

# Staff Report 26

General Lease – Recreational Use

## **APPLICANT:**

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Robert L. Hulbert and Zulima O. Hulbert

## **PROPOSED ACTION:**

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

Sovereign land located in the Sacramento River, adjacent to 673 Brickyard Drive, near Sacramento, Sacramento County.

### **AUTHORIZED USE:**

Use and maintenance of an existing boat dock with a boathouse, roof railing, spiral staircase, gangway, four pilings, sewer line, and pumpout facility previously authorized by the Commission, and existing electric and water utility outlets not previously authorized by the Commission.

### **TERM:**

10 years, beginning June 28, 2020.

### **CONSIDERATION:**

\$481 per year, with an annual Consumer Price Index adjustment.

### **SPECIFIC LEASE PROVISIONS:**

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

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

## BACKGROUND:

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On April 5, 2004, the Commission authorized a General Lease – Recreational Use to Robert L. Hulbert for the construction, use, and maintenance of a 40-foot by 32-foot (erroneously stated as 40-foot by 34-foot in the Lease document) covered floating boat dock with a 34-foot by 14-foot slip, four pilings, and a 4-foot by 52-foot gangway ([Item C01, April 5, 2004](#)). Once the dock was in place, staff received a complaint from a member of the public expressing concern over the size of the dock. Because of the complaint, staff conducted a site inspection and determined that the improvements were not constructed as authorized. On August 8, 2007, Mr. Hulbert was advised of the defaults of the lease and pursuant to the terms of the lease he was given 30 days from receipt of the notice to cure the defaults. The following is a summary of the unauthorized improvements that constituted a default under the terms of the lease:

1. The boat dock was approximately 252 square feet larger than authorized.
2. The boathouse was approximately 248 square feet larger than authorized with an unauthorized sundeck and railing. The roof of the boathouse was 20 feet above the deck, which is 7 feet higher than authorized.
3. There was an unauthorized spiral staircase.
4. The gangway was 10 feet longer than authorized.
5. A 144-square foot enclosed cabana (9 feet high) with a kitchen unit (all located on the boathouse roof), including the following items inside the cabana: an electric grill and cooktop, sink with garbage disposal, dishwasher, and two refrigerators.
6. A toilet, sink, and shower were constructed in the boathouse with a sewer line.

On August 22, 2007, Mr. Hulbert submitted an application to amend his lease to obtain authorization after the fact to retain all of the above accessory structures and add the increased dock dimensions to the lease. On December 3, 2007, staff presented an item to the Commission outlining their belief that the above proposal was inconsistent with the Commission's previous direction and recommended that the proposal not be accepted (Item C35, December 3, 2007). At the meeting, the Commissioners approved acceptance of the staff's recommendations to 1) issue a notice of default to Mr. Hulbert, and if he failed to comply with the Commission's previous direction, terminate the lease; 2) authorize staff and the Office of the Attorney General to take all necessary steps, including litigation to enforce the Commission's findings and to remove all of the improvements from the lease premises; and 3) to deny the application submitted by Mr. Hulbert to amend his lease.

On May 17, 2010, representatives of the parties reached a Litigation Settlement Agreement (Agreement). The Agreement provided for the termination of Mr. Hulbert's existing lease and the issuance of a new General Lease – Recreational Use with a term of 10 years. The new lease would allow Mr. Hulbert to retain his boathouse and dock as built including the increased dimensions, spiral staircase, roof railings, gangway, sewer line and pumpout. Mr. Hulbert also agreed to remove, within 90 days of approval of the new lease, the cabana/gazebo including the electric grill, cooktop, sink with garbage disposal, dishwasher, two refrigerators; to remove the toilet and sink inside the boathouse; and to cap the shower head. At the end of the 10-year lease term, Mr. Hulbert would be required to remove the siding of the boathouse.

On June 28, 2010, the Commission authorized a 10-year General Lease - Recreational Use to Robert L. Hulbert, for the use and maintenance of an existing floating boat dock with a single slip boathouse, roof railings, spiral staircase, four pilings, gangway, sewer line, and pumpout facility, located in the Sacramento River, adjacent to 673 Brickyard Drive, near Sacramento, Sacramento County (Item C39, June 28, 2010). That lease expired on June 27, 2020.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **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:**

The Applicant is now applying for a General Lease – Recreational Use, for the use and maintenance of an existing boat dock with a boathouse, roof railings, spiral staircase, four pilings, gangway, sewer line, and pumpout facility previously authorized by the Commission, and existing electric and water utility outlets not previously authorized by the Commission. The existing electric and water utility outlets were not authorized in the previous lease but appear to have been in place since before 2010. Staff has verified, as provided for in the Agreement, that the cabana/gazebo improvements, and the toilet and sink have all been removed from the lease premises, and the shower head has been capped. The Applicant has complied with and fulfilled the terms of the Agreement, except for the removal of the boathouse siding. The Applicant has requested permission to leave the boathouse siding in place since all other similar boathouses in the area have siding and believes that removing the siding would be a prohibitive financial burden. Staff has reviewed the request and believes the siding does not create risks to public health and safety or the environment and does not interfere with Public Trust uses. Since 2010, the Commission has authorized the

construction of similar boathouses with full wall siding in the same area. The initial reason staff sought removal in the 2010 Agreement (concealment of non-Trust uses inside the boathouse), is no longer a concern because the offending improvements have been removed and the lessee has been in compliance ever since. Staff recommends allowing the boathouse siding to remain, and also recommends the issuance of a new lease beginning June 28, 2020.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained, used for the docking and mooring of boats, and facilitate recreational boating. Recreational boating is a water-dependent use that 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 land (Pub. Resources Code, § 6503.5).

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 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. 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>**

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: <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 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. 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, climate-change induced droughts could decrease river levels and flow for extended periods of time, exposing previously submerged structures to the elements and potentially leading to increased wear-and-tear on the 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. 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 to structures within the lease premises during the term of the lease. The fixed pilings will likely need reinforcement or replacement in the future to withstand higher levels of flood exposure and storm activity. The floating boat dock and gangway with the single slip boathouse, sewer line and pumpout facility, roof railings, and spiral staircase, will be 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 the four pilings may require more frequent maintenance or replacement to ensure continued function during and after storm seasons or to avoid dislodgement. Pursuant to the proposed lease, the applicant acknowledges that the lease premises and the 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 the proposed 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.

**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, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant/Lessee may be required to remove the existing boat dock with a boathouse, roof railing, spiral staircase, gangway, four pilings, sewer line, pumpout facility, and electric and water utility outlets, and restore the 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. 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:**

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

### **AUTHORIZATION:**

Authorize issuance of a General Lease – Recreational Use to the Applicant beginning June 28, 2020, for a term of 10 years, for the use and maintenance of an existing boat dock with a boathouse, roof railing, spiral staircase, gangway, four pilings, sewer line, pumpout facility, and existing electric and water utility outlets; 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 \$481 per year, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 8513**

**LAND DESCRIPTION**

A parcel of tide and submerged land situate in the bed of the Sacramento River, lying adjacent to projected Section 27, Township 8 North, Range 4 East, MDM., as shown on Official Government Township Plat approved August 22, 1872, County of Sacramento, State of California, and more particularly described as follows:

All those lands underlying an existing dock, boathouse, and gangway, adjacent to Parcel One as described in that Grant Deed recorded June 14, 2001 in Book 20010614 at Page 1028 of Official Records of said County.

TOGETHER WITH any applicable impact area(s).

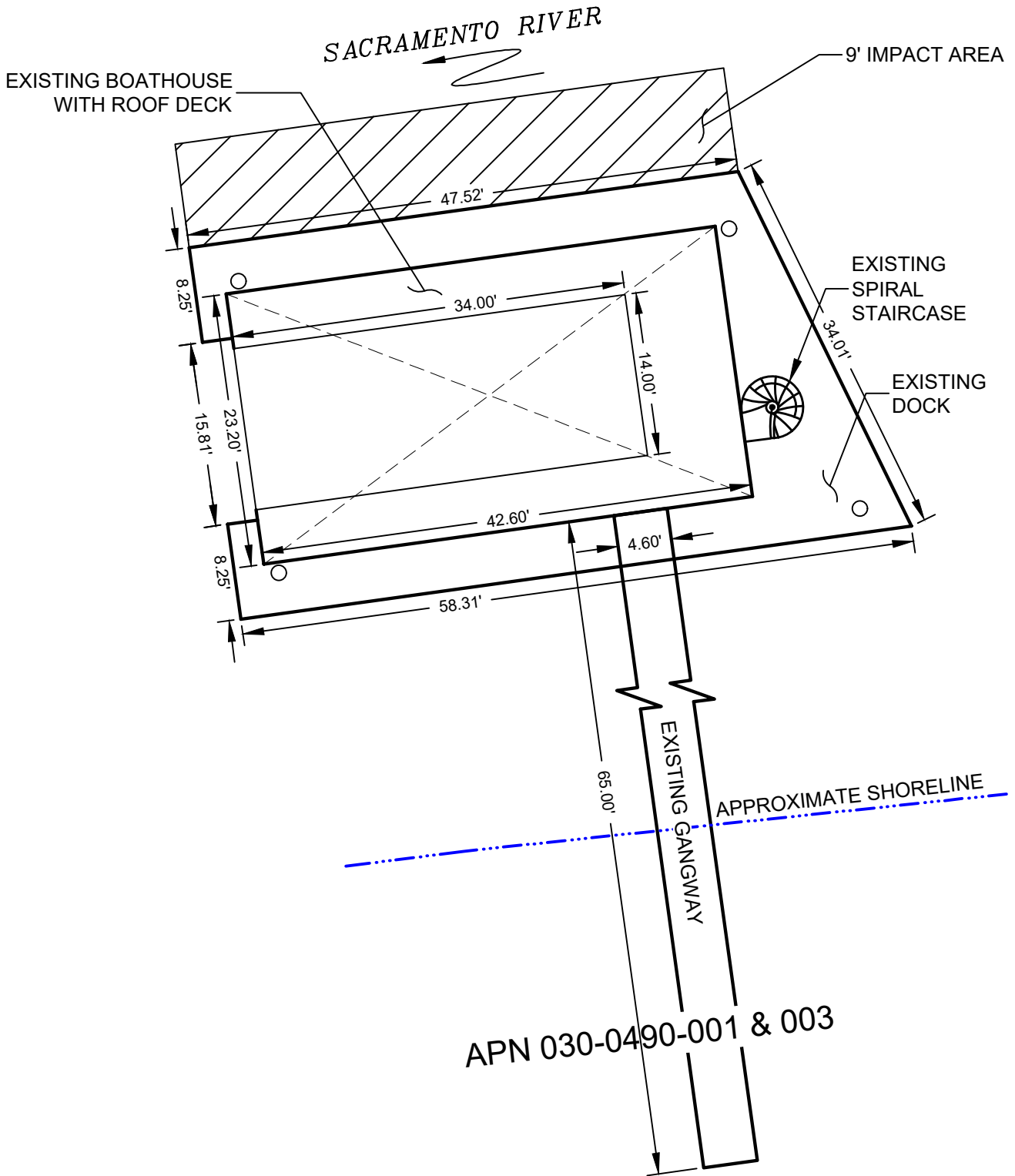
EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Mark of the left bank of the Sacramento River.

**END OF DESCRIPTION**

Prepared July 15, 2020 by the California State Lands Commission Boundary Unit.





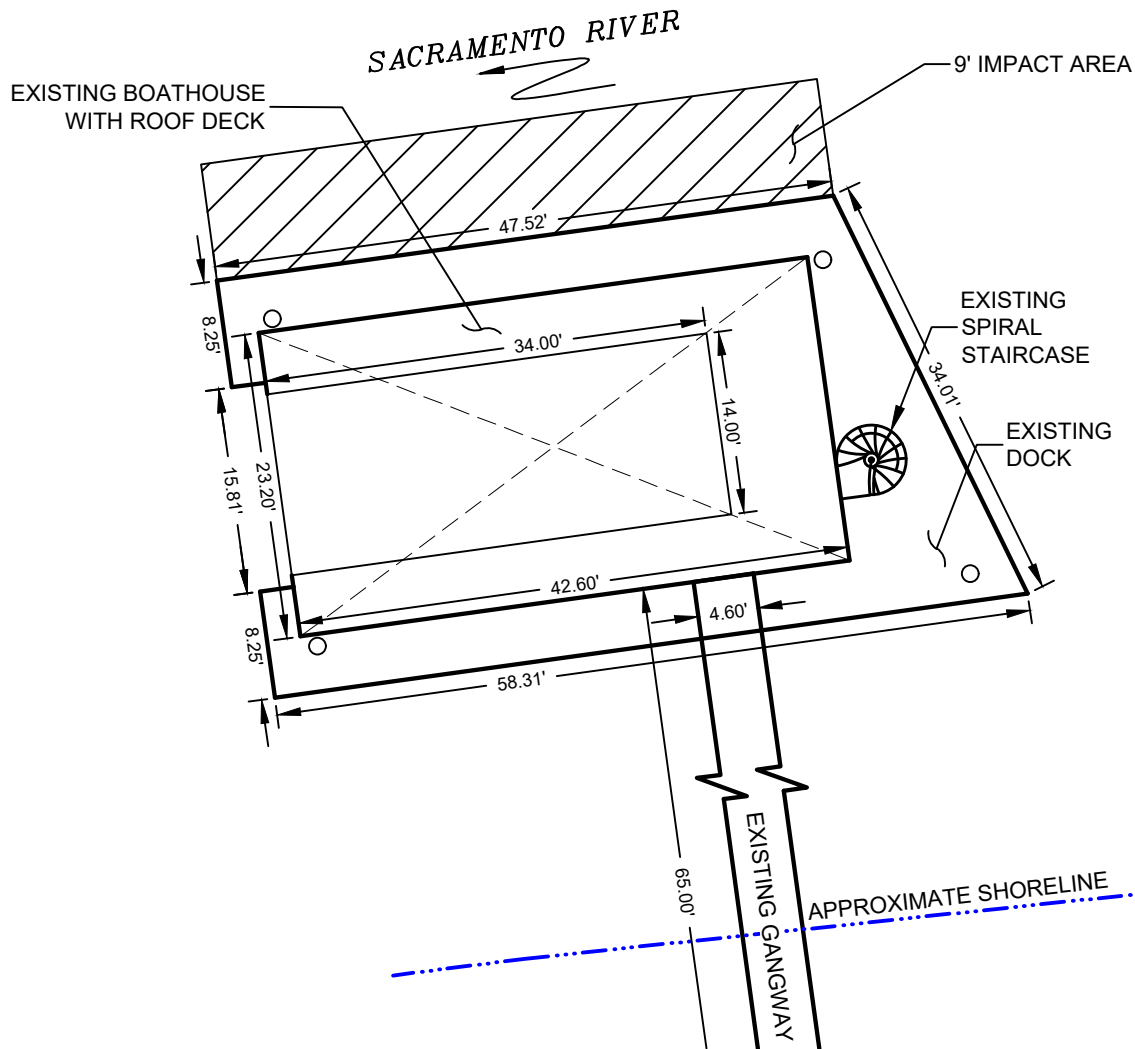


**EXHIBIT A**



NO SCALE

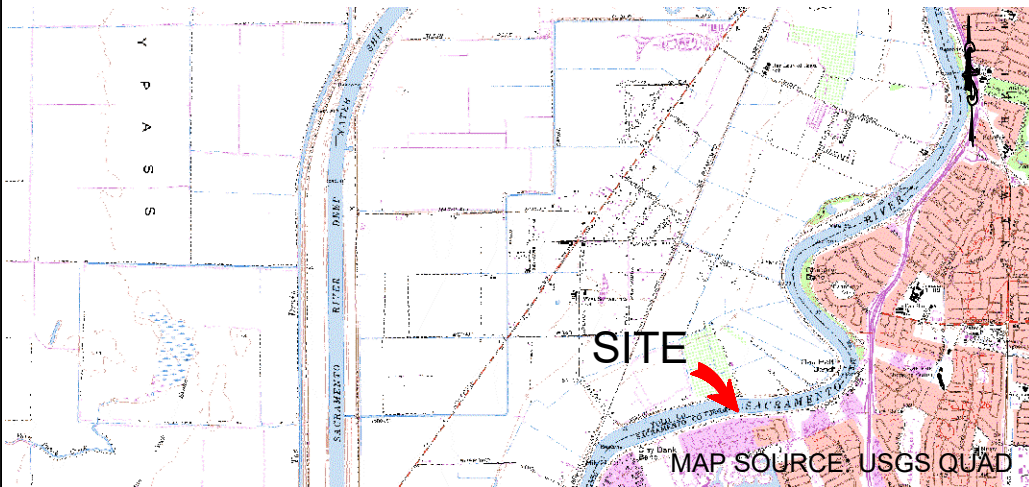
# SITE



673 BRICKYARD DR., SACRAMENTO

NO SCALE

# LOCATION



# EXHIBIT B

LEASE 8513  
 HULBERT  
 APN 030-0490-001 & 003  
 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.

JAK 7/15/20