

**CALENDAR ITEM
C30**

A 13
S 5

06/22/17
PRC 4194.1
V. Caldwell

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

APPLICANT/LESSEE:

Stockton Delta Resort, LLC

SECURED PARTY-LENDER:

United Bank, a Wisconsin Banking Corporation

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 Lodi, San Joaquin County.

AUTHORIZED USE:

Operation, use, and maintenance of an existing commercial marina known as Yogi Bear's Jellystone Park Camp-Resort at Tower Park, 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-shaped fuel dock with four marine fuel pumps, accommodation dock with two marine fuel pumps and two uncovered docks, restroom facilities, laundry room facilities, sewage pumpout facilities, water plant pump station, bulkhead, and bank protection.

LEASE TERM:

25 years, beginning January 1, 2016.

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.

CALENDAR ITEM NO. **C30** (CONT'D)

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, and 6501.1, 6503.6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

Applicant owns the upland adjoining the lease premises. On June 28, 2016, the Commission authorized a 25-year General Lease – Commercial Use to Kampgrounds of America, Inc.; and authorized an assignment of the Lease to Stockton Delta Resorts, LLC, for the operation of a commercial marina and appurtenant facilities ([Calendar Item C29, June 28, 2016](#)). This lease will expire on December 31, 2040. On March 27, 2017, the Applicant submitted an application for an agreement and consent to encumbrancing of the lease.

The Applicant is in the process of obtaining refinancing in favor of United Bank, the Secured Party-Lender (Secured Party-Lender or Lender/Beneficiary), in a loan amount not to exceed \$11,704,319.80. Under the terms of the new loan, the Secured Party-Lender is requiring the Applicant to pledge their interest in Lease No. PRC 4194.1 as additional security. The new loan will provide financing of existing debt on the property as well as provide funds for marina upgrades, repairs, and renovations. The current appraisal for the facility depicts the marina as being 25.48 percent of the total value of the resort, which includes extensive related facilities on the adjoining upland. This percentage equals \$2,926,080 of the loan that must be reinvested back into the Lease area. The proposed expenditures for the marina facilities total \$2,928,352.

The encumbrancing of the lease would be implemented through a document, "Agreement and Consent to Encumbrancing of Lease," that includes protections for the State land associated with the lease. These protections include the following requirements:

1. No subsequent encumbrancing of the lease shall be executed without prior written consent of the Commission.
2. Any transfer of the lease to a third party shall be subject to prior written approval and consent of the Commission.
3. If the Secured Party-Lender becomes the lessee, it shall be bound by all terms and conditions of the lease.
4. Any transaction requiring Commission approval and consent shall be void in the absence of such approval and consent.

CALENDAR ITEM NO. **C30** (CONT'D)

5. The duration of the encumbrancing agreement is limited to the term of the lease.

The subject commercial marina facilities directly promote Public Trust needs. They accommodate, promote, and support recreational boating, public access, and enjoyment of the State's sovereign land. 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 adjacent upland is privately owned and developed as a campground. The campground is available for use by the general public.

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 sublateral support to the adjoining properties.

The existing lease includes certain provisions protecting the public use of the 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.

The existing lease requires the lessee 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 Agreement and Consent to Encumbrancing is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

CALENDAR ITEM NO. **C30** (CONT'D)

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan 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, and Strategy 1.3 to protect, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.

2. Encumbrancing of the lease is not a project as defined by the California Environmental Quality Act because it is an administrative action 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).

EXHIBITS:

- A. Land Description
- B. Site and Location Maps
 - 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:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed "Agreement and Consent to Encumbrancing of Lease," will allow the Lessee to finance marina upgrades, repairs, and renovations, that will improve existing facilities serving the Public Trust needs and values at this location at this time and for the foreseeable term of the lease and is in the best interests of the State.

AUTHORIZATION:

Authorize the Executive Officer or her designee to execute the document entitled "Agreement and Consent to Encumbrancing of Lease," allowing Lessee's right, title, and interest in Lease No. PRC 4194.1 to be pledged as partial security for a loan in the principal amount not to exceed \$11,704,319.80 in favor of United Bank, a Wisconsin Banking Corporation, in substantially the same form as that on file in the Sacramento office of the Commission, effective June 22, 2017; and authorize the Executive Officer or her designee to execute, acknowledge, accept, and record all related documents as may be reasonably necessary to complete the transaction.

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 $07^{\circ}42'20''$ 2334.42 West feet thence along said bank the following fifteen (15) courses:

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

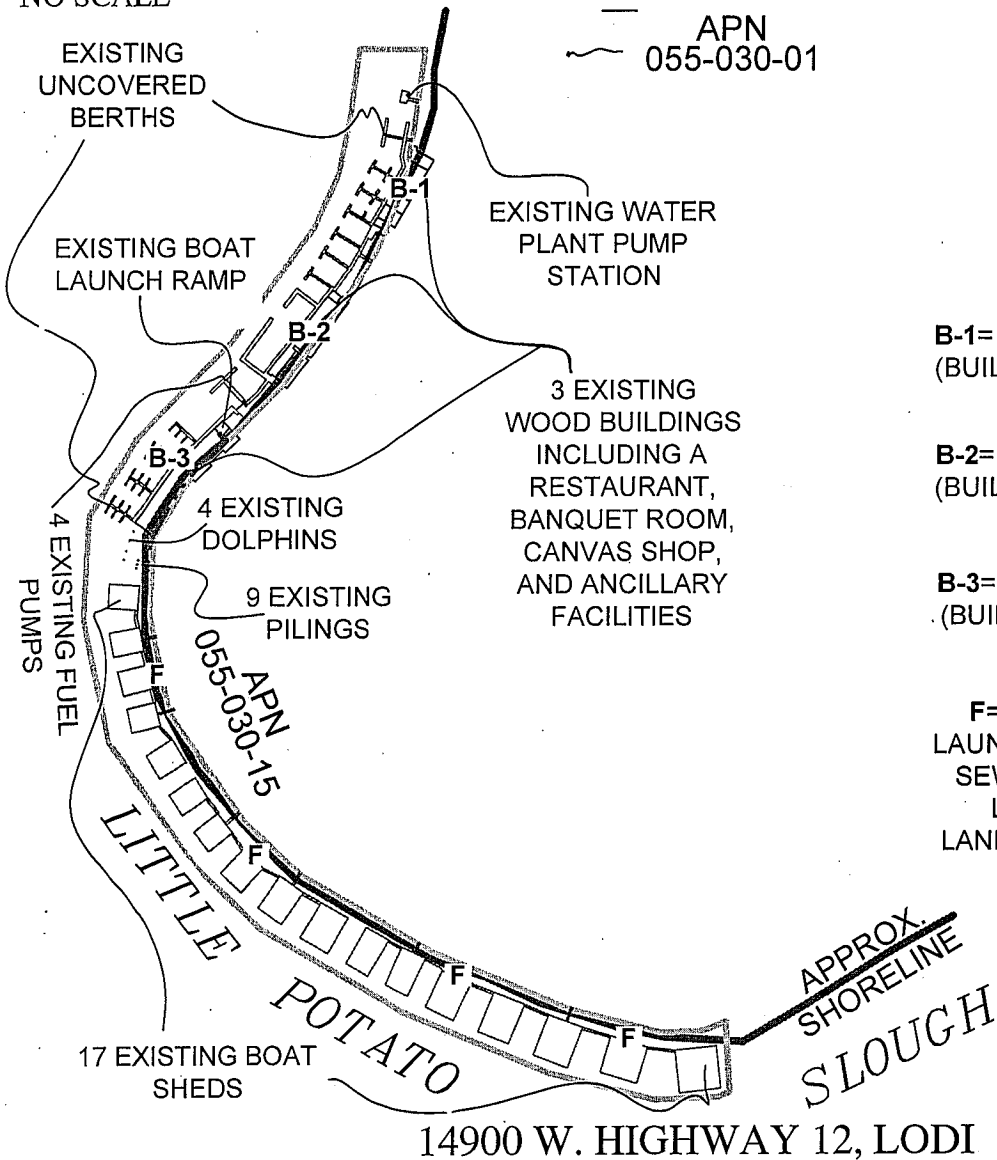
PREPARED 6/24/15 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



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

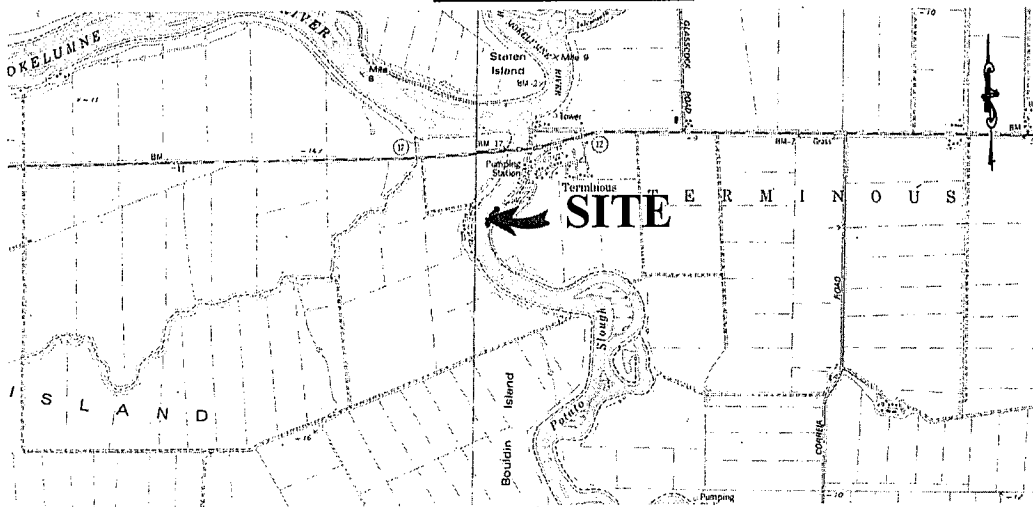


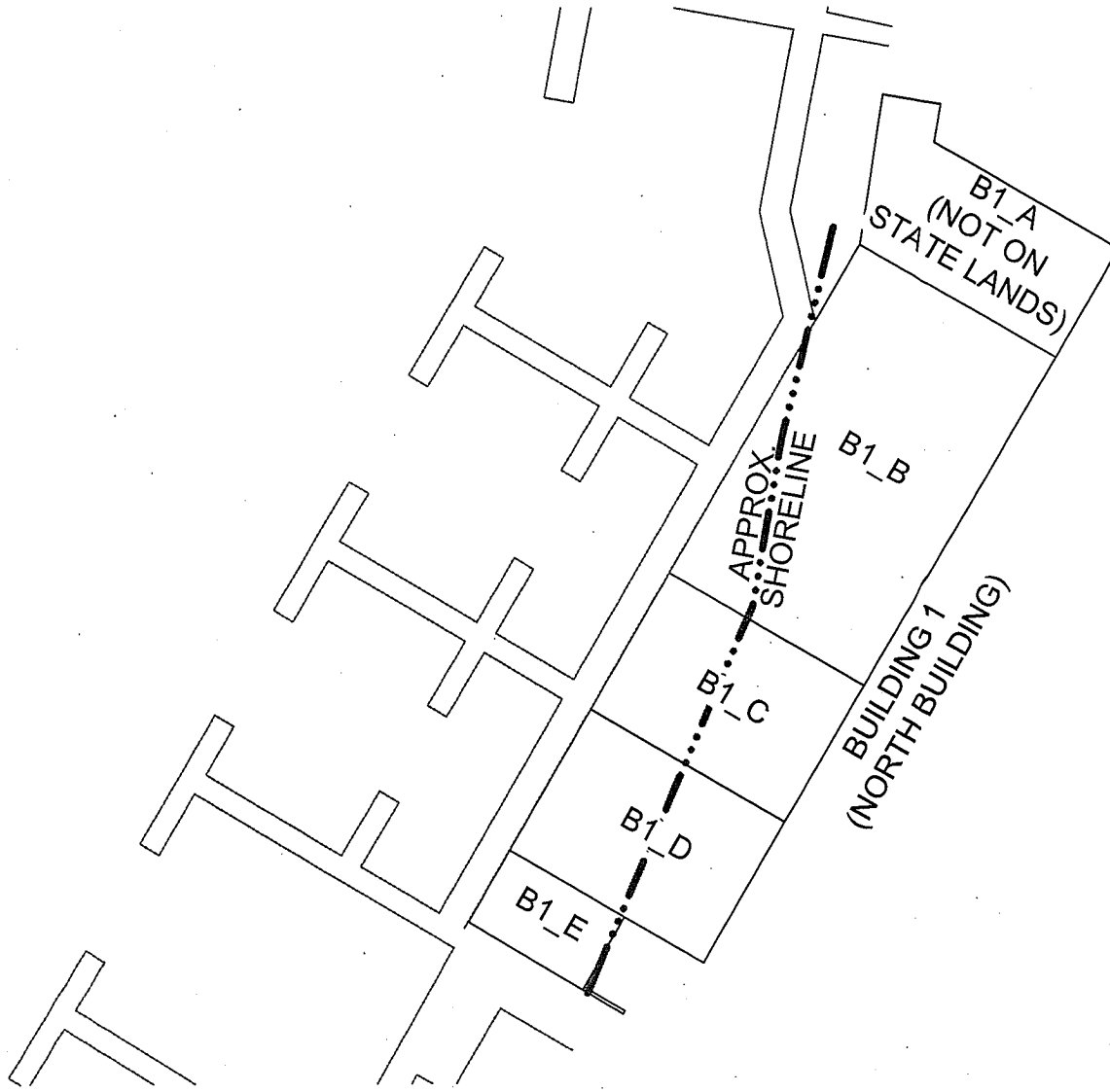
Exhibit B

PRC 4194.1
 STOCKTON DELTA RESORTS, LLC
 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.

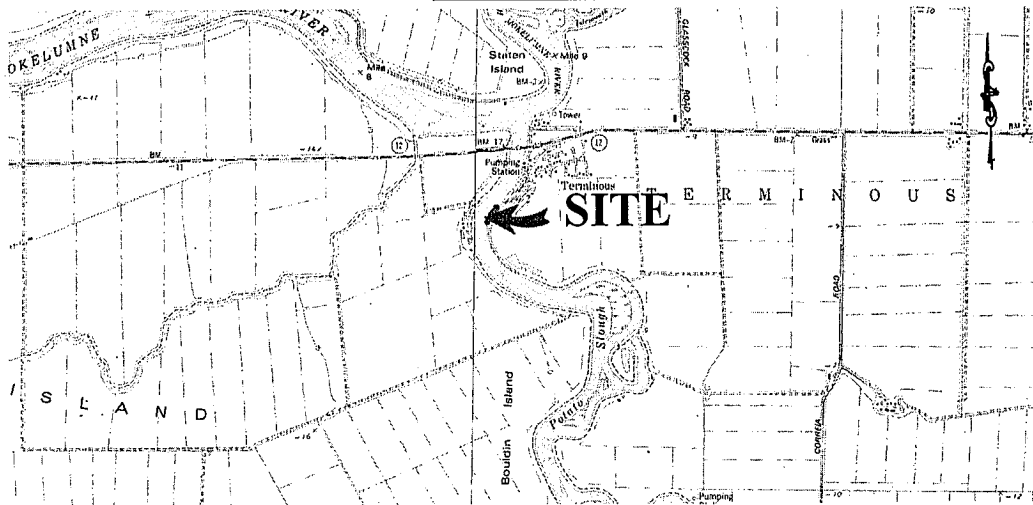
SCALE 1"=50'



14900 W. HIGHWAY 12, LODI

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B-1

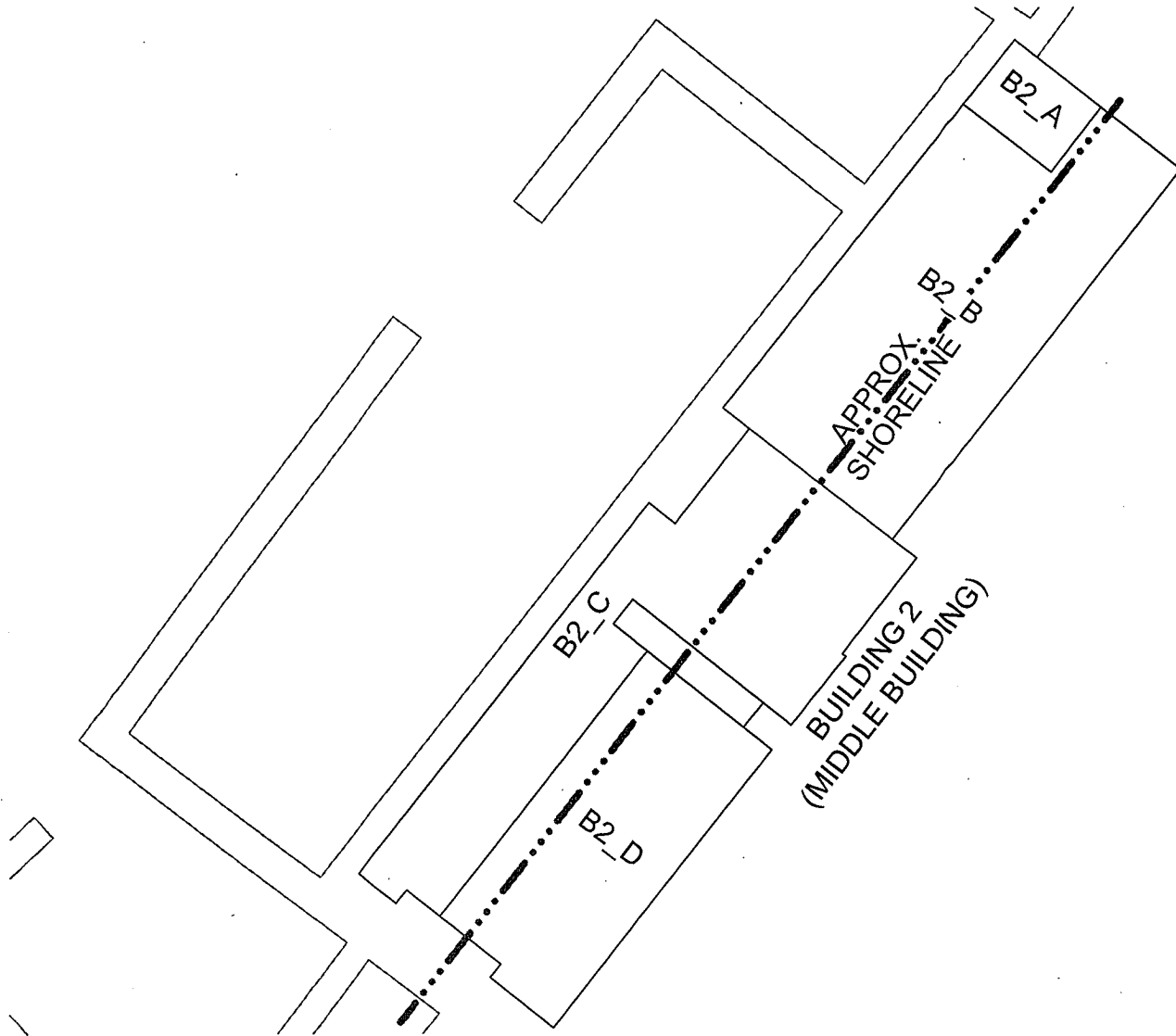
PRC 4194.1
 STOCKTON DELTA
 RESORTS, LLC
 APNs 055-030-01 & 055-030-15
 GENERAL LEASE -
 COMMERCIAL USE
 SAN JOAQUIN COUNTY



MJF 5/08/17

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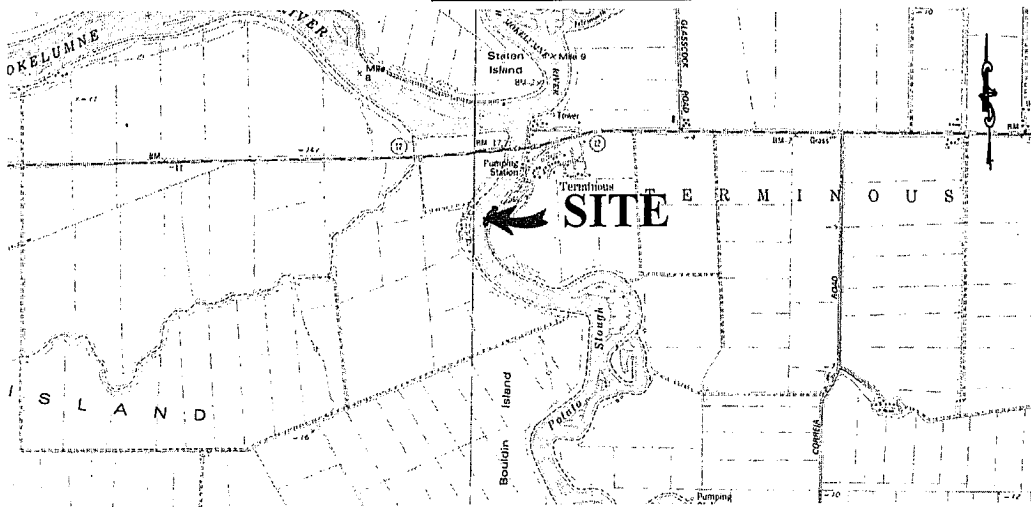
SCALE 1"=50'



14900 W. HIGHWAY 12, LODI

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B-2

PRC 4194.1

STOCKTON DELTA
RESORTS, LLC

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

GENERAL LEASE -

COMMERCIAL USE

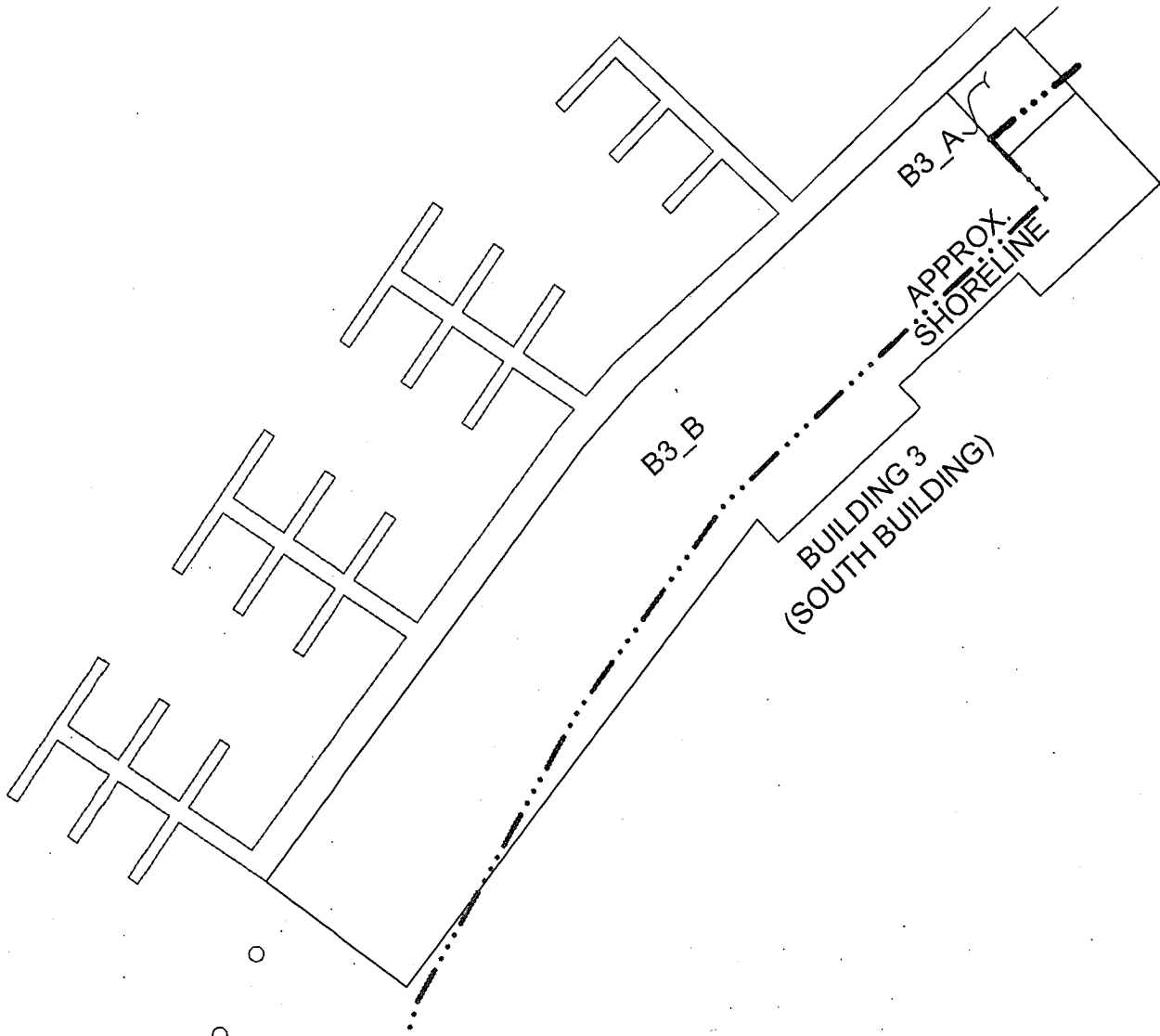
SAN JOAQUIN COUNTY



SITE

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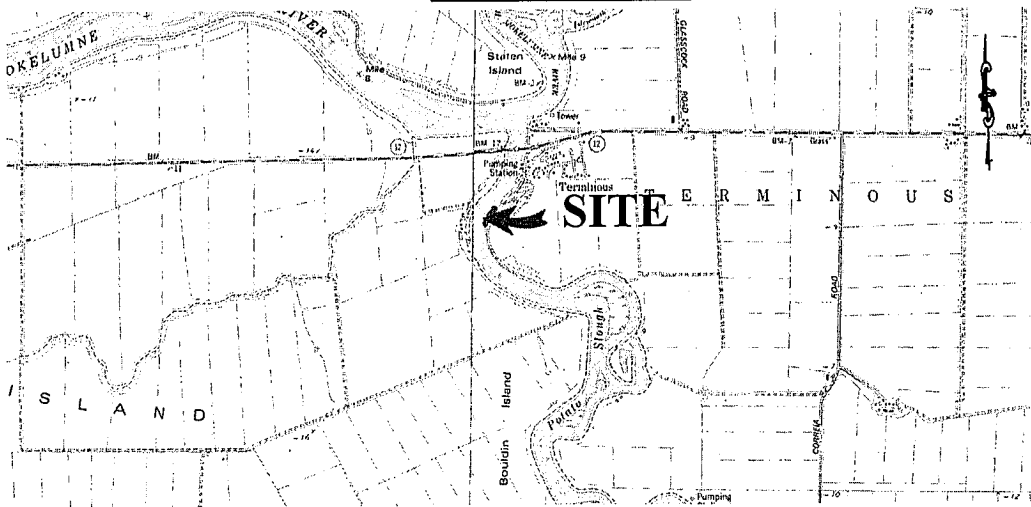
SCALE 1"=60'



14900 W. HIGHWAY 12, LODI

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B-3

PRC 4194.1
 STOCKTON DELTA
 RESORTS, LLC
 APNs 055-030-01 & 055-030-15
 GENERAL LEASE -
 COMMERCIAL USE
 SAN JOAQUIN COUNTY



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