

**CALENDAR ITEM
C29**

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06/28/16
PRC 4194.1
V. Caldwell

**AUTHORIZE TERMINATION OF A GENERAL LEASE – COMMERCIAL USE,
ISSUANCE OF A GENERAL LEASE – COMMERCIAL USE,
ASSIGNMENT OF A GENERAL LEASE – COMMERCIAL USE,
AND APPROVAL AND ASSIGNMENT OF SUBLEASES**

APPLICANT/ASSIGNOR:

Kampgrounds of America, Inc.
dba Tower Park Resort and Marina
550 N “31” Street. TW3 Fourth Floor
Billings, Montana 59101

APPLICANT/ASSIGNEE:

Stockton Delta Resort, LLC

SUBLESSEES:

Tower Park Marina Investors, LLC
John Giglio, dba Rosa’s Italian Restaurant
Pacific Boat Detailing
West Coast Canvas
Sunset Sweets

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

13.93 acres, more or less, of sovereign land in Little Potato Slough,
adjacent to 14900 W. Highway 12, near the city of Lodi, San Joaquin
County.

AUTHORIZED USE:

Operation, use, and maintenance of an existing commercial marina known
as Tower Park Resort and Marina, which consists of 17 boat sheds
accommodating approximately 365 boats, 17 end ties, restaurant, bar,
banquet room, general store, retail store, canvas shop, boat detailing
facility, boat rentals, dry dock storage spaces, elevator/launch ramp, T-
shape fuel dock with four marine fuel pumps, accommodation dock with
two marine fuel pumps and uncovered docks, restroom facilities, laundry

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room facilities, sewage pumpout facilities, water plant pump station, bulkhead, and bank protection.

LEASE TERM:

25 years, beginning January 1, 2016.

SUBLEASE:

AUTHORIZED USE:

Operation, use, and maintenance of Tower Park Resort and Marina, consisting of 17 boat sheds accommodating approximately 365 boats, 17 end ties, dry dock storage spaces, elevator/launch ramp, fuel dock with four marine fuel pumps, accommodation dock with two marine fuel pumps, uncovered docks, restrooms, laundry rooms, and sewage pumpout facilities.

LEASE TERM:

10 years, with three, five (5) year options to extend, beginning March 23, 2007.

SUBLEASE:

AUTHORIZED USE:

Operation, use, and maintenance of a restaurant, bar, and banquet room.

LEASE TERM:

Three years, beginning December 31, 2013.

SUBLEASE:

AUTHORIZED USE:

Operation, use, and maintenance of a boat detailing shop.

LEASE TERM:

Month-to-month tenancy.

SUBLEASE:

AUTHORIZED USE:

Operation, use, and maintenance of a canvas shop.

LEASE TERM:

Five years, beginning August 1, 2011.

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SUBLEASE:

AUTHORIZED USE:

Operation, use, and maintenance of an ice cream and fudge shop.

LEASE TERM:

Three years, beginning March 1, 2015.

CONSIDERATION:

Existing Facilities: \$65,000 per year, with an annual Consumer Price Index adjustment; and the State reserving the right to fix a different rent on the 10th and 20th anniversaries of the lease term, as provided in the lease.

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:

Insurance:

Liability insurance in an amount no less than \$5,000,000 per occurrence.

Bond:

\$100,000

Other:

1. The lease contains provisions that require implementation of the Commission's "Best Management Practices for Marina Owners/Operators" and encourage implementation of the Commission's "Best Management Practices for Berth Holders and Boaters," including additional Best Management Practices (BMPs) the Commission subsequently deems appropriate for either of the above categories.
2. Lessor's Executive Officer or her designee may approve future subleases. Such approval shall not be unreasonably withheld. If the Executive Officer or his/her delegate denies approval, Lessee may appeal that denial to the State Lands Commission at the Commission's next available noticed public meeting. Lessor's Executive Officer shall not have the delegated authority to approve increases or decreases in total base rent, bond or insurance, nor the authority to

CALENDAR ITEM NO. **C29** (CONT'D)

approve any amendments, assignment, quitclaim or permanent removals involving all or part of the Lease Premises.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, and 6503.5; California Code of Regulations, Title 2, section 2000, subdivision (b).

Public Trust and State's Best Interests Analysis:

The subject marina and water-related businesses directly promote public trust needs. The subject commercial marina facilities accommodate, promote, and foster the public's need for essential maritime services and the public's enjoyment of the State's adjacent waterways. 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 subject fuel facilities are consistent with the common law Public Trust Doctrine because it is used to aid in water-dependent commerce and navigation. The facility sells fuel to the general boating community of the Sacramento Delta and beyond. The commercial fuel docks provide a necessary and convenient service to regional boaters thereby facilitating public navigation, fishing, and water-related recreation. The proposed new lease will allow for the continued operation of the marina and appurtenant facilities.

Several of the businesses within the proposed lease area are dependent on being on or near the water, such as the canvas shop, boat detailing facility, and boat rentals. Visitor-serving facilities such as the restaurant, bar, banquet room, general store, and retail store are places of public accommodations, facilitating broad public access to public trust lands, and therefore enhance the public's enjoyment of these lands set apart for their benefit.

The adjacent upland is privately owned and developed as a campground. The subject structures are privately owned and maintained and used for commercial use. The campground is available for use by the general public.

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The bank protection is consistent with the common law Public Trust Doctrine because it serves as an aid to navigation by providing reinforced structural support to the banks of the waterway and limiting potentially harmful erosion of the bank into the waterway. The bank protection also confers benefits to the upland owner by ensuring sufficient sub-lateral support to the adjoining properties.

The proposed lease includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 25 years, and a non-exclusive use provision. The marina and appurtenant facilities have existed for many years at this location; they do not significantly alter the land, they do not permanently alienate the State's fee simple interest in the underlying land, and they do not permanently impair public rights. Upon termination of the lease, the Lessee may be required to remove any improvements and restore the lease premises to their original condition. Based on the foregoing, Commission staff believes that the marina facilities and water-related businesses, will not substantially interfere with public trust needs, at this location, at this time, and for the foreseeable term of the proposed lease and the bank protection is consistent with the common law Public Trust Doctrine.

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, Commission staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. The Applicant/Assignor owns the uplands adjoining the Lease Premises. The Assignee will own the uplands adjoining the Lease Premises upon the close of escrow, but not later than September 30, 2016.
2. On February 5, 2007, the Commission authorized an assignment of Lease No. PRC 4194.1, a General Lease – Commercial Use from Tower Park Marina Investors, LP, to Kampgrounds of America, Inc. (KOA). Included in the assignment were eight subleases which operated businesses within the lease premises. The lease will expire on December 31, 2023. On December 12, 2012, KOA submitted an application for a new lease for the

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impending sale of the property. KOA is now requesting termination of the existing lease and issuance of a new lease.

3. KOA's lease requires a minimum annual rent payment of \$46,897, against a percentage of gross income from the sublessee's businesses operating on the Lease Premises. KOA has been making annual payments based on their understanding of the lease. However, upon review of the annual reports of gross income, Commission staff determined that KOA had not correctly paid rent or reported gross income in accordance with the lease provisions. Staff informed KOA of discrepancies in their percentage of gross reporting and has been working with the Lessee to reconcile the discrepancies. KOA has agreed to pay compensation in the amount of \$106,932 to reconcile additional rent owed for the period from January 1, 2011 through June 28, 2016.
4. On May 6, 2015, Stockton Delta Resort, LLC, submitted an application for the assignment of the lease and approval of the five existing subleases beginning upon the close of escrow, but not later than September 30, 2016.
5. This action is consistent with Strategy 1.1 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.
6. Termination of lease, assignment of lease, and approval of subleases are not projects as defined by the California Environmental Quality Act (CEQA) because they are administrative actions that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378, subdivision (b)(5).

7. The staff recommends that the Commission find that issuance of the lease is exempt from the requirements of 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.

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8. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370, et seq., but such activity will not affect those significant lands. 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. Land Description
- B. Site and Location Map
- B-1. Site and Location Map Building 1
- B-2. Site and Location Map Building 2
- B-3. Site and Location Map Building 3

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that issuance of the lease 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 proposed lease is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

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 section 6370 et seq.

AUTHORIZATION:

1. Authorize acceptance of compensation in the amount of \$106,932 for the period of January 1, 2011 through June 28, 2016.
2. Authorize termination of Lease No. PRC 4194.1, a General Lease – Commercial Use, effective December 31, 2015, issued to Tower Park Marina Investors, LP, and assigned to Kampgrounds of America, Inc.

CALENDAR ITEM NO. **C29** (CONT'D)

3. Authorize issuance of a General Lease – Commercial Use to Kampgrounds of America, Inc., beginning January 1, 2016, for a term of 25 years, for the operation, use, and maintenance, of an existing commercial marina facility known as Tower Park Resort and Marina, which consists of 17 boat sheds accommodating approximately 365 boats, 17 end ties, restaurant, bar, banquet room, general store, retail store, canvas shop, boat detailing facility, boat rentals, dry dock storage spaces, elevator/launch ramp, T-shape fuel dock with four marine fuel pumps, accommodation dock with two marine fuel pumps and uncovered docks, restroom facilities with showers, laundry room facilities, sewage pumpout facilities, water plant pump station, bulkhead, and bank protection as described in Exhibit A and as shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration for the commercial marina facilities: annual rent in the amount of \$65,000, with an annual Consumer Price Index adjustment, as provided in the lease; and the State reserving the right to fix a different rent on the 10th and 20th anniversaries of the lease term, as provided in the lease; liability insurance in an amount no less than \$5,000,000 per occurrence; and a surety bond in the amount of \$100,000.
4. Authorize an assignment of a General Lease – Commercial Use and subleases from Kampgrounds of America, Inc., to Stockton Delta Resort, LLC, upon the close of escrow but not later than September 30, 2016.
5. Approve by endorsement a sublease from Kampgrounds of America, Inc., to Tower Park Marina Investors, LP, of a portion of Lease No. PRC 4194.1, effective March 23, 2007, with three, five (5) year options to extend.
6. Authorize by endorsement a sublease between Kampgrounds of America, Inc., to Rosa's Italian Restaurant, of a portion of Lease No. PRC 4194.1, effective December 31, 2013, and ending December 30, 2016.
7. Authorize by endorsement a sublease between Kampgrounds of America, Inc., to Pacific Boat Builder of a portion of Lease No. PRC 4194.1, effective on a month-to-month-tenancy.

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8. Authorize by endorsement a sublease between Kampgrounds of America, Inc., to West Coast Canvas of a portion of Lease No. PRC 4194.1, effective August 1, 2011, and ending July 13, 2016.
9. Authorize by endorsement a sublease between Kampgrounds of America, Inc., to Sunset Sweets of a portion of Lease No. PRC 4194.1, effective March 1, 2015, and ending February 28, 2018.
10. Authorize the Executive Officer or her designee to endorse future subleases. Such approval shall not be unreasonably withheld. If the Executive Officer or his/her delegate denies approval, except as provided hereafter, Lessee may appeal that denial to the Commission at the Commission's next available properly noticed public meeting. The Executive Officer shall not have the delegated authority to approve increases or decreases in the base rent, adjustments in bond and insurance coverage, nor the authority to approve any amendments, assignment, quitclaim or permanent removals involving all or part of the Lease Premises.

EXHIBIT A

PRC 4194.1

LAND DESCRIPTION

A 190 foot strip of tide and submerged land, situate in the bed of Little Potato Slough, lying adjacent to Swamp and Overflowed Land Survey 881 patented February 3, 1871, County of San Joaquin, State of California and lying (waterward) southerly, southwesterly, westerly, and northwesterly of the following described line:

BEGINNING at a point on the left bank of said slough, having the following CCS83, Zone 3 coordinates N(Y)=2226804.24 feet, E(X)=6275571.95 feet from which the most northerly northeast corner of Lot 2 as shown on Tract Map No 1762 "Tower Park Village" filed in Book of Maps and Plats, Volume 26, Page 43, San Joaquin County Records and per said map "Corner falls on Manhole, set chis. "L"s as reference points on concrete curb"; bears North 07°42'20" 2334.42 West feet thence along said bank the following fifteen (15) courses:

- 1) South 67° 50' 03" West 69.18 feet;
- 2) South 87° 31' 25" West 118.12 feet;
- 3) North 75° 46' 27" West 272.97 feet;
- 4) North 67° 14' 49" West 425.60 feet;
- 5) North 59° 48' 10" West 437.83 feet;
- 6) North 46° 34' 10" West 224.25 feet;
- 7) North 35° 08' 54" West 373.35 feet;
- 8) North 11° 46' 49" West 287.71 feet;
- 9) North 03° 08' 54" East 221.11 feet;
- 10) North 31° 51' 43" East 195.36 feet;
- 11) North 45° 22' 02" East 366.60 feet;
- 12) North 35° 55' 14" East 439.70 feet;
- 13) North 24° 19' 15" East 213.37 feet;
- 14) North 11° 12' 25" East 183.83 feet;
- 15) North 07° 34' 05" East 230.24 feet to the terminus of said strip.

Sidelines of said strip are to be lengthened or shortened so as to terminate on the westerly prolongation of the north line of "Lot 1" per said map and the southerly prolongation of the east line of "Lot 4" per said map.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the left bank of said slough.

The Basis of Bearings is CCS83, Zone 3 (Epoch 2007.00) as determined locally by a line between Continuous Global Positioning Systems (CGPS) stations site Kettleman_CN2005 (P273) and site SnodgraSlgCN2005 (P274) being North 18°17'47" West as derived from geodetic values published by the California Spatial Reference Center (CSRC). All distances are grid and in U.S. survey feet.

END OF DESCRIPTION

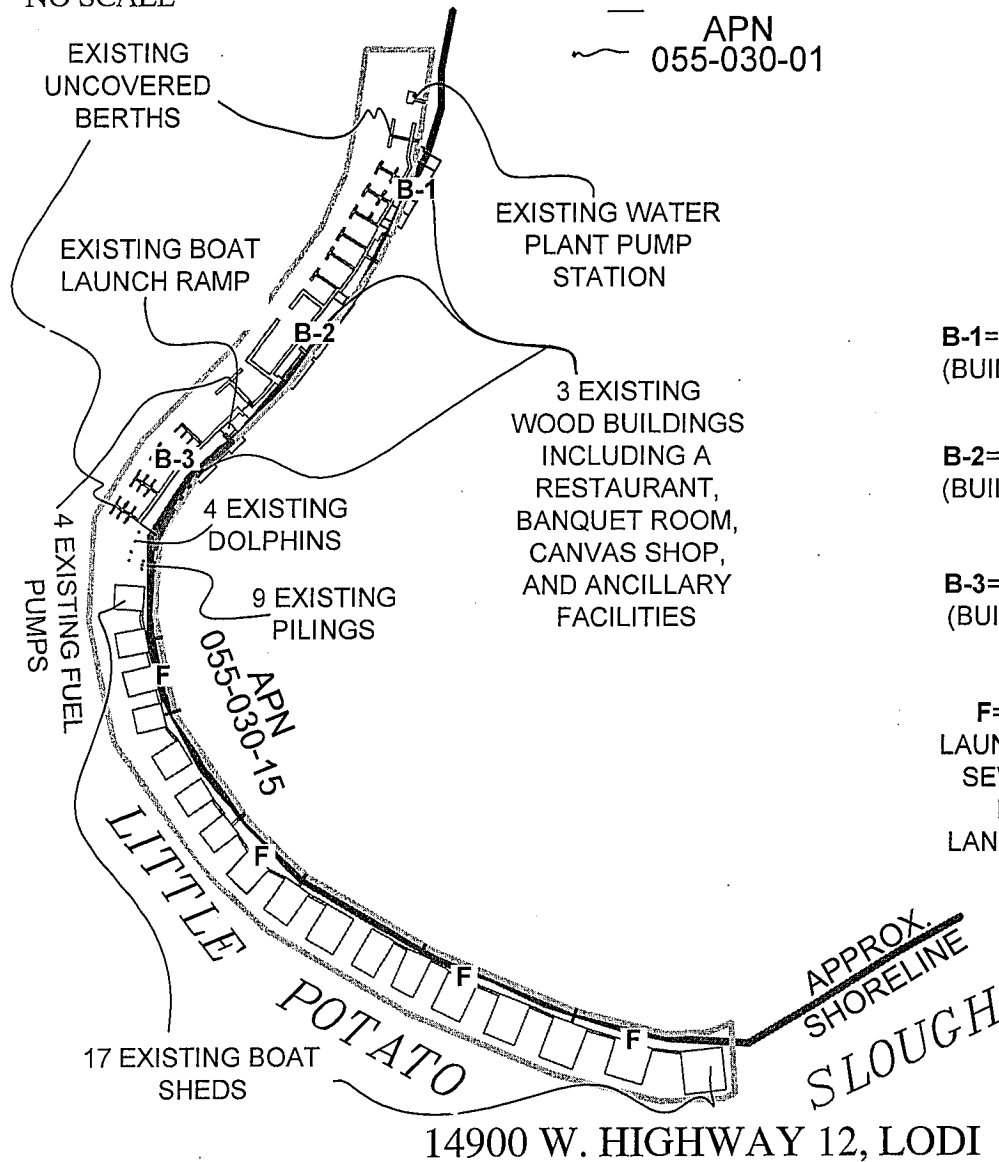
PREPARED 6/24/15 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



NO SCALE

SITE

APN
055-030-01



B-1= SEE EXHIBIT B-1 (BUILDING 1 - NORTH BUILDING)

B-2= SEE EXHIBIT B-2 (BUILDING 2 - MIDDLE BUILDING)

B-3= SEE EXHIBIT B-3 (BUILDING 3 - SOUTH BUILDING)

F=RESTROOMS, LAUNDRY FACILITIES, SEWER PUMPOUT LOCATED AT LANDWARD SIDE OF BOAT SHED

NO SCALE

LOCATION

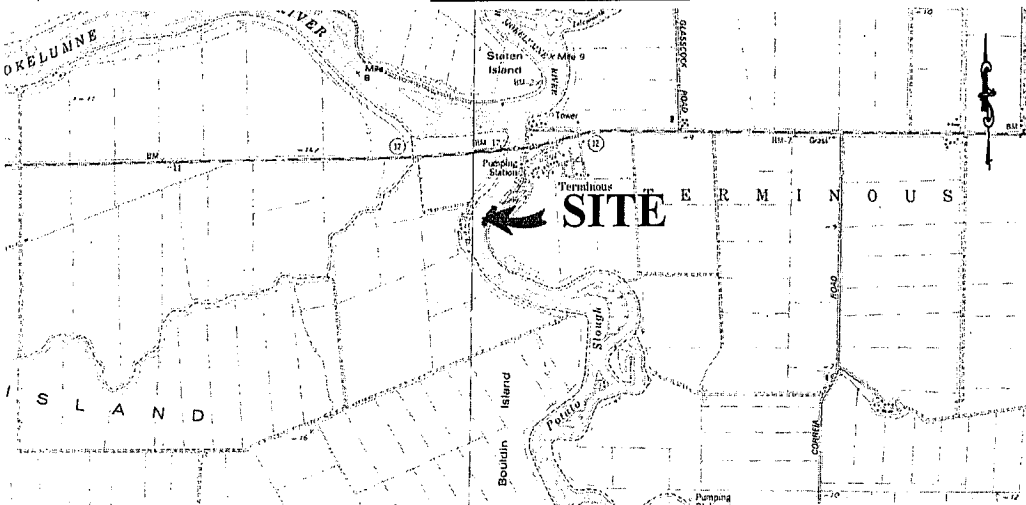


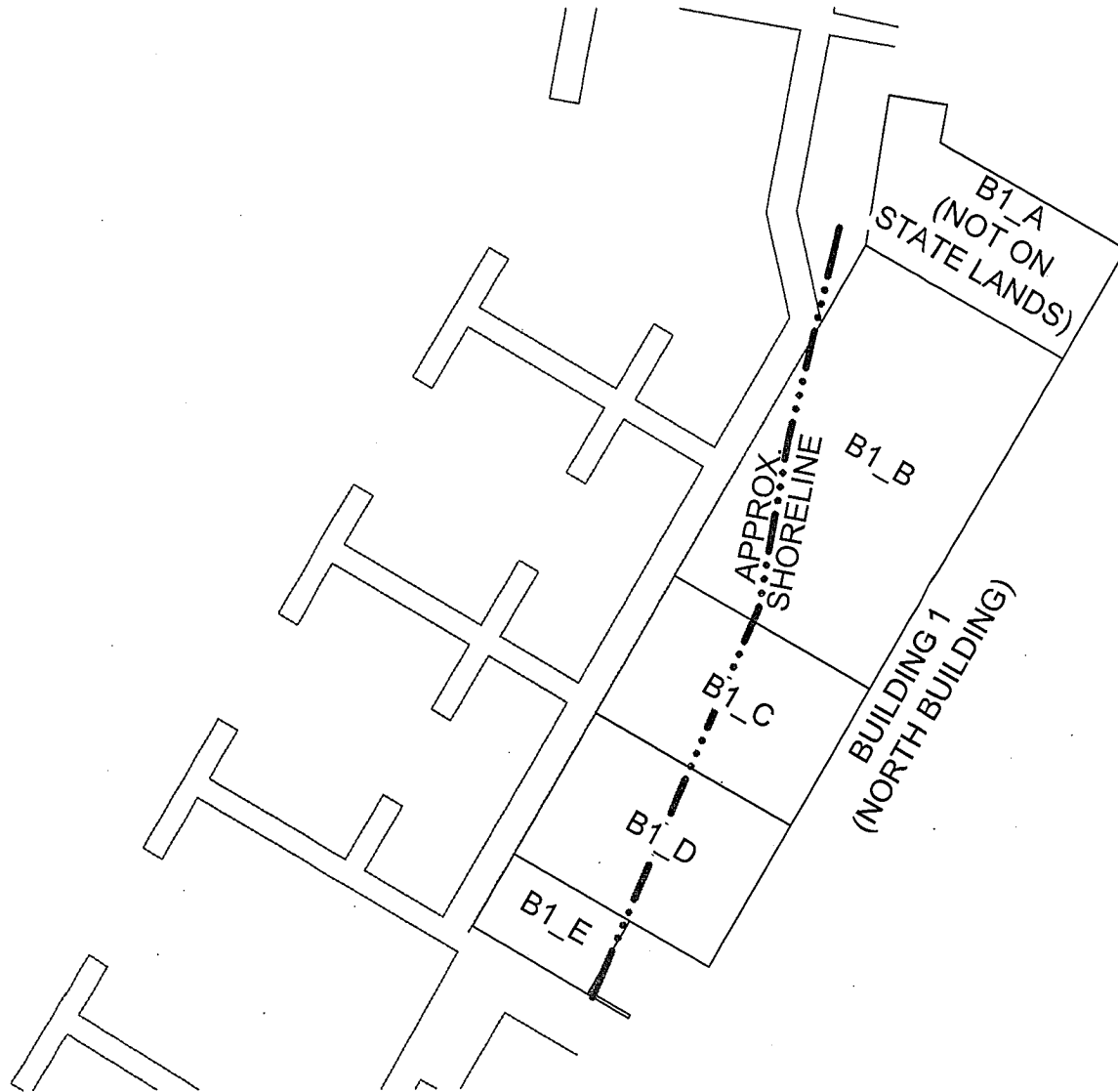
Exhibit B

PRC 4194.1
 KAMPGROUNDS OF AMERICA, INC.
 APNs 055-030-01 & 055-030-15
 GENERAL LEASE - COMMERCIAL USE
 SAN JOAQUIN 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.

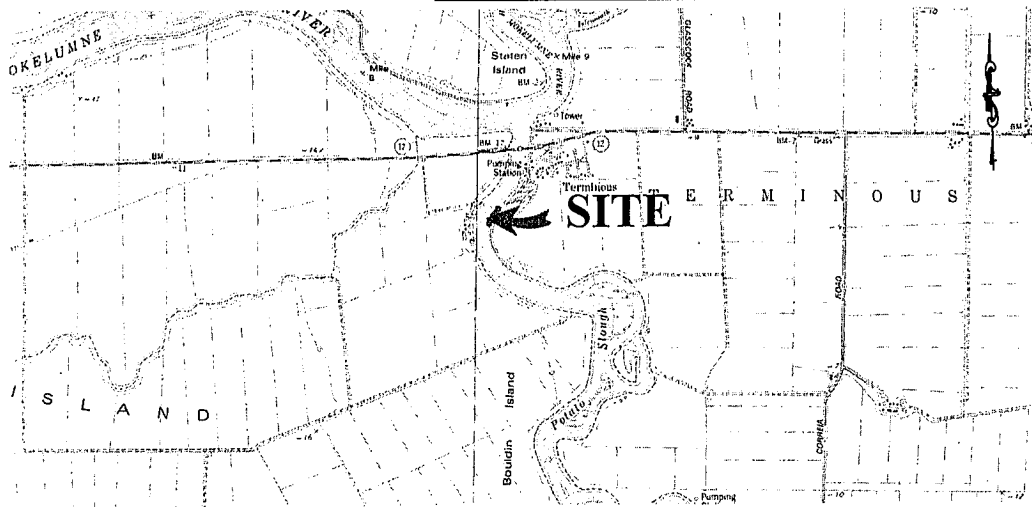
SCALE 1"=50'



14900 W. HIGHWAY 12, LODI

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B-1

PRC 4194.1

KAMPGROUNDS OF AMERICA, INC.

APNs 055-030-01 & 055-030-15

GENERAL LEASE - COMMERCIAL USE

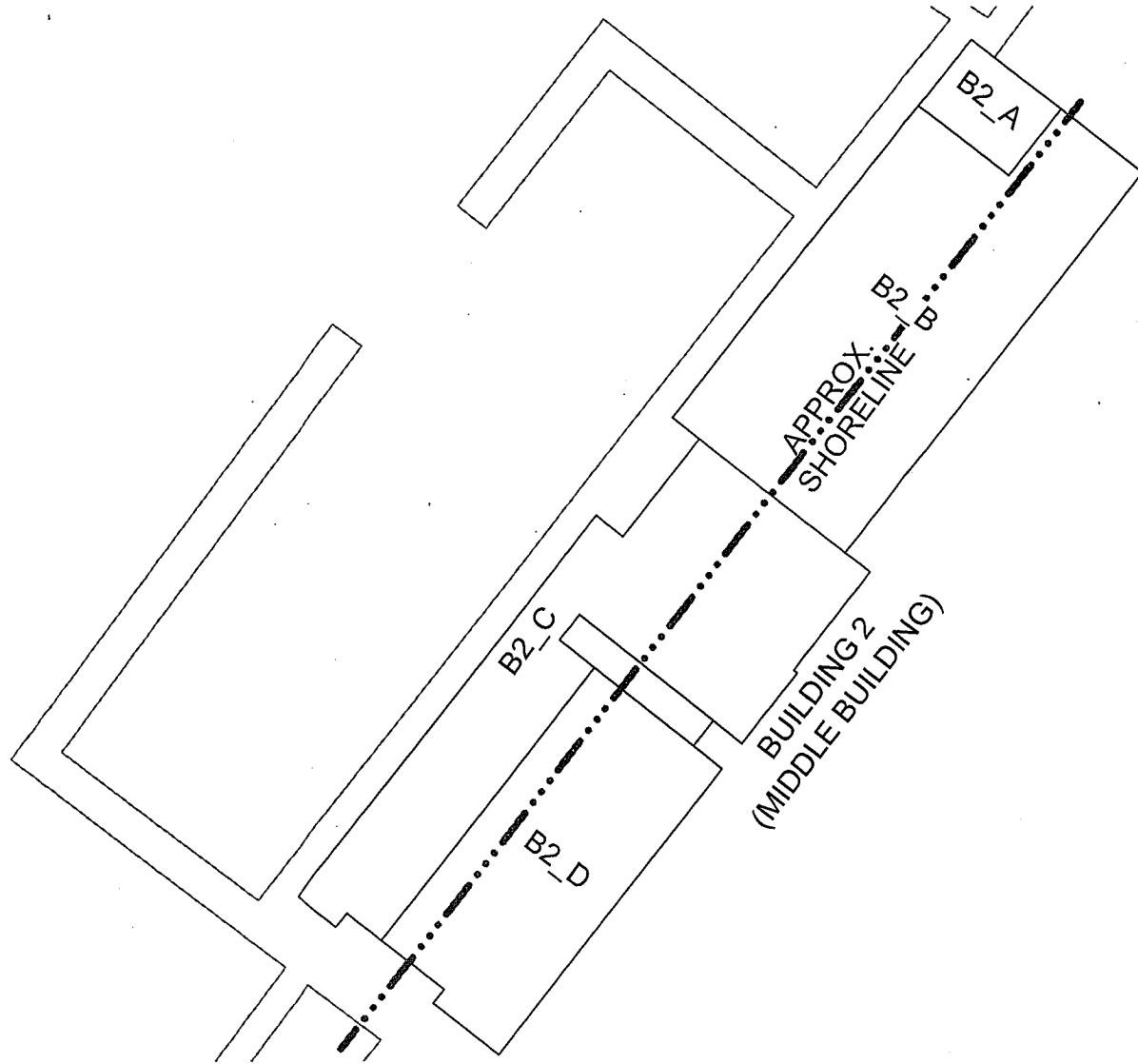
SAN JOAQUIN COUNTY



SITE

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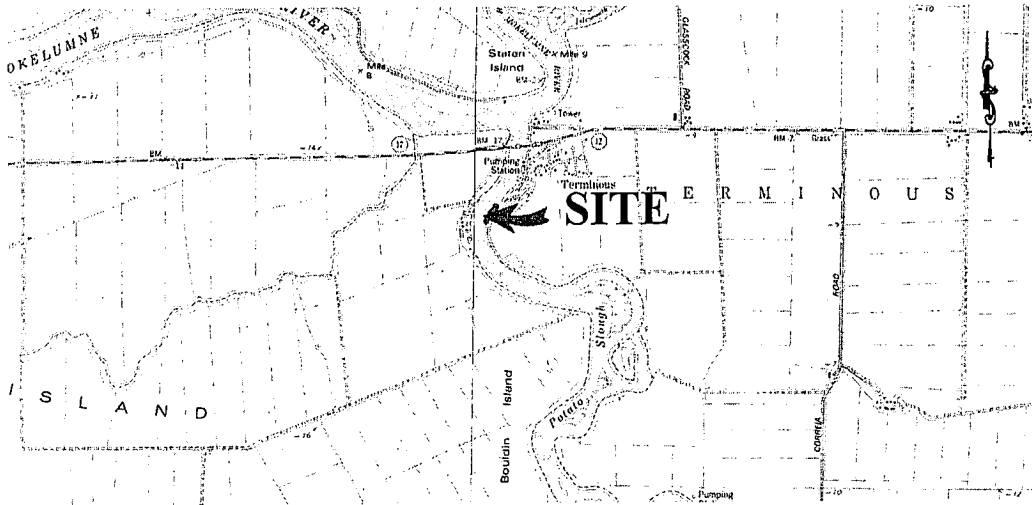
SCALE 1"=50'



14900 W. HIGHWAY 12, LODI

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B-2

PRC 4194.1

KAMPGROUNDS OF AMERICA, INC.

APNs 055-030-01 & 055-030-15

GENERAL LEASE - COMMERCIAL USE

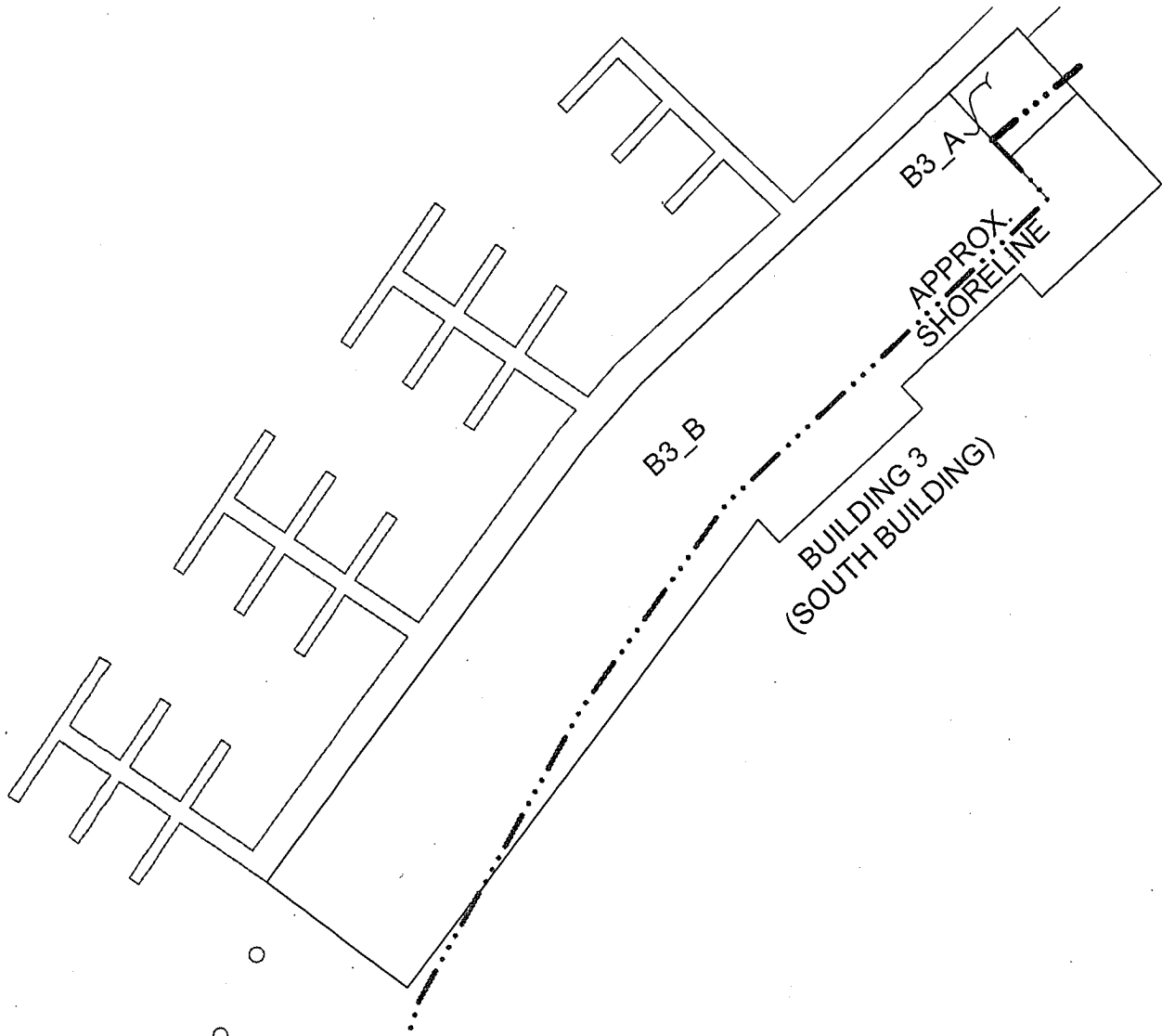
SAN JOAQUIN COUNTY



MJF 5/16/16

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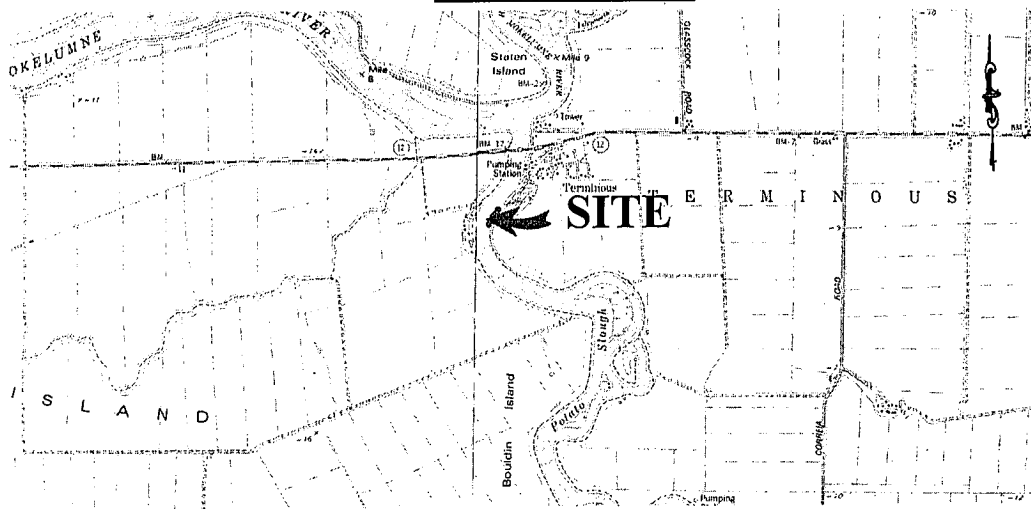
SCALE 1"=60'



14900 W. HIGHWAY 12, LODI

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B-3

PRC 4194.1

KAMPGROUNDS OF AMERICA, INC.

APNs 055-030-01 & 055-030-15

GENERAL LEASE - COMMERCIAL USE

SAN JOAQUIN COUNTY



MJF 5/16/16

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