LAND DESCRIPTION PLAT  
LEASE 7692.1, AREIAS/SANDINO  
SACRAMENTO COUNTY

CALIFORNIA STATE  
LANDS COMMISSION





13950 STATE HIGHWAY 160, NEAR WALNUT GROVE



**Exhibit B**  
 LEASE 7692.1  
 AREIAS/SANDINO  
 APN 142-0080-089  
 GENERAL LEASE -  
 RECREATIONAL USE  
 SACRAMENTO 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.