

MINUTE ITEM

This Calendar Item No. C44 was approved as Minute Item No. 44 by the California State Lands Commission by a vote of 3 to 0 at its 2-17-05 meeting.

**CALENDAR ITEM
C44**

A 11
S 7

02/17/05
PRC 7691.1
N. Smith

**APPROVAL OF AN AGREEMENT AND CONSENT TO
ENCUMBRANCING OF LEASE**

LESSEE:

Crockett Cogeneration, A California Limited Partnership
550 Loring Avenue
Crockett, California 94525

AREA, LAND TYPE, AND LOCATION:

2.04 acres, more or less, of filled sovereign lands in the town of Crockett, adjacent to the Carquinez Strait, Contra Costa County.

AUTHORIZED USE:

240 MW cogeneration facility.

LEASE TERM:

33 years, beginning September 29, 1993.

CONSIDERATION:

\$98,210 per year; with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

\$11,000,000 combined single limit.

Bond:

\$2,000,000.

OTHER PERTINENT INFORMATION:

1. Applicant has a right to use the uplands adjoining the lease premises.
2. On July 29, 1993, the Commission issued a 33-year lease to Crockett Cogeneration, LLC for the construction and operation of a cogeneration plant. At that meeting, the Commission also authorized an Agreement

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and Consent to Encumbrancing of Lease in favor of ABN AMRO Bank N. V. (as Administrative Agent) in the amount up to \$300 million. Staff is requesting this Agreement be terminated upon authorization and the execution of the proposed new Encumbrancing Agreement.

Lessee is seeking to refinance its existing loans in an amount up to \$295 million. The new loan will be used primarily to pay off outstanding principal and interest under its existing loans. The proposed new Agreement and Consent to Encumbrancing of Lease will be in favor of LaSalle Bank National Association, serving as trustee, collateral agent and depositary agent to institutional investors.

Pursuant to the Lease, Article XIV, Section 14.4, paragraph (d), funds obtained by encumbrance of the Lease Premises whose use is not for the benefit or enhancement of the Lease Premises or improvements on them are subject to a fee of up to one-percent.

Staff has reviewed the transaction and discussed the financing details with the Lessee and has determined that \$50 million is subject to the above described lease provision, as those monies are not being used to benefit the Lease Premises or improvements, but are instead to be distributed to Lessee's owners. Lessee has agreed to pay the amount of \$500,000 consistent with Staff's analysis of the proposed transaction.

4. 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.
5. This activity involves lands identified as possessing significant environment values pursuant to Public Resources Code section 6370, et seq.. Based upon the staff's consultation with the persons nomintaing 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. Land Description
- B. Location Map

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PERMIT STREAMLINING ACT DEADLINE:

N/A

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

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

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:

AUTHORIZE EXECUTION OF THE DOCUMENT ENTITLED "AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE" IN THE AMOUNT OF UP TO \$295 MILLION ON FILE IN THE OFFICE OF THE COMMISSION BETWEEN THE COMMISSION, CROCKETT COGENERATION A CALIFORNIA LIMITED PARTNERSHIP AND LASALLE BANK NATIONAL ASSOCIATION EFFECTIVE UPON THE APPROVAL OF THE NEW LOAN BY LASALLE BANK NATIONAL ASSOCIATION, BUT NO LATER THAN MAY 31, 2005.

AUTHORIZE TERMINATION OF AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE, DATED SEPTEMBER 29, 1993, BY AND BETWEEN THE STATE LANDS COMMISSION, CROCKETT COGENERATION, A LIMITED PARTNERSHIP AND ABN AMRO BANK N.V. (AS ADMINISTRATIVE AGENT); EFFECTIVE UPON EXECUTION OF THE ABOVE AUTHORIZED AGREEMENT AND CONSENT TO ENCUMBRANCING.

EXHIBIT "A"

W 23703

DESCRIPTION OF LEASE PREMISES

A PARCEL OF TIDE AND SUBMERGED LAND IN AND ADJACENT TO THE CARQUINEZ STRAIT IN THE UNINCORPORATED TOWN OF CROCKETT, CONTRA COSTA COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

A PORTION OF THAT PARCEL OF LAND DESCRIBED IN THE LEASE, DATED SEPTEMBER 19, 1929, BETWEEN THE STATE OF CALIFORNIA, AS LESSOR, AND THE CALIFORNIA AND HAWAIIAN SUGAR REFINING CORPORATION, AS LESSEE, RECORDED OCTOBER 7, 1929, IN BOOK 211 OF OFFICIAL RECORDS, AT PAGE 93, CONTRA COSTA COUNTY RECORDS, AS SHOWN ON EXHIBIT 'C-1 (PLAT MAP) ATTACHED HERETO AND MADE A PART HEREOF AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE UNITED STATES HARBOR LINE MONUMENT 31, AS SAID MONUMENT 31 IS SHOWN UPON A CERTAIN MAP ADOPTED BY THE UNITED STATES ARMY ENGINEERS ENTITLED "HARBOR LINES OF CARQUINEZ STRAIT, CALIFORNIA," MARKED "FILE 4, DIV. 4, SHEET 6," DATED JUNE 10, 1924, AND APPROVED BY THE SECRETARY OF WAR FEBRUARY 21, 1925; THENCE NORTH, 34.91 FEET; THENCE EAST, 11.44 FEET TO STATION 'A', SAID STATION 'A' BEING THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION AND BEING A POINT ON THE EAST LINE OF SAID STATE OF CALIFORNIA LEASE (211 OR 93) AND THE NORTH LINE OF THE RIGHT-OF-WAY DESCRIBED IN THE DEED TO THE SOUTHERN PACIFIC RAILROAD COMPANY, FILED AUGUST 6, 1873, IN BOOK 25 OF DEEDS, AT PAGE 156, CONTRA COSTA COUNTY RECORDS; THENCE LEAVING SAID POINT OF BEGINNING WESTERLY ALONG SAID NORTH RIGHT-OF-WAY LINE, SAID NORTH RIGHT-OF-WAY LINE BEING COMMON WITH THE SOUTH LINE OF SAID STATE OF CALIFORNIA LEASE (211 OR 93) AS DEPICTED ON THE "MAP OF RESURVEY OF TIDELAND SURVEYS NOS. 11 & 44 AND TIDELAND LOCATIONS NOS. 196, 199, 206, 226, & 229 CONTRA COSTA COUNTY, CALIFORNIA" MADE UNDER THE PROVISIONS OF CHAPTER 490, STATUTES OF 1915, SHEET 3, NORTH 73°37'15" WEST, 451.73 FEET TO STATION 'B'; THENCE CONTINUING ALONG SAID COMMON LINE ALONG A TANGENT CURVE, CONCAVE TO THE SOUTH AND HAVING A RADIUS OF 1189.78 FEET, THROUGH A CENTRAL ANGLE OF 27°08'33" AN ARC DISTANCE OF 563.63 FEET; THENCE LEAVING SAID COMMON LINE THE FOLLOWING COURSES AND DISTANCES: NORTH 4°00'00" EAST, 34.30 FEET; THENCE SOUTH 86°10'52" EAST, 155.00 FEET; THENCE NORTH 4°00'00" EAST, 50.50 FEET; THENCE SOUTH 86°00'00" EAST, 66.11 FEET; THENCE NORTH 4°00'00" EAST, 20.00 FEET; THENCE SOUTH 86°00'00" EAST, 111.00 FEET; THENCE NORTH 4°00'00" EAST, 35.00 FEET; THENCE SOUTH 86°00'00" EAST, 400.69 FEET; THENCE SOUTH 4°00'00" WEST, 5.00 FEET; THENCE SOUTH 86°00'00" EAST, 25.20 FEET; THENCE NORTH 4°00'00" EAST, 5.00 FEET; THENCE SOUTH 86°00'00" EAST, 17.11 FEET; THENCE NORTH 4°00'00" EAST, 22.58 FEET; THENCE SOUTH 73°34'28" EAST, 216.36 FEET; THENCE ALONG A NON-TANGENT CURVE, CONCAVE TO THE EAST AND SOUTH AND HAVING A RADIUS OF 30.00

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EXHIBIT "A" CONTINUED

FEET, THE CENTER OF WHICH BEARS NORTH 76°22'48" EAST THROUGH A CENTRAL ANGLE OF 119°59'58" AN ARC DISTANCE OF 62.83 FEET; THENCE SOUTH 73°37'15" EAST, 30.00 FEET TO THE AFORESAID EASTERLY LINE OF THE STATE OF CALIFORNIA LEASE (211 OR 93); THENCE SOUTHERLY ALONG SAID EAST LINE SOUTH 16°22'45" WEST, 239.05 FEET TO THE POINT OF BEGINNING.

BASIS OF BEARINGS: THE BEARING BETWEEN THE FOUND U.S. HARBOR LINE MONUMENTS #33 AND #31, AS SHOWN ON SAID ARMY ENGINEER'S MAP, "HARBOR LINES OF CARQUINEZ STRAIT, CALIFORNIA", DATED JUNE 10, 1924; CALCULATED AND TAKEN AS NORTH 86°45'48" EAST,

EXCEPTING THEREFROM ANY PORTION LYING LANDWARD OF THE ORDINARY HIGH WATER MARK OF CARQUINEZ STRAIT, AS IT LAST EXISTED IN A STATE OF NATURE.

END OF DESCRIPTION

A.P.N. 354-011-002 & 003 (PORTION OF).

REVIEWED JULY, 1993 BY SFBCC.

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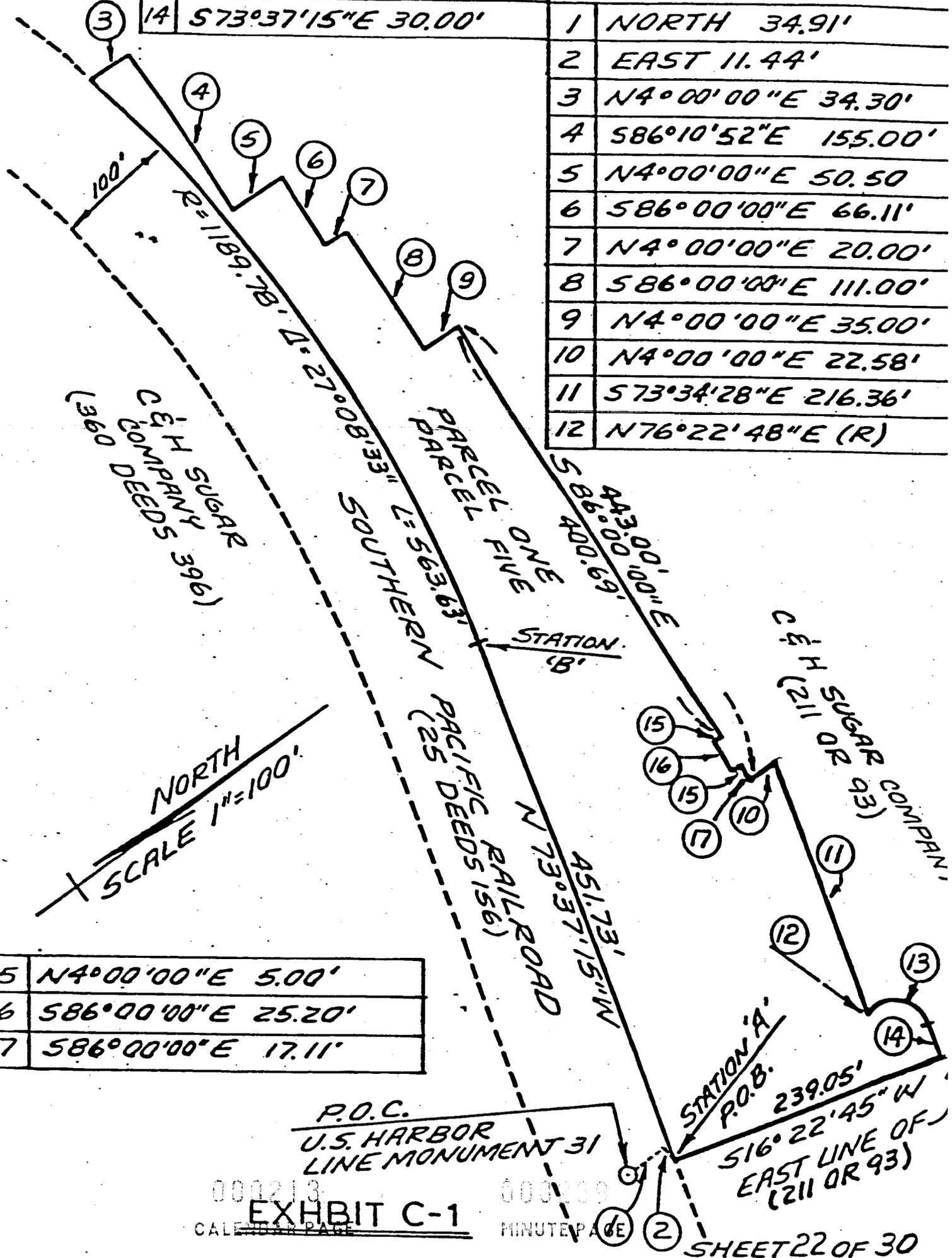
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13	R=30' Δ= 119°59'58" L=62.83
14	S73°37'15"E 30.00'

COURSE DATA	
1	NORTH 34.91'
2	EAST 11.44'
3	N4°00'00"E 34.30'
4	S86°10'52"E 155.00'
5	N4°00'00"E 50.50'
6	S86°00'00"E 66.11'
7	N4°00'00"E 20.00'
8	S86°00'00"E 111.00'
9	N4°00'00"E 35.00'
10	N4°00'00"E 22.58'
11	S73°34'28"E 216.36'
12	N76°22'48"E (R)



15	N4°00'00"E 5.00'
16	S86°00'00"E 25.20'
17	S86°00'00"E 17.11'

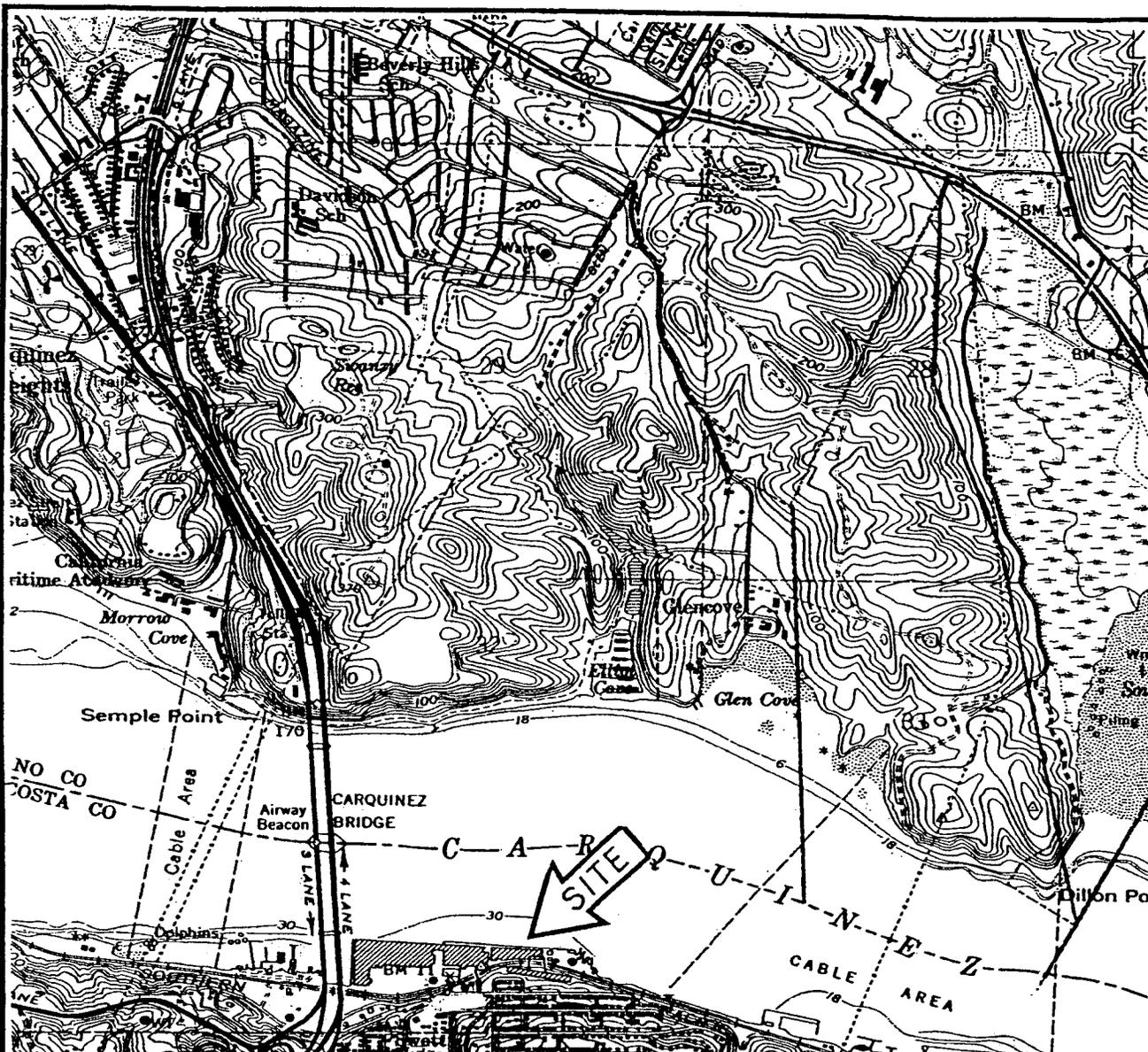
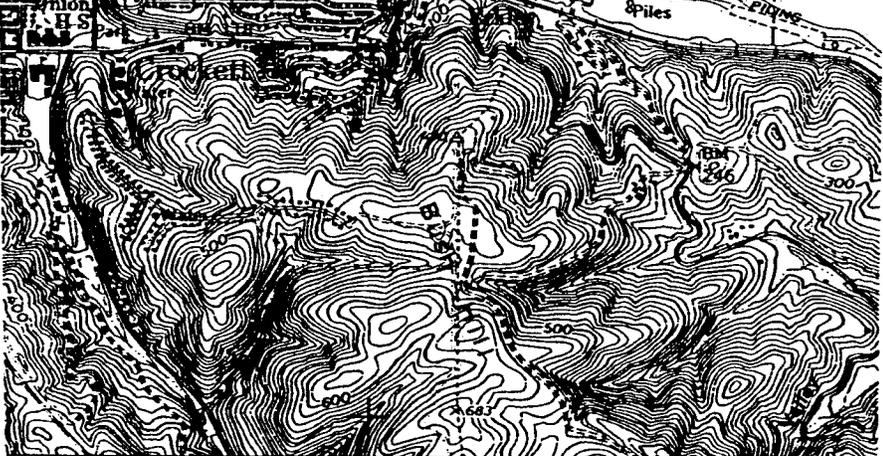


EXHIBIT B
Location Map



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.