

# Staff Report 35

## **APPLICANT:**

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William C. Kelley and Mae Anderson-Kelley

## **PROPOSED ACTION:**

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Issuance of a General Lease – Recreational and Protective Structure Use

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

Sovereign land in the Sacramento River, adjacent to 6051 Garden Highway, Sacramento, Sacramento County.

## **AUTHORIZED USE:**

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

## **TERM:**

10 years, beginning December 17, 2020.

## **CONSIDERATION:**

**Covered boat dock with boat lift, gangway, three-pile dolphin, pilings, and utility conduit:** \$415 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.
- 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:**

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### **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:**

On November 9, 1993, the Commission authorized a 10-year General Lease – Recreational Use to Gilbert C. Buckner and Dorothy L. Buckner ([Item C03, November 09, 1993](#)). That lease expired on February 28, 2002. On April 29, 1998, the upland property was transferred to the Applicant. In 1999, the dock facilities were constructed without prior authorization from the Commission. Staff has been working with the applicant for many years to submit an application for the improvements. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use, for the use and maintenance of an existing covered boat dock with boat lift, gangway, three-pile dolphin, pilings, utility conduit, and bank protection in the Sacramento River.

Staff recommends issuance of a new lease beginning December 17, 2020, and acceptance of compensation from the Applicant in the amount of \$2,076, for the unauthorized occupation of State land during the period from April 29, 1998, to December 16, 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 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 bank protection will maintain and improve the integrity of the river channel, which will help protect the Public Trust resources 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 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. 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 Public Trust Doctrine; and is in the best interests of the State.

### **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**

<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: 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 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 covered 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 of dock facilities. The three-pile dolphin and pilings may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events. The bank is vegetated and protected, which should reduce the amount of erosion and scour pressure experienced during future events, but remains at risk of accelerated deterioration from currents and floods. 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 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; 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 may be required to remove the existing covered boat dock with boat lift, gangway, three-pile dolphin, pilings, utility conduit, and bank protection, and restore the premises to their original condition. The current application was aware of the prior lease and has exhibited control and ownership over the improvements and is therefore liable for removal if the Commission denies the proposed use. 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 Public Trust Doctrine; and is in the best interests of the State.

**AUTHORIZATION:**

1. Authorize acceptance of compensation from the Applicant in the amount of \$2,076 for the unauthorized use and occupation of State land for the period beginning April 29, 1998, through December 16, 2020.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning December 17, 2020, for a term of 10 years, for the use and maintenance of an existing covered boat dock with boat lift, gangway, three-pile dolphin, pilings, utility conduit, and bank protection 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 covered boat dock with boat lift, three-pile dolphin, pilings, and utility conduit: \$415 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**

**LEASE 5351**

**LAND DESCRIPTION**

Two parcels of tide and submerged land situate in the bed of the Sacramento River, lying adjacent to Swamp and Overflowed Land Survey 898 patented January 29, 1868, County of Sacramento, State of California and more particularly described as follows:

**PARCEL 1 - Dock**

All those lands underlying an existing covered boat dock slip with a boat lift, gangway, utility conduit, one piling and one 3-pile dolphin lying adjacent to that parcel described in Grant Deed, recorded April 29, 1998 in Document No. 199804290495 in Official Records of said County.

TOGETHER WITH 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 lying landward of the ordinary high water mark of the left bank of said river.

**PARCEL 2 – Piling**

All those lands underlying an existing piling lying adjacent to that parcel described in Grant Deed, recorded April 29, 1998 in Document No. 199804290495 in Official Records of said County.

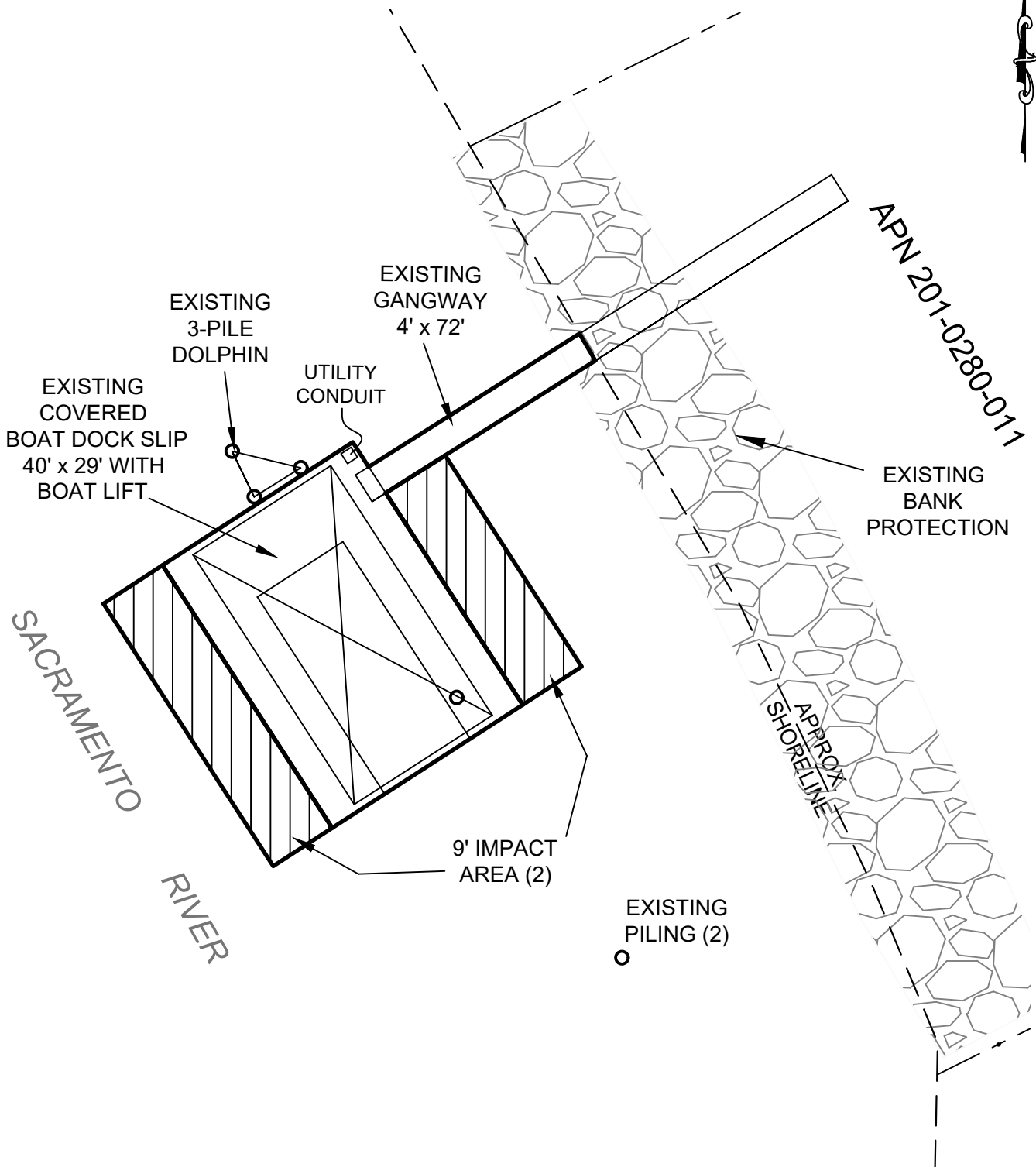
Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared 10/01/2020 by the California  
State Lands Commission Boundary Unit



NO SCALE



## EXHIBIT A

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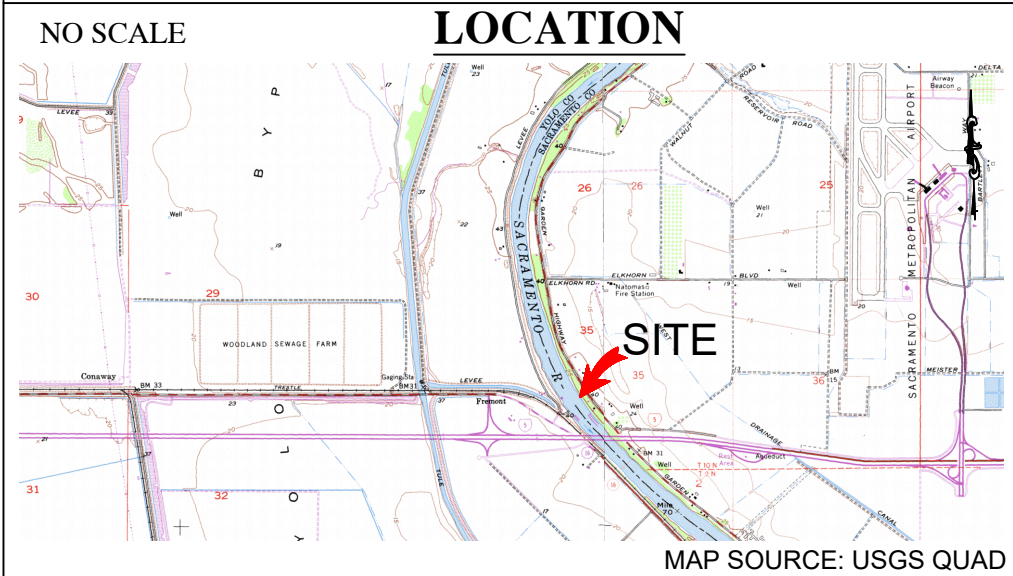
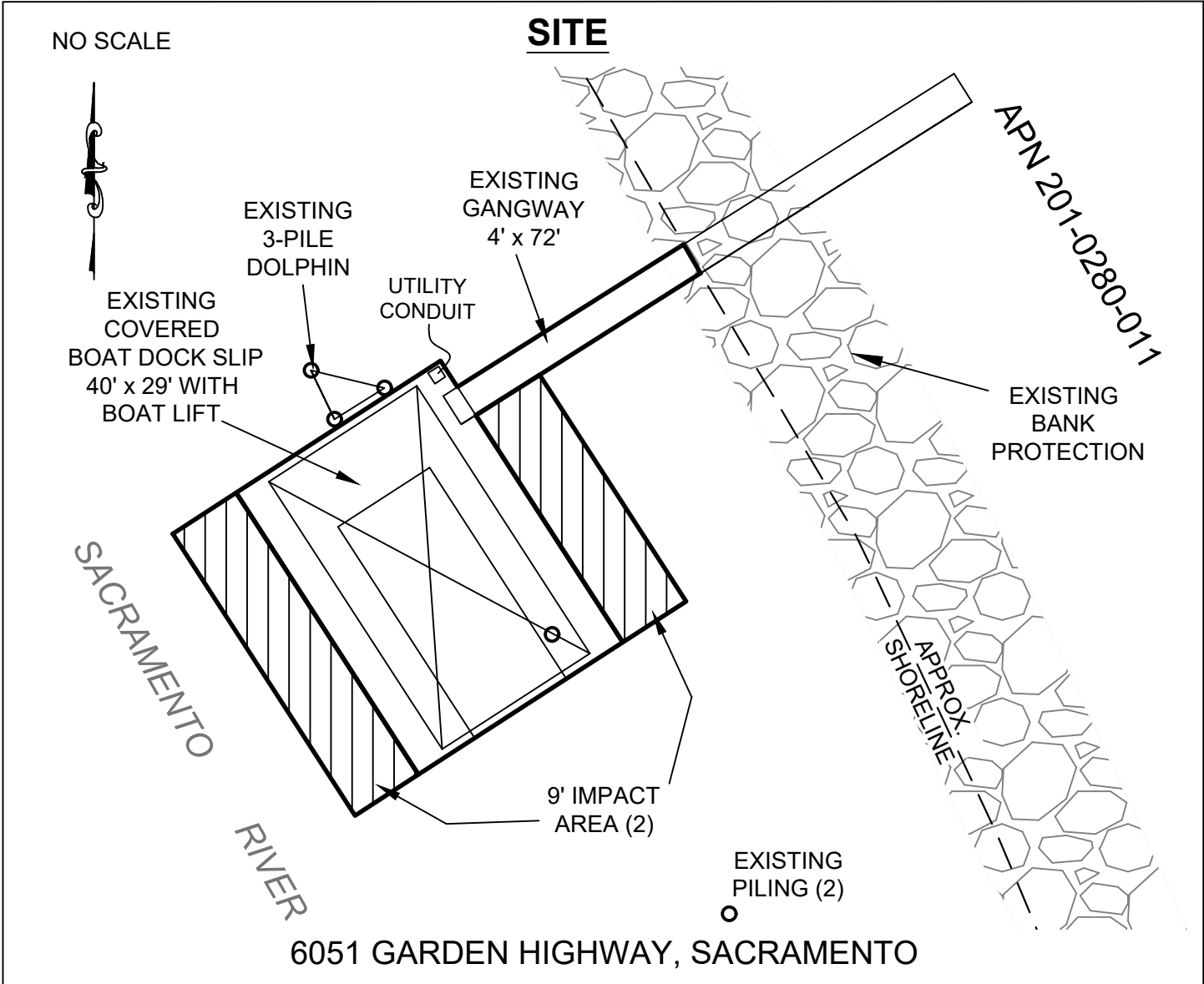
TS 10/01/2020

LAND DESCRIPTION PLAT  
LEASE 5351, KELLEY  
SACRAMENTO COUNTY

CALIFORNIA STATE  
LANDS COMMISSION







**Exhibit B**  
 LEASE 5351  
 KELLEY  
 APN 201-0280-011  
 GENERAL LEASE-  
 RECREATIONAL &  
 PROTECTIVE STRUCTURE 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.