

Staff Report 21

APPLICANT:

Susan V. Carson, Trustee of the Susan V. Carson Trust U/D/T dated October 19, 1994

PROPOSED ACTION:

Issuance of General Lease – Recreational and Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the historic bed of the San Joaquin River at Atherton Cove, adjacent to 1 Atherton Island, near Stockton, San Joaquin County.

AUTHORIZED USE:

Use and maintenance of an existing boat dock, gangway, fill area, bulkhead, and bank protection previously authorized by the Commission and an existing deck not previously authorized by the Commission.

TERM:

10 years, beginning October 22, 2020.

CONSIDERATION:

Boat dock, gangway, and deck: \$181 per year, with an annual Consumer Price Index adjustment.

Fill area, bulkhead, and 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.
- 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 6303.5; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On November 5, 1991, the Commission authorized a 10-year General Permit - Recreational and Protective Structure Use to Robert Beardslee and Margaret M. Beardslee ([Item C07, November 5, 1991](#)). That permit expired on July 31, 2001. On August 20, 1999, the upland was transferred to Susan V. Carson, Trustee of the Susan V. Carson Trust U/D/T dated October 19, 1994. During the next several years, the Applicant researched rehabilitation measures for existing structures and potential enhancements. At some point during the period of occupation, the Applicant added a deck to the lease area, which supplemented existing improvements. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use, for the use and maintenance of an existing boat dock, gangway, fill area, bulkhead, and riprap bank protection previously authorized by the Commission and an existing deck not previously authorized by the Commission. The subject facilities reside in the historic bed of the San Joaquin River at Atherton Cove.

Staff recommends acceptance of compensation from the Applicant in the amount of \$906, for the unauthorized occupation of State land during the period from August 20, 1999, through October 21, 2020, the day preceding issuance of the proposed new lease.

The Applicant owns the upland adjoining the lease premises. The subject facilities have existed at this location for many years. The waterway facilities are used for the docking and mooring of 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 fill area is comprised of rocks and riprap bank protection covering an existing bulkhead for reinforcement purposes. It was initially installed in the 1980s for bank reconstruction and bank protection. These materials maintain and improve the integrity of the river channel, which helps protect the Public Trust resources for recreational and navigational use by the public.

The existing deck is located slightly landward of the boat dock. It offers scenic views of the waterway and enjoyment of Public Trust Resources. Although the

existing deck is not associated with traditional Public Trust uses, a recreational deck that has been in place for several years may be permitted if, as in this case, the improvement does not significantly interfere with Trust activities. The deck is slightly elevated and therefore does not impair public use of State land. Further, the lease contains provisions that the deck may not be expanded or rebuilt, if significantly destroyed. The deck has been in place for many years and occupies a small area of State land. The deck does not substantially interfere with the needs and values of the Public Trust at this location, at this time, and for the foreseeable term of the proposed lease.

The proposed lease does not alienate the State's fee simple interest or 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 reserves an easement to the public for Public Trust-consistent uses. On termination of the proposed 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 facility is located near Stockton on the San Joaquin 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 lease area as listed in Table 1.

Table 1. Projected Sea-Level Rise for San Francisco

| 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: Projections are with respect to a 1991 to 2009 baseline.

This effect could increase the San Joaquin River's inundation levels within the lease area, and this risk of flood exposure is likely to increase with time. 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. Although the banks within the lease area are vegetated, 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 boat dock infrastructure. Lowered water levels could also reduce navigability of the channel, thereby increasing hazards related to the lease area structures.

The floating boat 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 or replacement to ensure continued function during and after storm seasons and to avoid dislodgement. The fixed features, such as the pilings and bank protection may need reinforcement to withstand higher levels of flood exposure and more frequent storm events. The bank is somewhat vegetated, which provides additional stability and will reduce the amount of erosion and scour pressure experienced during future events because of the vegetation's underground root system, but it remains at risk of accelerated deterioration from

currents and floods. Exposed portions of the existing 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 in the lease premises and reduce flood impacts to the upland parcel.

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 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 proposed lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

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, as the owner of the improvements, may be required to remove the existing boat dock, gangway, deck, fill area, bulkhead, and riprap bank protection, 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:

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

RECOMMENDED ACTION:

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 existing boat dock, gangway, fill area, bulkhead, and riprap bank protection will not substantially interfere with Public Trust needs and values at this location and are 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 deck is not generally consistent with the Public Trust Doctrine, but the current use does not substantially interfere with the trust;
3. Find that issuing the proposed lease is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of compensation from the Applicant in the amount of \$906 for the unauthorized occupation of State land for the period beginning August 20, 1999, through October 21, 2020.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning October 22, 2020, for a term of 10 years, for the use and maintenance of an existing boat dock, gangway, fill area, bulkhead, and bank protection previously authorized by the Commission and an existing deck not previously authorized by the Commission; 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 boat dock, gangway, and deck: \$181 per year, with an annual Consumer Price Index adjustment; consideration for

the fill area, bulkhead, and 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

LEASE 6047

LAND DESCRIPTION

A parcel of tide and submerged land, whether filled or unfilled, situate in the bed of the Atherton Cove (formerly the bed of the San Joaquin River), lying adjacent to Swamp and Overflowed Land Survey 1299, patented March 28, 1868, County of San Joaquin, State of California, and more particularly described as follows:

All those lands underlying an existing boat dock, gangway, deck, fill area and bulkhead lying adjacent to and northeasterly of those lands as described in that Grant Deed, recorded August 20, 1999 in Document Number 99105871 in Official Records of said County.

TOGETHER WITH any applicable impact area(s).

ALSO TOGETHER WITH all those lands underlying existing bank protection lying adjacent to said deed.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the left bank of the historic San Joaquin River.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

PREPARED 8/31/2020 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



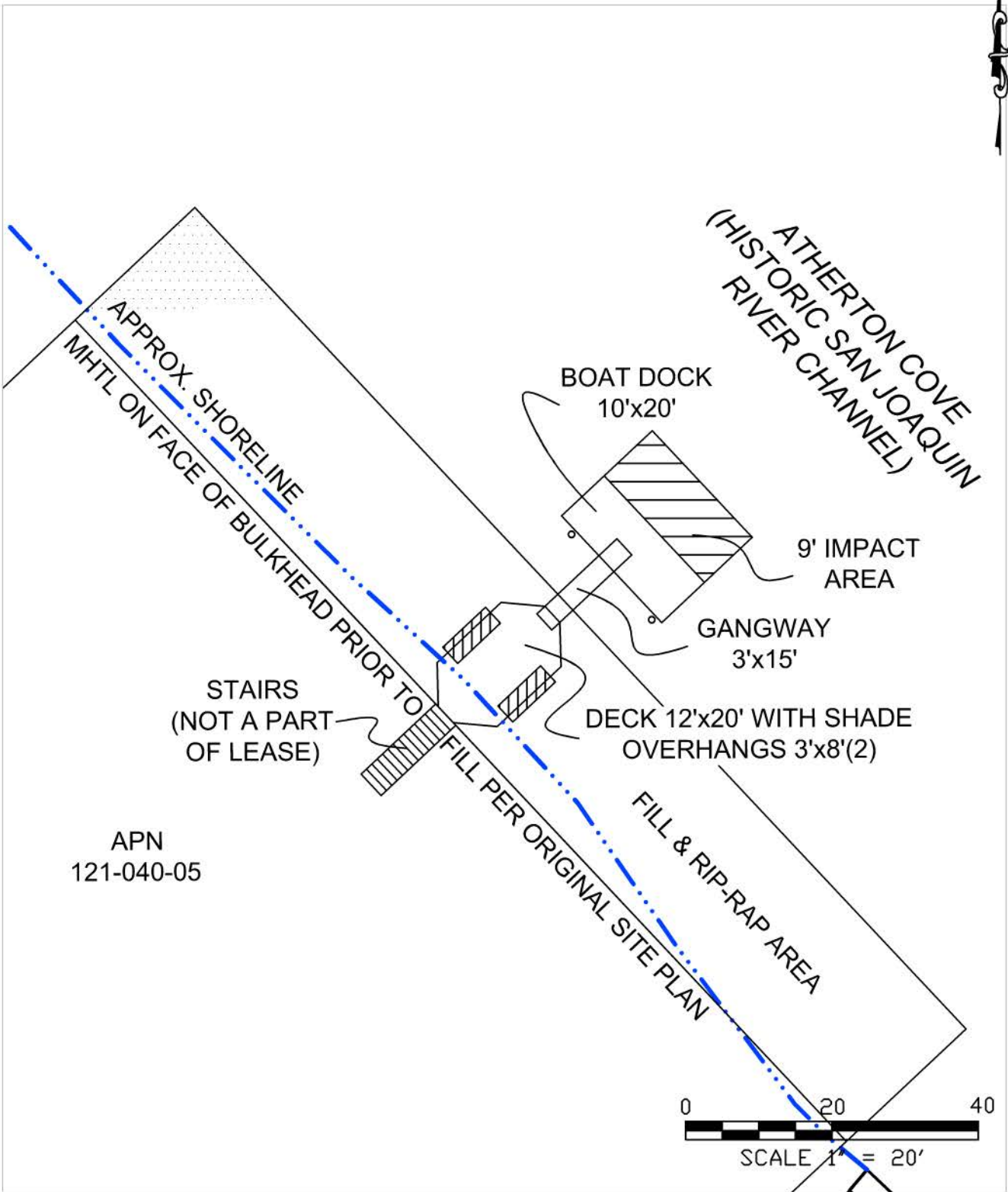


EXHIBIT A

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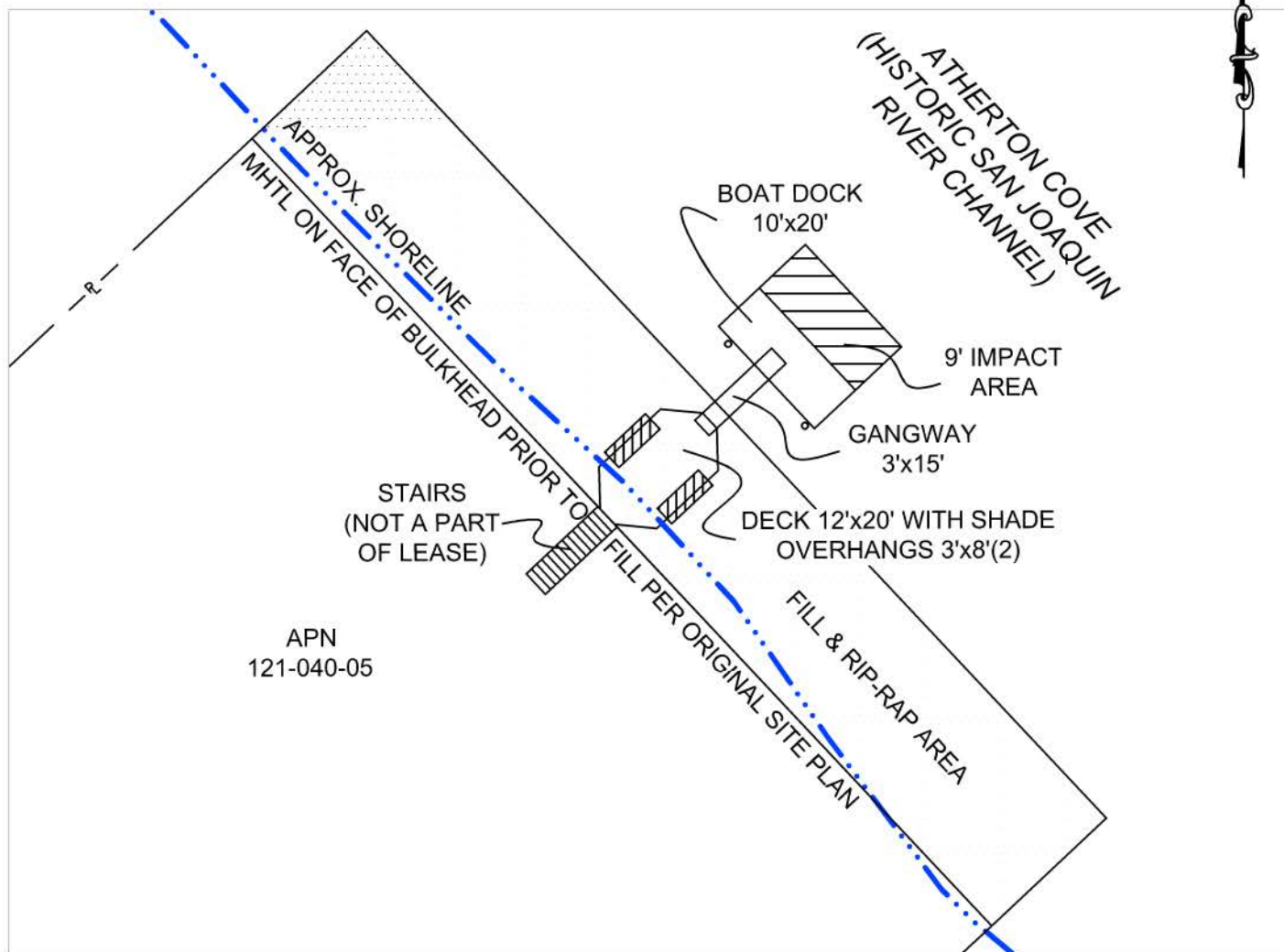
LAND DESCRIPTION PLAT
 LEASE 6047, CARSON TRUST
 SAN JOAQUIN COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

SITE



1 ATHERTON ISLAND, NEAR STOCKTON

NO SCALE

LOCATION

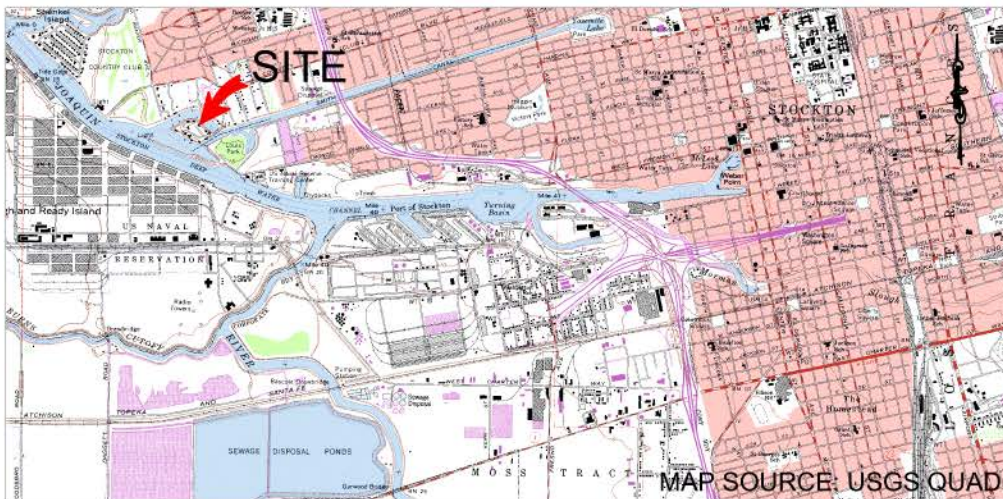


EXHIBIT B

LEASE 6047.1
 CARSON TRUST
 APN 121-040-05
 GENERAL LEASE -
 RECREATIONAL & PROTECTIVE
 STRUCTURE USE
 SAN JOAQUIN COUNTY



MJF 9/24/2020

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.