

Staff Report 56

APPLICANT:

Kyu Sung Kim and Beth Ann Green Kim, Trustees of the 2018 Kim Irrevocable Trust dated June 7, 2018

PROPOSED ACTION:

Issuance of a General Lease – Recreational and Protective Structure Use

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Sacramento River, adjacent to 4007 Garden Highway, Sacramento, Sacramento County.

AUTHORIZED USE:

Use and maintenance of existing bank protection, and construction, use, and maintenance of a covered boat dock, gangway, concrete landing, and four pilings.

TERM:

10 years, beginning March 1, 2023.

CONSIDERATION:

\$505 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 that the hazards associated with sea level rise may require additional maintenance or protection strategies regarding the improvements on the lease premises.
- Lessee agrees and acknowledges that the boat dock and boathouse are used for docking and mooring purposes only. This does not include swimming floats or platforms, swim areas, fishing platforms, residential, storage or eating facilities or

areas attached or adjacent to the authorized improvements, or any other facilities not constructed for the docking of boats.

- Within 60 days of completing the construction of authorized improvements, Lessee will provide Lessor with photographs and a set of “as-built” plans that will show where the improvements have been placed. Lessor shall then replace Exhibit A, Land Description, and Exhibit B, Site and Location Map, to the Lease as necessary to accurately reflect the final location of the authorized improvements. Once approved by the Lessor’s Executive Officer or designee, and Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The replaced Exhibits shall be incorporated in the Lease as though fully set forth therein.
- Construction activities will be performed pursuant to the specific terms identified in the Lease, including that the Applicant obtain all necessary permits and authorizations prior to commencing work, including requirements pertaining to construction equipment, debris, and the provision to Lessor of specified documents related to the construction activities.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, 6503.5, and 6505.5; California Code of regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE’S BEST INTERESTS:

The Applicant is applying for a General Lease – Recreational and Protective Structure Use for the use and maintenance of existing bank protection, and the construction, use, and maintenance of a new covered boat dock, gangway, concrete landing, and four pilings in the Sacramento River, adjacent to 4007 Garden Highway, Sacramento, Sacramento County. The Applicant took ownership interest of the adjacent upland property on August 20, 2021.

The Applicant has demonstrated due diligence by submitting a project description, project plans, a cultural resource assessment, and a biological assessment of predicted impacts to the surrounding environment and wildlife resulting from the proposed project.

The Applicant has also applied for appropriate permits authorizing the activities required for the construction of the covered boat dock and appurtenant facilities. The Applicant has already submitted applications for permits and authorizations with Reclamation District 1000, the U.S Army Corps of Engineers, and the Central

Valley Flood Protection Board. The Applicant's submission of a permit application with the Central Valley Regional Water Quality Control Board is pending, pursuant to completion of other permitting processes.

The proposed project consists of the installation of a covered floating boat dock and gangway which are to be manufactured offsite, delivered to the boat ramp nearest to the lease premises, and floated to the lease premises from said boat ramp. Additionally, the proposed project involves driving four 12-inch diameter steel piles of approximately 40 feet in length into the bed of the Sacramento River to a depth of 25 feet or to a point of refusal using a barge-mounted drop hammer of 3,000 pounds or less; and the installation of a concrete landing with two four-inch piles on the shore, to which the gangway will be attached.

The proposed project plan details appropriate management practices which will be used to minimize the environmental impacts from construction. These practices include driving all of the steel piles in less than one day to minimize the duration of acoustic impacts, utilizing wooden cushion blocks to diminish the acoustic intensity of the drop hammer strikes, using curtains and screen barriers to mitigate impacts to water quality from disturbed sediment, and using any of a variety of barrier devices to capture debris, spills or drips resulting from any construction activities.

The proposed dock will occupy an area measuring 32 feet by 40 feet and will be W-shaped, with a headfloat measuring 8 feet by 24 feet, two fingers measuring 4 feet by 24 feet, and one finger measuring 8 feet by 24 feet. The dock will have two berths within the "W" shape. It will be constructed with an aluminum frame, decked with composite materials, and will utilize encapsulated floatation for buoyancy. The dock is to be anchored to the four steel piles such that the dock can rise and fall along with the changing water level of the river.

The dock will be accessible from the shore via the proposed gangway. The gangway will measure 3 feet by 70 feet and be constructed with an aluminum frame and aluminum decking. The gangway will be attached to the dock such that it can rise and fall along with the dock in accordance with the changing water levels of the river. The gangway will be attached to the shore via the proposed concrete landing; the gangway will specifically be attached to the two four-inch-diameter piles which are to be built into the landing in such a way that the gangway can rise during flood conditions.

The proposed project will commence only once all necessary approvals, authorizations, and permits are obtained. The project is scheduled to take place over seven days between August 1 and October 31 to minimize any potential impacts to federally listed fish species and to avoid flood season. All construction

activities must comply with the codes and methods established by agencies exercising pertinent jurisdiction within the lease area.

The existing and proposed improvements shall be privately owned and maintained by the Applicant. The boat dock and appurtenant facilities will be used for 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 bank protection serves to improve the integrity of the river channel and helps protect the upland property and the Public Trust resources of the river for recreational and navigational use by the public. The existing and proposed improvements are located directly waterward of the upland property and will occupy a relatively small area of the river. The proposed lease will not interfere with navigation and does not substantially interfere with any Public Trust needs at this time or the foreseeable future.

Staff recommends issuance of a General Lease – Recreational and Protective Structure Use to the applicant, to take effect on March 1, 2023. 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 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

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 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 floating boat dock and ramp will be adaptable to higher 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 the facilities. The fixed pilings and bank protection will be more vulnerable to sea level rise and more frequent flood events. These structures may need additional fortification, repair and maintenance, or replacement to ensure they do not become dislodged or degraded, as they could pose risks to public safety and navigation.

Regular maintenance, as referenced in the lease, may 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 the effects of climate change, including sea level rise.

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.

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 cannot construct the boat dock, gangway, and concrete landing, nor install the four pilings, and may be required to remove the bank protection. The lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. **Bank Protection:** 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).
4. **Covered Boat Dock, Gangway, Concrete Landing, and Four Pilings:** 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

Authority: Public Resources Code section 21084, California Code of Regulations, title 14, section 15300, and California Code of Regulations, title 2, section 2905.

APPROVALS OBTAINED:

Reclamation District 1000

EXHIBITS:

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

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

1. **Bank Protection:** 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).
2. **Covered Boat Dock, Gangway, Concrete Landing, and Four Pilings:** 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 3, New Construction of Small Structures; California Code of Regulations, title 2, section 2905, subdivision (c)(1).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that 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:

1. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning March 1, 2023, for a term of 10 years, for the use and maintenance of existing bank protection, and the construction, use and maintenance of a covered boat dock, gangway, concrete landing, and four pilings, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$505, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Authorize the Executive Officer or their designee to replace Exhibits in the lease upon submission, review, and approval of as-built plans detailing the final location of the improvements following construction.

EXHIBIT A

A 3806

LAND DESCRIPTION

A parcel of tide and submerged land situated in the bed of the Sacramento River, lying adjacent to Swamp and Overflow Survey 905 patented June 10, 1869, County of Sacramento, State of California, and more particularly described as follows:

All those lands underlying a proposed covered double slip boat dock, gangway and four pilings lying adjacent to that parcel described in Grant Deed recorded March 17, 2022 as Document Number 202203170886 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

ALSO TOGETHER WITH all those lands underlying any existing bank protective structure lying adjacent to that parcel as described in said Grant Deed.

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

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

This description is based on Applicant provided design plans for a proposed boat dock together with any and all appurtenances pertaining thereto, to be built at a later date within the Lease time frame. This description is to be updated once final as-built plans are submitted.

Prepared 11/11/2022 by the California State Lands Commission Boundary Unit.



NO SCALE

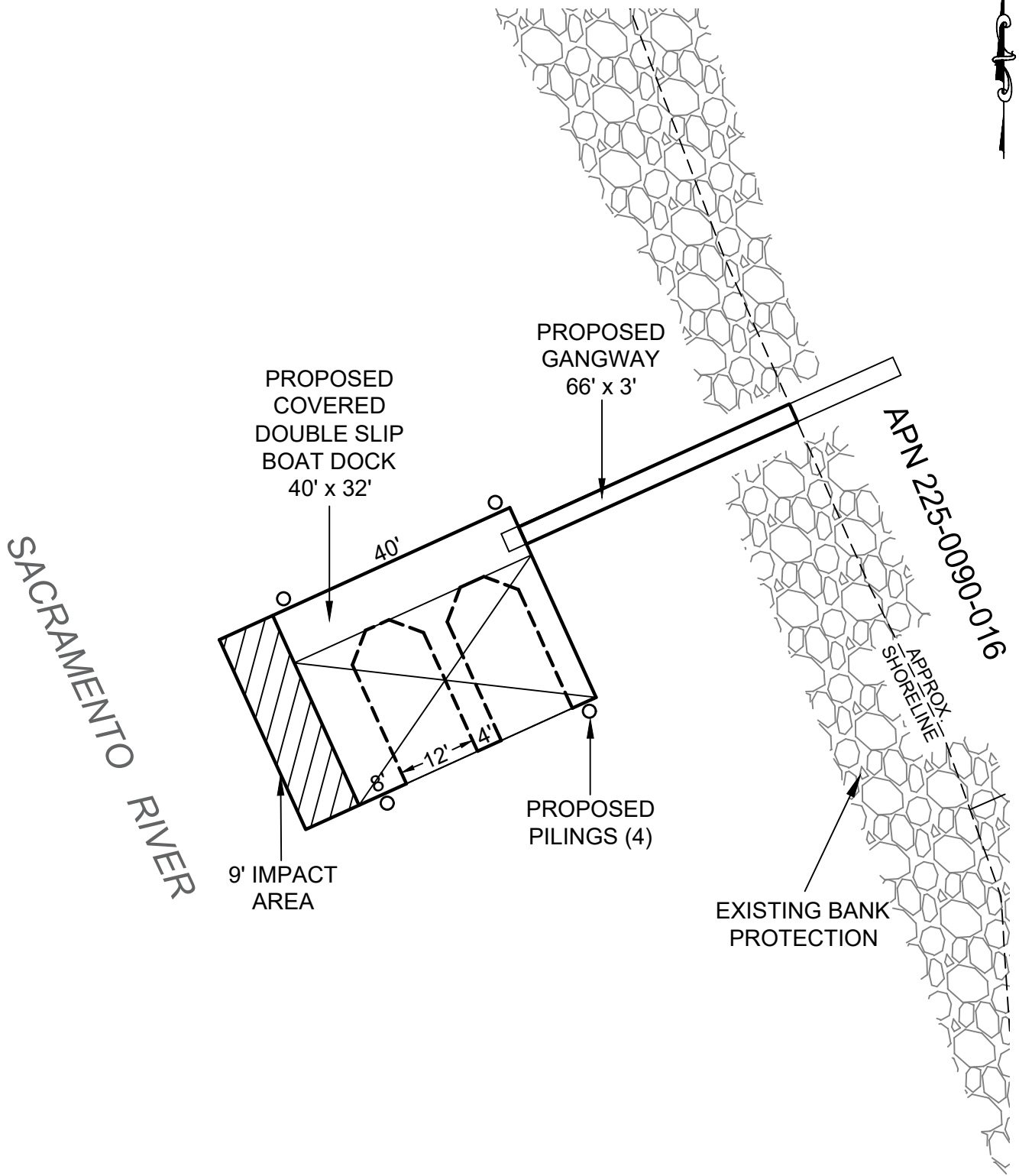


EXHIBIT A

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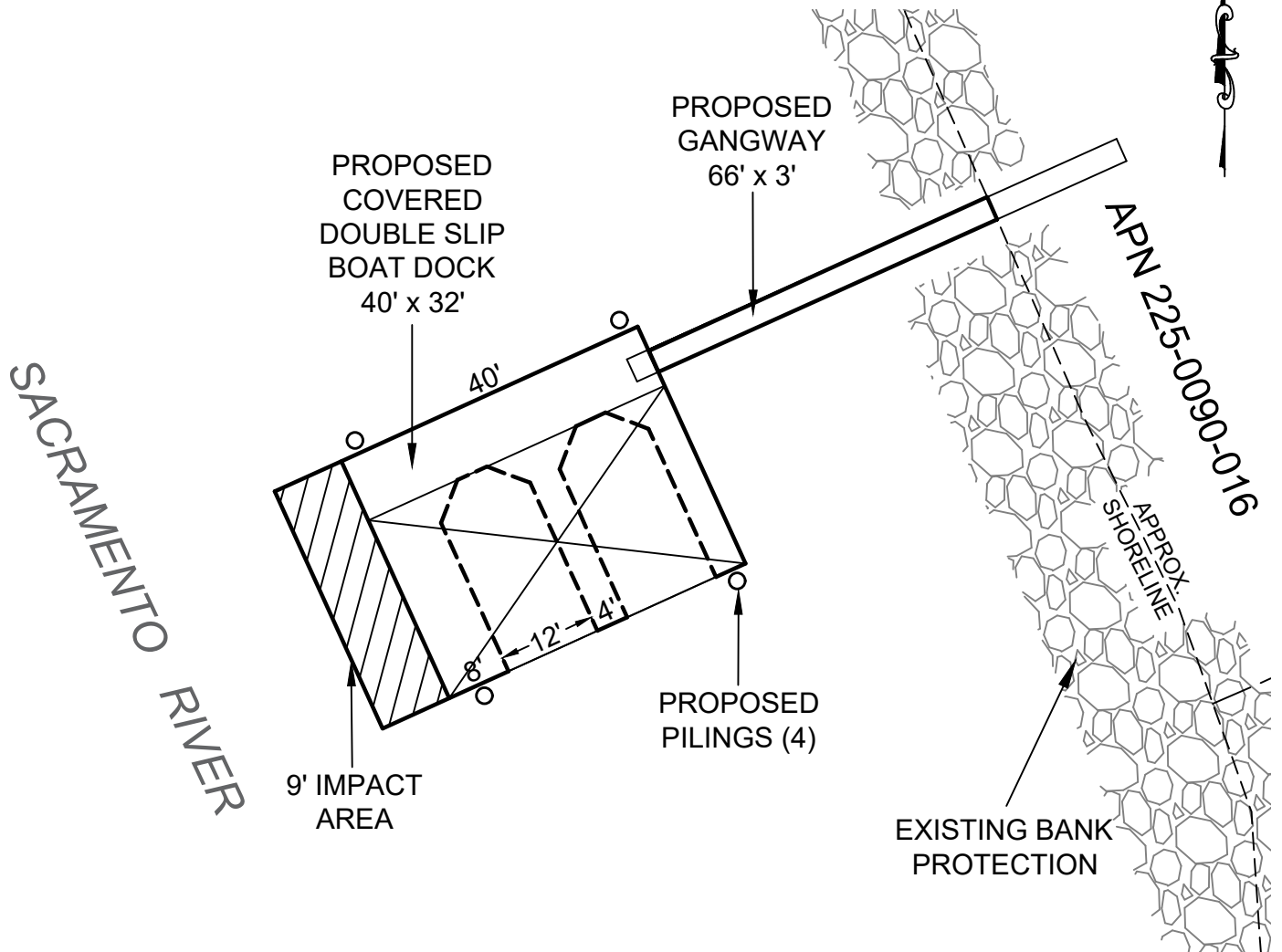
LAND DESCRIPTION PLAT
 A 3806, KIM, TRUSTEES
 SACRAMENTO COUNTY

CALIFORNIA STATE
 LANDS COMMISSION



NO SCALE

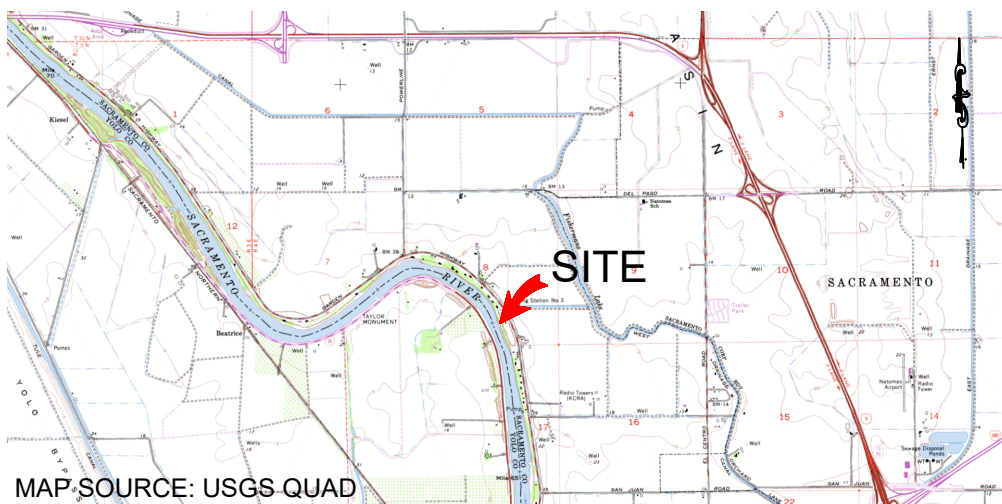
SITE



4007 GARDEN HIGHWAY, NEAR SACRAMENTO

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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.

EXHIBIT B

A 3806
 KIM, TRUSTEES
 APN 225-0090-016
 GENERAL LEASE -
 RECREATIONAL USE
 SACRAMENTO COUNTY



DT 11/11/2022