MINUTE ITEM
This Calendar Item No. C23 was approved as Minute Item No. 23 by the California State Lands Commission by a vote of 3 to 0 at its 10-01-02 meeting.

CALENDAR ITEM
C23

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10/01/02
PRC 6427.1
D. Jones

TERMINATION OF GENERAL LEASE - COMMERCIAL USE PRC NO. 6427.1; ISSUANCE OF NEW GENERAL LEASE - COMMERCIAL USE PRC NO. 6427.1; TERMINATION OF AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE; APPROVAL OF AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE; APPROVAL OF SUBLEASES

LESSEE:

Riverbank Holding Company, LLC
P. O. Box 340658
Sacramento, California 95834

AREA, LAND TYPE, AND LOCATION:

Five acres, more or less, of sovereign tide and submerged lands in the Sacramento River, city of Sacramento, Sacramento County.

AUTHORIZED USE:

The continued use and maintenance of an existing commercial marina consisting of approximately 159 individual berths; outside side tie docks measuring 236 feet for A Dock, 200 feet for B Dock, 290 feet for C Dock, and 512 feet for D Dock, all outside docks accommodating approximately 19 boats in total; an inside side tie dock fronting F and G Docks accommodating approximately 9 boats, a sewage pumpout, debris deflector, two speed signs, a restaurant with an accommodation dock measuring 152 feet; and two floating offices.

LEASE TERM:

25 years, beginning September 1, 2002.

CONSIDERATION:

A minimum annual rental of $41,658, paid quarterly, against a percentage of gross receipts:

6 % of gross income for the berthing, mooring of boats;
1.5% of gross income for the operation of restaurants and bars;
0.5% of the total sales price derived from boat sales and servicing of new and used yachts, boats, personal watercraft and related equipment by Lessee or sublessees of Lessee regularly engaged in the business of selling boats on or by consignment;
25% of gross income from coin operated vending and electronic game machines; and
10% of all other Gross Income generated from the Lease Premises.

SPECIFIC LEASE PROVISIONS:

Insurance:

$2,000,000 Combined Single Limit.

Bond:

$20,000.

OTHER PERTINENT INFORMATION:

1. Applicant owns the uplands adjoining a portion of its lease premises and has a use right and/or is the best qualified applicant as to the remainder of the lease premises. Riverbank Holding Company, LLC. (Riverbank) is the best-qualified applicant for the lease premises that adjoin the uplands because it has long-standing improvements on the sovereign lands which have provided recreational opportunities to the public for over twenty years.

2. On July 12, 1984, the Commission issued a General Lease – Commercial Use to Riverbank for a commercial marina, floating restaurant, harbor master office, boat sales office, debris deflector and appurtenant facilities. The term was for 20 years. In 1995, the lease was extended to terminate on December 31, 2025. In 1997, the Commission approved assignment of the lease to Riverbank. At that same meeting, the Commission also authorized an Agreement and Consent to Encumbrancing Agreement in favor of First Federal Lincoln, as secured party lender.

Riverbank currently is seeking to refinance its loan for the marina facilities and intends to secure the loan by the State Lands Commission's lease. The existing Encumbrancing Agreement in favor of First Federal Lincoln will be paid off with a new loan that will be from Ohio National Life Insurance Company. GMAC is arranging the loan for Riverbank from Ohio National. The lending practices of Ohio National require a longer term on Riverbank's lease. Therefore, it is proposed to terminate the existing lease and issue a new lease for a term of 25 years.

3. Riverbank has four subleases with public trust related tenants on its property. These include Crawdad's Restaurant; Harrison's Boat Center, Inc., dba Marinemax, Inc.; Diversified Restaurant Concepts (Building 1401, #125) used by the River City Queen as an office; and Diversified Restaurant Concepts, Inc. (Building 1401, #100) used by Woody's Corporation as an office. Staff has reviewed these subleases and has concluded their lease terms are consistent with the master lease.

4. In its previous lease, the Commission endorsed two nontrust subleases to occupy some of its office space within the Lease Premises because Riverbank had demonstrated that a demand did not exist for public trust related tenants. Riverbank is currently requesting that the Commission endorse three nontrust subleases to Pearl-Hewitt Group, Inc., Law Offices of Carolyn Langenkamp, and Laura L. Taylor, Attorney at Law. The Commission's endorsement of those subleases is hereby granted again and shall be effective until the expiration or earlier termination of those subleases. Thereafter, Riverbank shall, prior to negotiating any renewal of an existing sublease or a new sublease for non-trust uses and seeking the Commission's approval of future subleases under the Lease, conduct a market study demonstrating whether there is a demand for trust-related space and, if appropriate, develop a program for the subleasing of the space.

5. Riverbank is a large marina and it has experienced vandalism, as well as other problems that require immediate action, such as boats taking on water, accidental fires, etc. These factors support a limited and controlled presence of navigable vessels used as residences for security purposes. Two vessels used for security purposes are recommended and will be located in strategically designed slips subject to the approval of staff. These security vessels will be required to leave the marina waters at least

once for a minimum of six hours in each ninety-day period and submit an annual log to the staff of the Commission.

6. Because of the siltation problems at this marina, it is recommended Riverbank be authorized to perform maintenance dredging in an amount not to exceed 1,000 cubic yards each lease year.

7. **As to the termination of General Lease – Commercial Use, PRC Lease No. 6427.1**
Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, section 15378.

As to the issuance of General Lease – Commercial Use, PRC Lease No. 6427.1
Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; Title 2, California Code of Regulations, section 2905 (a)(2).

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

As to the Termination and Issuance of Encumbrancing Agreements and Subleases
Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

As to the Dredging
Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a categorically exempt project. The project is exempt under Class 4, Minor Alteration to Land; Title 2, California Code of Regulations, section 2905 (d)(4).

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

8. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

A. Lease Description
B. Site Map
C. Location Map

PERMIT STREAMLINING ACT DEADLINE:
N/A

RECOMMENDED ACTION:
IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

AS TO THE TERMINATION OF GENERAL LEASE – COMMERCIAL USE, LEASE NO. PRC 6427.1:
FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY

PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

AS TO THE ISSUANCE OF GENERAL LEASE – COMMERCIAL USE, LEASE NO. PRC 6427.1:
FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 1, EXISTING FACILITIES; TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 2905 (a)(2).

AS TO THE TERMINATION AND ISSUANCE OF ENCUMBRANCING AGREEMENTS AND SUBLEASES:
FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

AS TO THE DREDGING:
FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 4, MINOR ALTERATION TO LAND; TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 2905 (d)(4).

SIGNIFICANT LANDS INVENTORY FINDING:
FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

1. TERMINATE GENERAL LEASE – COMMERCIAL USE, PRC NO. 6427.1, ISSUED TO RIVERBANK HOLDING COMPANY, LLC., ORIGINALLY AUTHORIZED BY THE COMMISSION ON JULY 12, 1984, AND SUBSEQUENTLY AMENDED, SAID TERMINATION EFFECTIVE AUGUST 31, 2002.

2. AUTHORIZE ISSUANCE TO RIVERBANK HOLDING COMPANY, LLC OF A GENERAL LEASE - COMMERCIAL USE, BEGINNING SEPTEMBER 1, 2002, FOR A TERM OF 25 YEARS, FOR THE CONTINUED USE AND MAINTENANCE OF AN EXISTING COMMERCIAL MARINA DESCRIBED ON EXHIBIT A AND SHOWN ON EXHIBIT B ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF; CONSIDERATION: MINIMUM ANNUAL RENTAL OF $41,658, AGAINST A PERCENTAGE OF GROSS RECEIPTS: 6% OF GROSS INCOME FOR BERTHING, DOCKING, MOORING OF BOATS; 1.5% OF GROSS INCOME DERIVED FROM THE OPERATION OF RESTAURANTS AND BARS; 25% OF THE GROSS INCOME DERIVED FROM THE OPERATION OF COIN OPERATED VENDING AND ELECTRONIC GAME MACHINES; 0.5% OF THE TOTAL SALES PRICE DERIVED FROM BOAT SALES AND SERVICING OF NEW AND USED YACHTS, BOATS, PERSONAL WATERCRAFT AND RELATED EQUIPMENT BY LESSEE OR SUBLESSEES OF LESSEE REGULARLY ENGAGED IN THE BUSINESS OF SELLING BOATS ON OR BY CONSIGNMENT; AND 10% OF ALL OTHER GROSS INCOME GENERATED FROM THE LEASE PREMISES; PERFORMANCE OF MAINTENANCE DREDGING IN AN AMOUNT NOT TO EXCEED 1,000 CUBIC YARDS PER LEASE YEAR, SUCH ACTIVITY BEING CONTINGENT UPON LESSEE'S COMPLIANCE WITH APPLICABLE PERMITS, RECOMMENDATIONS, OR LIMITATIONS ISSUED BY FEDERAL, STATE AND LOCAL GOVERNMENTS; INSURANCE: LIABILITY INSURANCE WITH COVERAGE OF NO LESS THAN $2,000,000; BOND: $20,000 SURETY BOND.

3. AUTHORIZE THE TERMINATION OF THE "AGREEMENT AND CONSENT OF ENCUMBRANCING OF LEASE" APPROVED BY THE COMMISSION ON JULY 6, 1995, BETWEEN THE COMMISSION, RIVERBANK HOLDING COMPANY, AND FIRST

FEDERAL LINCOLN AS SECURED PARTY LENDER, SAID TERMINATION EFFECTIVE UPON THE APPROVAL OF THE NEW LOAN BY OHIO NATIONAL LIFE INSURANCE COMPANY, BUT NO LATER THAN DECEMBER 31, 2002.

4. AUTHORIZE EXECUTION OF THE DOCUMENT ENTITLED "AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE" IN THE AMOUNT OF $5,000,000 ON FILE IN THE OFFICE OF THE COMMISSION, BETWEEN THE COMMISSION, RIVERBANK HOLDING COMPANY, LLC, AND OHIO NATIONAL LIFE INSURANCE COMPANY, EFFECTIVE UPON THE APPROVAL OF THE NEW LOAN BY OHIO NATIONAL LIFE INSURANCE COMPANY, BUT NO LATER THAN JANUARY 1, 2003.

5. AUTHORIZE, BY ENDORSEMENT, THE FOLLOWING SUBLEASES:

   A. TO CRAWDAD'S RESTAURANT, SAID SUBLEASE IS ON FILE IN THE OFFICE OF THE COMMISSION AND BY REFERENCE MADE A PART HEREOF.

   B. TO HARRISON'S BOAT CENTER, INC., DBA MARINEMAX, INC., SAID SUBLEASE IS ON FILE IN THE OFFICE OF THE COMMISSION AND BY REFERENCE MADE A PART HEREOF.

   C. TO DIVERSIFIED RESTAURANT CONCEPTS, INC., SAID SUBLEASE IS ON FILE IN THE OFFICE OF THE COMMISSION AND BY REFERENCE MADE A PART HEREOF.

   D. TO DIVERSIFIED RESTAURANT CONCEPTS, INC., SAID SUBLEASE IS ON FILE IN THE OFFICE OF THE COMMISSION AND BY REFERENCE MADE A PART HEREOF.

   E. TO PEARL-HEWITT GROUP, INC., SAID SUBLEASE IS ON FILE IN THE OFFICE OF THE COMMISSION AND BY REFERENCE MADE A PART HEREOF.

F. TO THE LAW OFFICES OF CAROLYN LANGENKAMP, SAID SUBLESSEE IS ON FILE IN THE OFFICE OF THE COMMISSION AND BY REFERENCE MADE A PART HEREOF.

G. TO LAURA L. TAYLOR, ATTORNEY AT LAW, SAID SUBLESSEE IS ON FILE IN THE OFFICE OF THE COMMISSION AND BY REFERENCE MADE A PART HEREOF.

RIVERBANK LEASE

A PARCEL OF TIDE AND SUBMERGED LAND LYING IN THE SACRAMENTO RIVER, ADJACENT TO SWAMP AND OVERFLOWED LAND SURVEYS NO. 184 AND 907, COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF THAT PARCEL OF LAND DESCRIBED AS PARCEL B OF THAT CERTAIN CERTIFICATE OF COMPLIANCE, RECORDED APRIL 2, 1985 IN BOOK 85-04-02, PAGE 1162, OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG THE EAST LINE OF SAID PARCEL AND ITS PROLONGATION SOUTH 00° 23' 30" WEST 327.42 FEET; THENCE LEAVING THE PROLONGATION OF SAID LINE SOUTH 23° 01' 00" WEST 92.38 FEET; THENCE NORTH 66° 59' 00" WEST 291.84 FEET; THENCE NORTH 70° 04' 56" WEST 638.52 FEET; THENCE NORTH 76° 10' 55" WEST 634.86 FEET TO A POINT FROM WHICH THE NORTHWEST CORNER OF LOT A OF THAT CERTAIN MAP RECORDED IN BOOK 226 OF MAPS, MAP NO. 1, IN THE OFFICE OF THE RECORDER OF SAID COUNTY BEARS THE FOLLOWING TWO COURSES: NORTH 13° 49' 05" EAST 223.76 FEET; (2) NORTH 78° 54' 49" WEST 323.95 FEET; THENCE FROM SAID POINT, NORTH 13° 49' 05" EAST 223.76 FEET TO THE NORTHERLY LINE OF SAID LOT A, ALSO BEING THE SOUTHERLY RIGHT OF WAY OF GARDEN HIGHWAY; THENCE ALONG SAID SOUTHERLY RIGHT OF WAY SOUTH 78° 54' 49" EAST 1498.29 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION THEREOF LYING LANDWARD OF THE ORDINARY HIGH WATER MARK OF THE SACRAMENTO RIVER.

ALSO EXCEPTING THEREFROM ANY PORTION OF LOT A OF THAT CERTAIN MAP RECORDED IN BOOK 226 OF MAPS, MAP NO. 1, IN THE OFFICE OF THE RECORDER OF SAID COUNTY AND PARCEL B OF THAT CERTAIN CERTIFICATE OF COMPLIANCE, RECORDED APRIL 2, 1985 IN BOOK 85-04-02, PAGE 1162 OF OFFICIAL RECORDS OF SAID COUNTY.

END OF DESCRIPTION

PREPARED FROM RECORD DATA BY JTS ENGINEERING CONSULTANTS, INC.

11-17-97

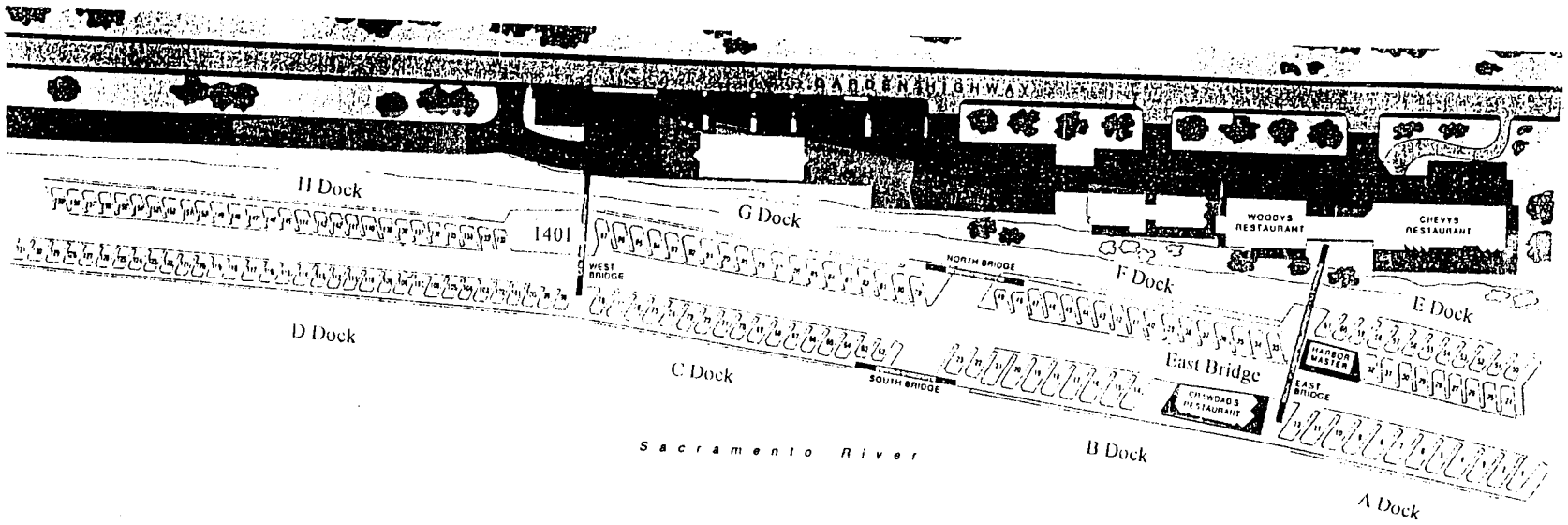
L.A. KNEEDLER, L.S.4380 Date
License Expires 9-30-2001

LICENSED LAND SURVEYOR
L. A. KNEEDLER
No. 4380
Exp. 09-30-2001
STATE OF CALIFORNIA

This exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by 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 other property.

Exhibit A
PRC 6427.1

Exhibit B
PRC 6427.1



SLIP #	SIZE	SLIP #	SIZE	SLIP #	SIZE	SLIP #	SIZE
1	U40'	24-47	C30'	78-79	U30'	117-130	C24'
2-11	C40'	48-49	U24'	80-96	C30'	132-133	U24'
12	U40'	50-58	C30'	97	U30'	134-144	C24'
14	U40'	59-61	U30'	98-100	U24'	145-146	U24'
15-21	C40'	62-63	U24'	101-114	C24'	147-158	C24'
22-23	U33'	64-77	C30'	115-116	U24'	159	U24'

C = Covered U = Uncovered

RIVERBANK MARINA
1371 Garden Highway, Sacramento, CA 95833
(916) 922-0720

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QUAD: USGS

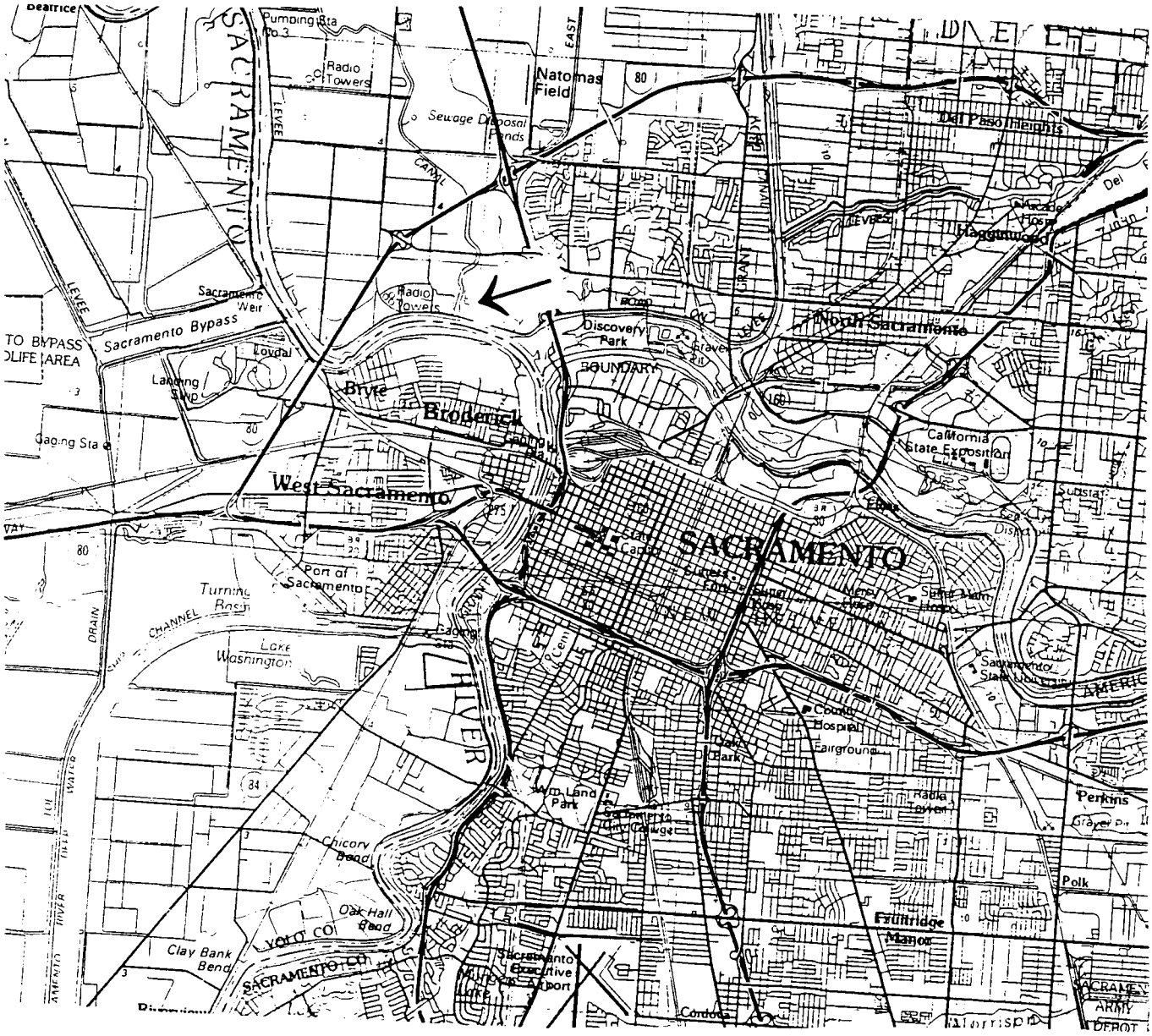

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Exhibit C
PRC 6427.1
Dj 8/29/02