

Staff Report 55

PARTIES:

The State of California, acting by and through the California State Lands Commission (Commission)

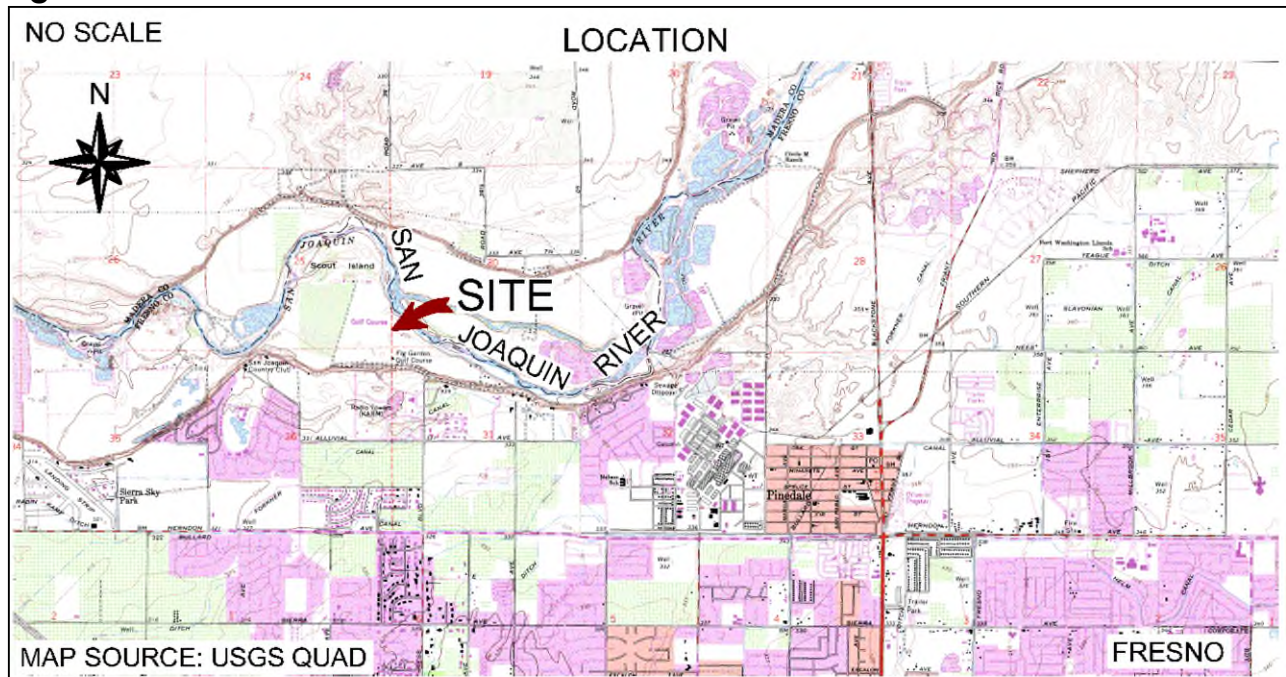
Fig Garden Investments, LLC (Fig Garden)

PROPOSED ACTION:

Consider a compromise title settlement and land exchange agreement between the California State Lands Commission and Fig Garden Investors, LLC, resolving a title dispute to certain real property located near the San Joaquin River in Fresno County.

AREA, LAND TYPE, AND LOCATION:

Sovereign land near the historic bed of the San Joaquin River, within portions of Assessor's Parcel Numbers 405-020-10 and 405-020-13, commonly known as 7700 Van Ness Boulevard, Fresno, Fresno County (as shown in Figure 1, below).

Figure 1. Location**BACKGROUND:**

The Subject Property is the former Fig Garden Golf Course that was used for approximately 60 years before closing in 2018. In early 2020, Fig Garden representatives approached Commission staff regarding the State's potential ownership interests in portions of the 140.1-acre parcel of land located along the San Joaquin River in the City of Fresno (Subject Property). After significant title and boundary research, staff determined that the Commission had property interests throughout the parcel. Staff determined that the last natural location of the San Joaquin River covered portions of the Subject Property, that the state owns the property waterward of the last natural ordinary low water mark as sovereign state land, and holds a Public Trust Easement over the property between the ordinary low water mark and ordinary high water mark.

Commission staff contend that the property includes 30.5 acres of property impressed with a Public Trust Easement and approximately 17.6 acres of sovereign lands (Exhibit A). While the Public Trust Easement snakes through the property, the public has not had use of or access to the easement area for decades, and the Public Trust Easement does not connect to existing public rights of way.

Fig Garden disputes the State's asserted ownership. Fig Garden wishes to develop the Subject Property into seven 20-acre single-family residential lots (the Project),

which would be compatible with current zoning but incompatible with the current General Plan designation. To move forward with the Project, Fig Garden must remove any encumbrances to the Subject Property, including the Public Trust Easement and the State's ownership claims. As part of this negotiated settlement, the parties also wish to confirm the boundary of sovereign interest and a 50-foot-wide Public Trust Easement along the shoreline.

PROPOSED TITLE SETTLEMENT AND LAND EXCHANGE AGREEMENT:

The recommended Title Settlement and Land Exchange Agreement resolves the title disputes and confirms the State's sovereign interest and a 50-foot-wide Public Trust Easement along the Subject Property, connected to the sovereign lands (Exhibit B). The Agreement would include the following key components:

1. The Commission and Fig Garden will exchange Quitclaim Deeds to confirm the location of the Sovereign Land and remove the Public Trust Easement.
2. In place of the dispersed Public Trust Easement across the property, Fig Garden will convey a consolidated 50-foot-wide Public Trust Easement along the shoreline adjacent to the sovereign land to the State. The Public Trust Easement will extend along the north and west boundaries of the Subject Property until it overlaps with the Commission's existing easement over Van Ness Road.
3. Fig Garden will deposit \$451,980 to the Kapiloff Land Bank Fund in fulfillment of the proposed agreement.

STAFF ANALYSIS AND RECOMMENDATION:

BASIS OF STATE'S CLAIMS:

Upon its admission to the United States of America on September 9, 1850, the State of California, by virtue of its sovereignty under the Equal Footing Doctrine of the U.S. Constitution, received in trust for the people of California all right, title, and interest in and to the tide and submerged lands and the beds of navigable waterways located within its boundaries for Public Trust purposes. Historically, these Public Trust purposes referred to commerce, navigation, and fisheries. Over time, the Public Trust Doctrine has broadened through case law and now includes swimming, boating, other forms of water recreation, open space, and preservation.

The State of California owns the bed of the San Joaquin River between the two ordinary low water marks (OLWMs) (Civil Code section 830). The entire river between the ordinary high water marks (OHWMs) is subject to a Public Trust Easement as described in *State of California v. Superior Court (Fogerty)* 29 Cal 3rd 210 (1980). This easement and the fee-owned lands in the bed of the San Joaquin River are under the jurisdiction and control of the Commission pursuant to Public Resources Code sections 6301 and 6216.

In 1976, the Commission began a comprehensive investigation of the historical factual evidence relating to the San Joaquin River to determine the location of the State's sovereign property interests between Friant Dam and Highway 99. Upon completion of that study, Commission staff prepared, printed, and distributed the San Joaquin River Administrative Maps to the county, city, and other interested parties in April 1992. These maps depict the common boundaries between State property interests and those of adjacent property owners, based upon analysis of the best evidence known to Commission staff at the time of the survey and as these maps were being prepared.

In the area involved in the proposed title settlement, the San Joaquin River has been affected by human activities which have had a direct impact upon, among other characteristics, the River's location, velocity, and volume of flow, seasonal flow patterns, and sediment transport and deposition. Examples of the direct artificial influences are the impoundment and diversion of water for agricultural, recreational, and flood control purposes by the construction and operation of Friant Dam, and gravel extraction. Consequently, the pre-artificial conditions and location of the OHWM and OLWM in this area, along or through the subject property, are no longer reflected by current channel configurations. These changes have also had an impact on the location and extent of the riparian corridor along the river and the associated public trust values.

Based upon the San Joaquin River Administrative Maps, portions of the Subject Property are waterward of the San Joaquin River's last natural OHWM and OLWM, meaning that they are either burdened by a Public Trust Easement or are owned in fee by the State. Fig Garden disputes the location of the last natural OHWM and OLWM, and also contends the State's ownership interests are defined by the current location of the San Joaquin River and not its last natural condition.

AUTHORITY AND LEGAL REQUIREMENTS:

The Public Resources Code gives the Commission authority to enter into title settlement and exchange agreements for certain lands subject to the Public Trust if a specific set of circumstances are present. Public Resources Code section 6307 lists the conditions that must be met for the Commission to enter into such an agreement. Those conditions are:

1. The exchange is for one or more of the following purposes: (a) to improve navigation or waterways; (b) to aid in reclamation or flood control; (c) to enhance the physical configuration of the shoreline or trust land ownership; (d) to enhance public access to or along the water; (e) To enhance waterfront and nearshore development or redevelopment for public trust purposes; (f) to preserve, enhance, or create wetlands, riparian or littoral habitat, or open space; or (g) to resolve boundary or title disputes.
2. The lands or interests in lands to be acquired in the exchange will provide a significant benefit to the Public Trust.
3. The exchange does not substantially interfere with public rights of navigation and fishing.
4. The monetary value of the lands or interests in lands received by the Public Trust in exchange is equal to or greater than that of the lands or interests in lands given by the trust in exchange.
5. The lands or interest in lands given in exchange have been cut off from water access and no longer are in fact tidelands or submerged lands or navigable waterways, by virtue of having been filled or reclaimed, and are relatively useless for public trust purposes.
6. The exchange is in the best interests of the State.

The Commission may only approve the Agreement if it finds the above conditions have been satisfied.

Pursuant to Public Resources Code section 6357, the Commission can establish the ordinary low-water mark of any of the swamp, overflowed, marsh, tide, or submerged lands of this State by certain means, including an agreement. To establish and fix such a line, courts require evidence that: (1) a reasonable attempt has been made to locate the true boundary line; and (2) the proposed line is based on those attempts. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 480).

The Kapiloff Land Bank Act (Pub. Resources Code § 8600 *et seq.*) allows the Commission, acting as Trustee for the Kapiloff Land Bank, to accept a monetary deposit into the Kapiloff Land Bank Fund rather than land or interests in land. The monetary deposit must be used to purchase outstanding interests in tide and submerged lands, lands that have been or may be converted to wetlands, or adjoining or nearby lands where the public use and ownership of the land is necessary or extremely beneficial for furtherance of Public Trust purposes (Pub. Resources Code, §§ 8613 and 8625).

ANALYSIS AND STAFF RECOMMENDATION:

Commission staff analyzed all available evidence related to the Subject Property, including title history, surveys, historic mapping, environmental information, use data, information related to the history of the River at this location, applicable case law and other useful information to determine the best evidence of the location of any property interests held by the State. Staff spoke with the San Joaquin River Conservancy regarding the public access concerns and possibilities for the Subject Property. Staff also reviewed an appraisal of the State's interest in the Subject Property as well as of the Public Trust Easement value. This evidence serves as the basis for the proposed Agreement.

Staff recommends the Commission approve the proposed Agreement for several reasons. First, approval of this Agreement will settle a title dispute at the Subject Property. Since litigation of this matter would likely be protracted, costly, and risky, staff have concluded it is expedient, necessary, and in the best interests of the State to resolve this dispute through the Agreement.

The boundary of the sovereign land will be confirmed in its current location, as shown in the Commission's administrative maps, through a quitclaim deed from Fig Garden. This will ensure there are no future disputes over the extent of the State's fee ownership in the Subject Property.

The current location of the Public Trust Easement snakes through upland property that has been cut off from the San Joaquin River and used as a golf course for decades. The current Public Trust Easement location would be difficult – or impossible – for a member of the public to identify and access. Releasing the State's interests in those upland areas will not substantially interfere with public rights of navigation or fishing because these areas have long been cut off from navigable waterways. Additionally, the subject property is surrounded by private uplands and the contours of the Public Trust Easement does not connect to any

public rights of way and so is not useful for access to the current location of the river.

The Commission holds access easements over Van Ness Road and Boy Scout Road, adjacent to the Fig Garden property. By the terms of these easements, they are not open to the public, but the Commission can make them public if it constructs and accepts maintenance responsibility for public access improvements in compliance with local laws.

Discussions with the San Joaquin River Conservancy staff indicated that there is value in retaining easement areas to facilitate a San Joaquin River Trail. The Trail plans are still conceptual but could include property on both banks of the San Joaquin River at this location, and the Trail would need access points from public roads. Easements would need a minimum of roughly 25 feet in width to allow the Trail's conceptual public access improvements, such as paved walking paths.

As part of the proposed resolution, Fig Garden would convey a 50-foot-wide, and roughly 4,696 feet long, Public Trust Easement (the Retained Public Trust Easement) along the Sovereign Parcel and northwest boundaries of the Subject Property to connect the Van Ness Road easement to the San Joaquin River. This easement would be open to the public immediately and would also allow the Commission to authorize public access improvements. This Retained Public Trust Easement would also meet the San Joaquin River Conservancy's needs for the San Joaquin River Trail. When the connecting easements on Van Ness and Boy Scout Road are opened to the public, the Retained Public Trust Easement would create new public access to the San Joaquin River.

Fig Garden would deposit \$451,980 to the Kapiloff Land Bank Fund. The donation amount was calculated by multiplying the appraised per-acre value of the Public Trust Easement (\$18,000) by the acreage of the Retained Public Trust Easement (5.39 acres) and subtracting that value from the total appraised value of the Trust Termination Parcel (\$549,000). Therefore, the \$451,980 amount is equal to the appraised value of the Public Trust Easement lifted from the property, not including the area of the 50-foot Public Trust Easement that will be confirmed to the State. The Commission can use those funds to acquire property for public access, such as property necessary for the future San Joaquin River Trail, or to construct public access improvements on the Van Ness and Boy Scout Road easements.

The above facts and conclusions support each of the necessary findings the Commission must make under Public Resources Code sections 6307 and 6357, including that the exchange is in the best interests of the State. Commission staff and the Attorney General's Office have reviewed the proposed Agreement and believe all necessary legal elements have been met. Staff therefore recommends the Commission approve the Agreement, in substantially the form on file with the Commission, and authorize its execution and the execution and recordation of all documents necessary to implement it.

CONCLUSION:

The Agreement results in a substantial gain and benefit to the public, relocating a scattered Public Trust easement to a certain location, abutting sovereign lands, and providing greater public access. The State will also receive funds through a Kapiloff Land Bank Fund deposit that can be used to acquire or facilitate additional public access in the future. In exchange, the State will quitclaim a residual Public Trust easement over now private lands that have been filled and cut off from navigable waterways. Staff recommends that the Commission find the Agreement to be in the State's best interests and authorize the Agreement.

OTHER PERTINENT INFORMATION:

1. Approval or denial of this Agreement is a discretionary action by the Commission based on the Commission's legislatively delegated authority and responsibility as trustee of the State's Public Trust land as authorized by law. If the Commission denies the proposed Agreement, the dispute over title and boundary issues on the Fig Garden Property will remain unresolved.
2. The State, acting by and through the Commission, is authorized under Division 6 of the Public Resources Code, and specifically pursuant to sections 6307 and 6357 of such code, to enter into title settlement and land exchange agreements and establish a boundary line.
3. This action is consistent with the "Meeting Evolving Public Trust Needs" Strategic Focus areas of the Commission's 2021- 2025 Strategic Plan.
4. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act as a statutorily exempt project. The project is exempt because it involves settlement of title and boundary problems.

Authority: Public Resources Code section 21080.11 and California Code of Regulations, title 14, section 15282, subdivision (f).

EXHIBITS:

- A. Subject Property
- B. Proposed Settlement Property

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 statutorily exempt project pursuant to Public Resources Code section 21080.11, settlement of title and boundary problems.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed Title Settlement and Land Exchange Agreement is consistent with the Public Trust needs and values at this location; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Find that the proposed Title Settlement and Land Exchange Agreement meets all conditions required by Public Resources Code section 6307:
 - a. The proposed exchange would be to both enhance public access to and along the water and to resolve a boundary dispute.
 - b. The lands or interests to be acquired by the State will provide a significant benefit to the public trust. The State's ownership would be reconfigured to move otherwise unusable Public Trust Easement areas to a waterfront location and enhance access to sovereign lands. The State will lift the remaining, relatively useless Public Trust Easement in exchange for a donation to the Kapiloff Land Bank Fund, and that donation will be used to acquire property to facilitate public access or otherwise benefit the public trust.

- c. The exchange provided for in this Agreement does not substantially interfere with public rights of navigation and fishing but rather will enhance the public's rights of access through the reconfiguration of the new 50-foot-wide Public Trust Easement adjacent to the confirmed sovereign lands.
 - d. The Kapiloff Land Bank Fund donation of \$451,~~098980~~ equals the appraised value of the removed Public Trust Easement area.
 - e. The Public Trust Easement being relinquished by the State is cut off from water access and no longer in fact tidelands or submerged lands or the bed of a navigable waterway, by virtue of being filled or reclaimed, and is relatively useless for Public Trust purposes.
 - f. This Agreement is in the best interests of the State by resolving a title dispute at no expense to the State, enhancing public access to and along the water by relocating a Public Trust easement to a certain location abutting trust lands, and requiring a Kapiloff Land Bank Fund donation which can be used to purchase additional property for public access.
- 2. Find that there is a dispute over the location of the current boundary line between State sovereign land and upland along the bank of the historic San Joaquin River, and the proposed boundary line is based on the best available evidence of the ordinary low water mark prior to significant artificial influence.
 - 3. Find that the property interests to be conveyed to the State of California, acting by and through the Commission, are to be accepted as Public Trust lands for the benefit of the people of the State of California, to be held by the State of California for Public Trust purposes.
 - 4. Authorize the Executive Officer or designee to approve final drafts of the exhibits to the agreement, which shall be prepared in accordance with the draft record of survey on file with the Commission and the terms outlined herein, and to make minor revisions to the copy of the agreement currently on file with the Commission in order to effectuate the terms and conditions of the agreement if the Executive Officer determines such revisions are appropriate and necessary.
 - 5. Approve and authorize the execution, acknowledgment, and recordation of the Title Settlement and Land Exchange Agreement and associated deeds and acceptances and leases on behalf of the Commission, in substantially the form of the copy of such agreement on file with the Commission with any minor

revisions deemed appropriate and necessary by the Executive Officer to effectuate the Agreement.

6. Accept the grant of a Public Trust Easement over the Subject Property described in the Agreement and generally shown on Exhibit B.
7. Authorize the Executive Officer or designee and the Office of the Attorney General to take all other necessary or appropriate action on behalf of the Commission to effectuate the terms and conditions of the Agreement.

NO SCALE

SITE

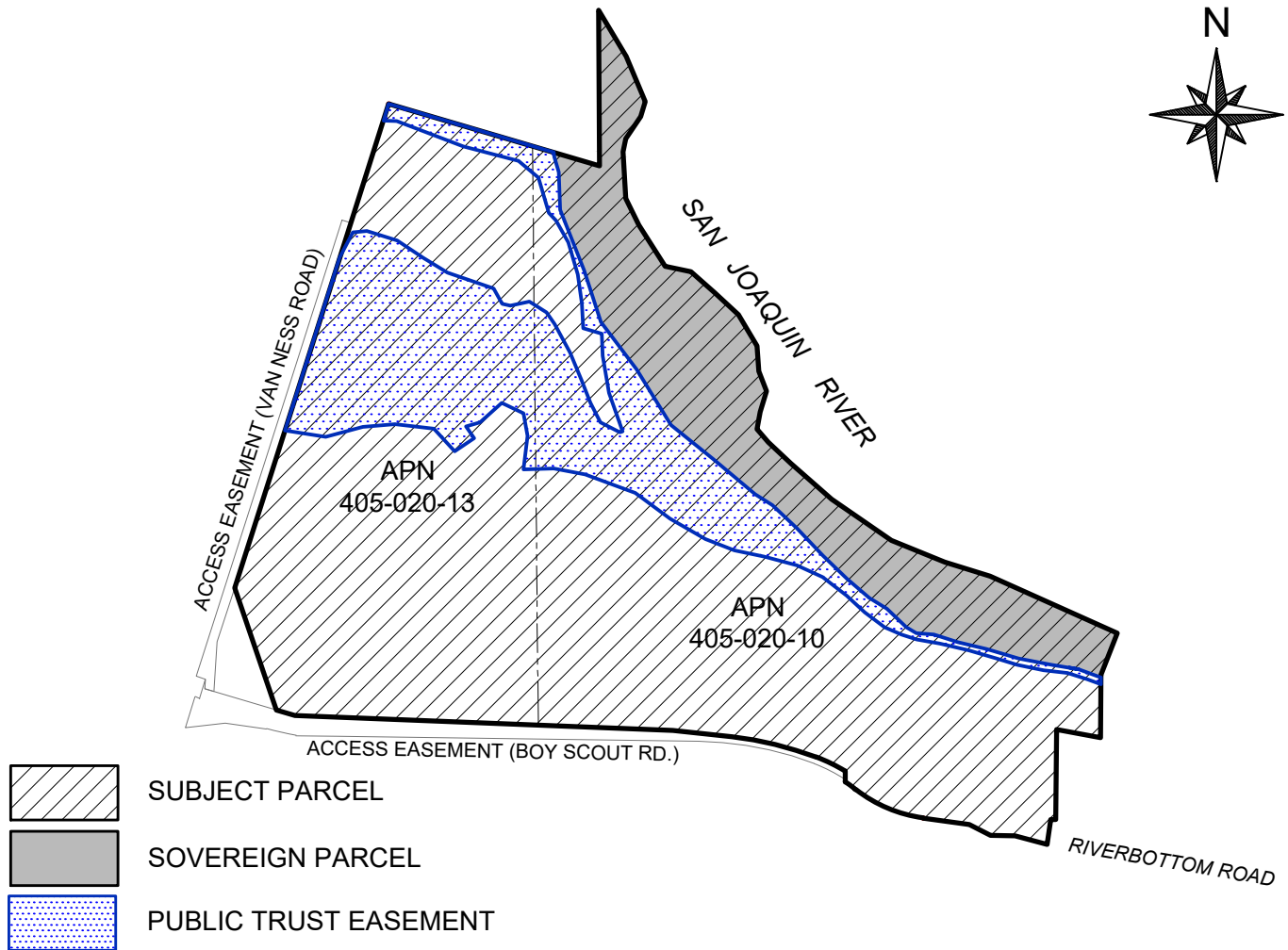
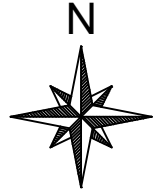
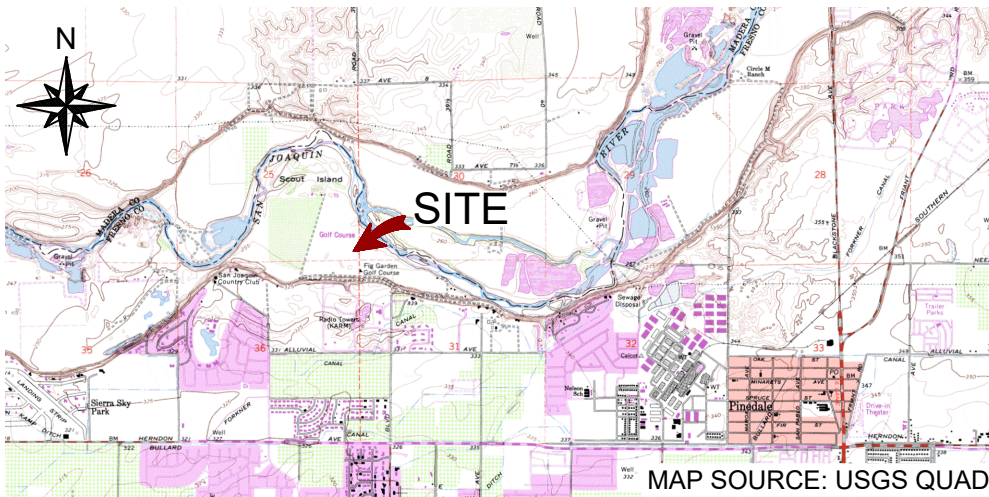


FIG GARDEN GOLF COURSE, NEAR FRESNO

NO SCALE

LOCATION



THIS EXHIBIT IS SOLELY FOR PURPOSES OF GENERALLY DEFINING THE TITLE SETTLEMENT AREA, 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 A

AD 699

FIG GARDEN GOLF COURSE
TITLE SETTLEMENT
APNs: 405-020-10 & -13
FRESNO COUNTY



TS 04/24/2025

NO SCALE

SITE

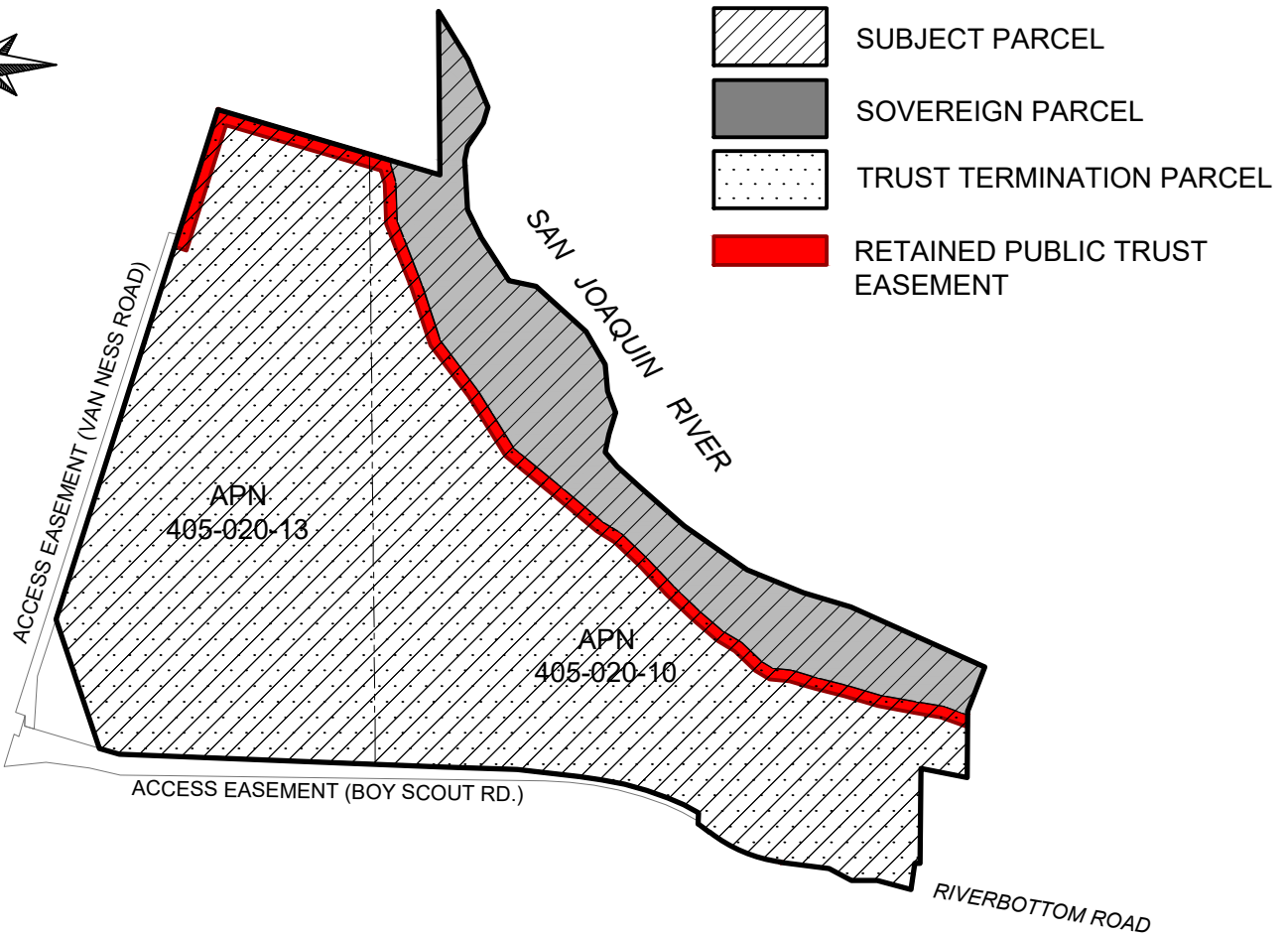
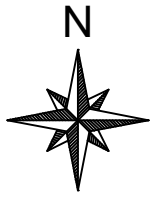
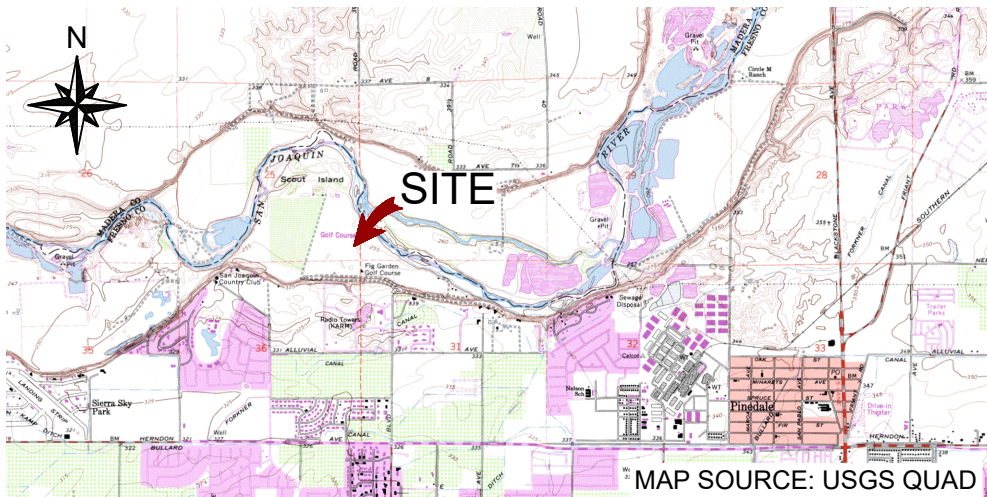


FIG GARDEN GOLF COURSE, NEAR FRESNO

NO SCALE

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EXHIBIT B

AD 699
FIG GARDEN GOLF COURSE
TITLE SETTLEMENT
APNs: 405-020-10 & -13
FRESNO COUNTY



TS 04/24/2025