

**PULLED**

**Minute Item  
68**

**09/13/07  
PRC 6855  
J. Frey**

**BRUNO'S ISLAND YACHT HARBOR, INC.  
(LESSEE)**

**Item 68 was removed from the agenda to be  
heard at a subsequent meeting.**

002498

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**CALENDAR ITEM**

**68**

A 15

09/13/07

S 8

WP 6855.1

V. Caldwell

J. Frey

**CONSIDERATION OF DEFAULT AND TERMINATION OF A GENERAL LEASE –  
COMMERCIAL USE**

**LESSEE:**

Bruno's Island Yacht Harbor, Inc.  
1200 W. Brannan Island Road  
Isleton, California 95641

**AREA, LAND TYPE, AND LOCATION:**

5.81 acres, more or less, of sovereign lands in Seven Mile Slough, near the town of Isleton, Sacramento County.

**AUTHORIZED USE:**

The continued use and maintenance of a commercial marina accommodating approximately 170 boats, including 148 berths and three accommodation docks, appurtenant facilities including a bridge and a boat repair facility; and potential dredging to allow safe navigation.

**LEASE TERM:**

35 years, beginning May 1, 1985.

**CONSIDERATION:**

Up to \$13,334 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease, to be paid semi-annually in a five year step-up payment plan, as follows:

- a. May 1, 2004 through April 30, 2005 a total amount of \$8,490; in semi-annual payments of \$4,245 each;
- b. May 1, 2005 through April 30, 2006 a total of \$9,600; in semi-annual payments of \$4,800 each;

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- c. May 1, 2006 through April 30, 2007 a total of \$10,700; in semi-annual payments of \$5,350 each;
- d. May 1, 2007 through April 30, 2008 a total of \$11,800; in semi-annual payments of \$5,900 each;
- e. May 1, 2008 through April 30, 2009 a total of \$13,334; in semi-annual payments of \$6,667 each; and
- f. from May 1, 2009 and thereafter a total annual rental of \$13,334, in semi-annual payments of \$6,667 each.

Dredging: No royalty will be charged in the event dredging is approved as the project will result in a public benefit, i.e. safe navigation. Dredged material may not be sold.

**SPECIFIC LEASE PROVISIONS:**

Liability Insurance:

\$1,000,000 combined single limit

Bond:

\$20,000

**OTHER PERTINENT INFORMATION:**

- 1. Lessee owns the uplands adjoining the lease premises.
- 2. On June 26, 1985, the Commission approved a 35-year lease to Bruno's Island Yacht Harbor, Inc., for operation of a commercial marina and bridge approach to Owl Island. In a negotiated settlement concerning a myriad of issues with the Lessee and the Lease, including, but not limited to, the actual lease acreage occupied by the existing facilities, the land values used in computing the annual rent, and back rent issues at that time, the Commission approved an Amendment to the Lease on August 17, 2004, which authorized the following:
  - a. The lease acreage increased from 3.493 acres to 5.18 acres in recognition of the actual area occupied by the existing facilities.
  - b. The annual rent increased from \$8,490 to \$13,334 to be paid semi-annually in a five year step-up program of beginning in the 2004-

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2005 lease year, and running through the 2008-2009 lease year and thereafter.

- c. Lessee agreed to pay \$25,000 as full payment of back rent over a five year period in annual payments of \$5,000 each.
  - d. The Surety Bond or other form of security increased from \$5,000 to \$20,000 and was to be paid in \$3,000 increments until it reached a maximum of \$20,000 on September 1, 2008.
3. On August 17, 2004, the Commission approved the execution of an Agreement and Consent to Encumbrancing of Lease whereby the Lessee was allowed to offer the Lease as security for a loan from Owens Financial Group, Inc. Under the terms of this Agreement, the lender is permitted to cure defaults of the Lease by the Lessee and to foreclose on the Lease.
  4. Since the August 17, 2004 Amendment, the Lessee has failed to perform under the obligations of the Lease and the Lease Amendment as follows:
    - a. **Back Rent as defined in the 2004 Lease Amendment:** Of the \$25,000 agreed on, the Lessee has only made one \$5,000 payment. The payments of \$5,000 each for the years May 1, 2005, May 1, 2006, and May 1, 2007, have not been paid. (The May 1, 2008 payment is not yet due.) Paragraph 4 of the 2004 Amendment allows the Commission to accelerate the collection of Back Rent without further demand or notice if Lessee conveys out any interest in the appurtenant property. Staff recently discovered grants of fractional interests in the appurtenant property to, among others, Bernette Kegel, Trustee of the Bernette Kegel Revocable Trust dated May 31, 1995, and to Pensco Trust Company Custodian FBO Christine Salmeri, and TRA Account Number SA1fm. In accordance with the rights granted by the Amendment, staff accelerated the remaining \$5,000 payment of Back Rent otherwise due on May 1, 2008. Therefore, the total Back Rent due is \$20,000, plus penalty and interest.
    - b. **Annual Rent as defined in the 2004 Lease Amendment:** The Lessee has failed to make a partial payment of \$555 on May 1, 2005; a partial payment of \$555 on November 1, 2005; a

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November 1, 2006 payment of \$5,350, and a May 1, 2007 payment of \$5,900. Therefore, a total of \$12,360, plus penalty and interest, is currently due.

- c. **Surety bond or other form of security:** Lessee submitted a Certificate of Deposit to the Commission in the amount of \$8,000 in 2004, but has failed to make the annual \$3,000 increases on September 1, 2005, September 1, 2006, and September 1, 2007.
- d. **Insurance:** A Certificate of Liability Insurance in the amount of \$1,000,000 has not been submitted.

The Lessee was contacted on a number of occasions concerning the above delinquencies, but failed to remedy them. On May 30, 2007, Commission staff mailed a Notice of Default of Lease to Mr. David Snodderly, President, Bruno's Island Yacht Harbor, Inc., setting forth the defaults to the Lease and requesting that they be cured. No remedy to the default was made. On June 20, 2007, another letter was sent to the Lessee again advising of the defaults and requesting information about the ownership of the appurtenant upland. In that letter, Commission staff invited the Lessee to attend a meeting at the Commission's offices on July 11, 2007, at which time it would be decided if enforcement action would be taken.

The Lessee met with Commission staff on July 11, 2007, indicated that a partial payment of \$10,000 would be made, and asked that the Commission staff not recommend termination of the Lease to the Commission and further requested that the staff provide an additional 90 days for it to cure the defaults. On July 13, 2007, Commission staff wrote to the Lessee and advised it would not be in the State's best interest to accept Lessee's offer because of the long history of defaults by the Lessee. The letter further stated that if the defaults were not cured by close of business on July 18, 2007, staff would recommend termination of the lease to the Commission and that a Notice of Termination would be served on the Lessee and Owens Financial Group, Inc.

On July 18, 2007, the Lessee owed the State \$27,360 in rent, \$1,368 in penalty and \$4,579.20 in interest. On July 18, 2007, the Lessee submitted a \$10,000 payment. Staff advised the Lessee in writing that the \$10,000 payment would be applied to outstanding penalty, interest and principal in

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accordance with the Commission's regulations and that interest would continue to accrue on all rental amounts remaining unpaid. The principal balance owing as of July 19, 2007 was \$23,307.20 with interest accruing at \$13.66 per day. These amounts do not include the \$5,000 accelerated payment for back rent due on May 1, 2008.

The Commission has received no further rental payments since July 18, 2007 and Lessee has not submitted the required increase in the Certificate of Deposit or a copy of the insurance certificate.

5. Section 4, Paragraph 11 of the Lease states that failure to pay rent in a timely manner, maintain a bond or other security device or insurance are defaults of the lease with no period for their cure. The remedies provided to the Commission under this paragraph include ejectment, termination of the lease, or allowance for cure of the defaults and continuation of the Lessee's occupancy.
6. Under the Agreement and Consent to Encumbrance the secured party lender, Owens Financial Group, has 60 days after receipt of a copy of a notice of termination to cure the Lessee's defaults and to acquire the Lease from the Lessee. Commission staff has been in contact with the lender and it indicates that it is willing to cure the Lessee's defaults.
7. Staff recommends termination of the Lease and ejectment of the Lessee because of the long history of default in rental payments, security instruments and liability insurance. Such action would include restoration of the Lease Premises to their original condition and removal of all improvements. Actual termination and ejectment would occur only if the secured party lender, Owens Financial Group, fails to cure the lease defaults within 60 days of receipt of a Notice of Termination.
8. 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.

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9. 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.
10. 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. Site and Location Map
- B. Land Description

**PERMIT STREAMLINING ACT DEADLINE:**

N/A

**RECOMMENDED ACTION:**

**CEQA FINDING:**

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.

**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:**

**IT IS RECOMMENDED THAT THE COMMISSION:**

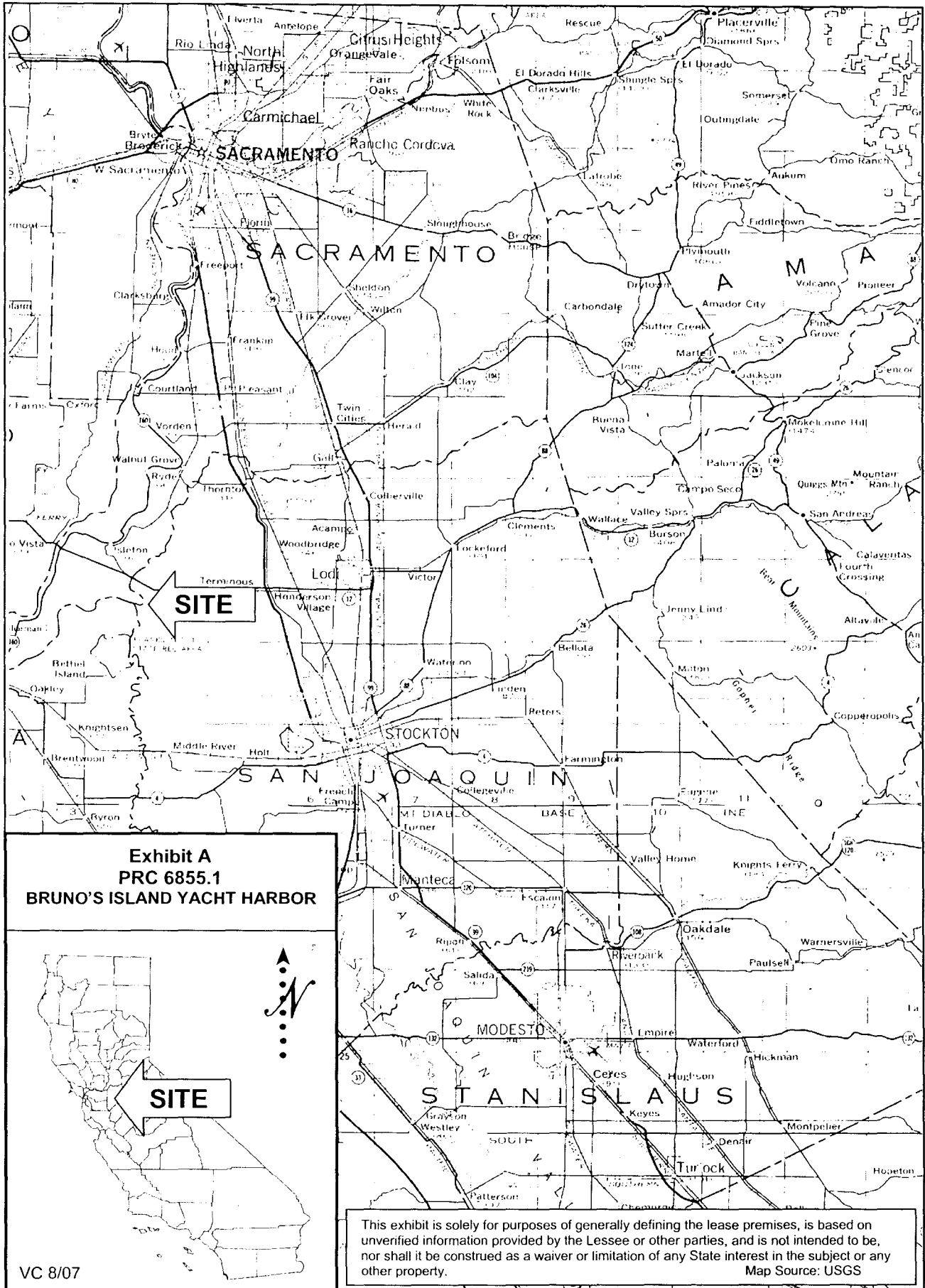
1. RATIFY STAFF'S FINDING THAT THE LESSEE, BRUNO'S ISLAND YACHT HARBOR, INC., IS IN DEFAULT OF ITS OBLIGATIONS UNDER LEASE NO. PRC 6855.1 FOR FAILURE

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TO: 1) PAY RENT IN THE PRINCIPAL AMOUNT OF \$27,360 PLUS PENALTY AND INTEREST, LESS A PAYMENT OF \$10,000 ON JULY 18, 2007; 2) PAY THE INCREASED AMOUNTS TO MEET THE REQUIREMENTS FOR THE SURETY BOND OR OTHER SECURITY; AND 3) PROVIDE A CERTIFICATE OF INSURANCE EVIDENCING CURRENT INSURANCE ON THE LEASE PREMISES; ALL AS REQUIRED BY THE LEASE AND THE 2004 AMENDMENT TO THE LEASE.

2. AUTHORIZE ACCELERATION OF THE LAST PAYMENT OF \$5,000 IN BACK RENT DUE ON MAY 1, 2008 AS DESCRIBED IN THE AUGUST 17, 2004 AMENDMENT TO THE LEASE, BECAUSE LESSEE HAS GRANTED INTERESTS IN THE APPURTENANT PROPERTY.
3. AUTHORIZE STAFF TO: 1) ISSUE A NOTICE OF TERMINATION AND EJECTMENT TO BRUNO'S ISLAND YACHT HARBOR, INC., BECAUSE OF THE ABOVE RECITED DEFAULTS; 2) PROVIDE NOTICE TO THE SECURED PARTY LENDER, OWENS FINANCIAL GROUP, INC., OF THE TERMINATION AND EJECTMENT; AND 3) REQUIRE RESTORATION OF THE LEASE PREMISES TO THEIR NATURAL CONDITION AND THE REMOVAL OF ALL IMPROVEMENTS; AND 4) TERMINATE LEASE NO. PRC 6855.1 ISSUED TO BRUNO'S ISLAND YACHT HARBOR, INC., AND EJECT BRUNO'S ISLAND YACHT HARBOR, INC., IMMEDIATELY THEREAFTER PROVIDED THAT OWENS FINANCIAL GROUP, INC., HAS NOT CURED THE DEFAULTS OF THE LEASE COVENANTS WITHIN 60 DAYS OF RECEIPT OF THE NOTICE OF TERMINATION.
4. AUTHORIZE STAFF OF THE STATE LANDS COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS NECESSARY, INCLUDING LITIGATION, TO TERMINATE THE LEASE AND EJECT BRUNO'S YACHT HARBOR, INC., AND TO REMOVE THE IMPROVEMENTS FROM THE LEASE PREMISES PROVIDED OWENS FINANCIAL GROUP HAS NOT CURED THE DEFAULTS OF THE LEASE COVENANTS.





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**LAND DESCRIPTION  
OF OWL ISLAND SURVEY 1990**

Four parcels of tide and submerged land in the state-owned bed of Seven Mile Slough, Sacramento County, California, adjoining Owl Island in projected fractional Sections 10 and 11, T 3 N, R 3 E, MDM, said parcels being described as follows:

Parcel 1

Beginning at a point that bears S 03° 22' 44" E, 631.19 feet from a concrete monument with a California State Lands Commission brass cap stamped "BRUNO 1969" having coordinates of X = 2,111,067.87 and Y = 163,381.98, said monument is shown on that map entitled "Record of Survey of Owl Island", October 6, 1969, filed in Book 27 of Surveys at page 9, Official Records of Sacramento County. Said Point of Beginning is designated MHW 1 on said map, being on the line described in Boundary Line Agreement 114 (BLA 114), recorded October 14, 1969, in Book 69-10-14 at Page 132, Official Records of Sacramento County; thence along said BLA 114 the following seven (7) courses:

- |     |                 |   |
|-----|-----------------|---|
| 1.  | N 13° 44' 40" E | 92.34 feet to MHW 51  |
| 2.  | N 01° 44' 14" E | 85.76 feet to MHW 50  |
| 3.  | N 19° 28' 14" W | 81.18 feet to MHW 49  |
| 4.  | N 35° 35' 24" W | 217.58 feet to MHW 46   |
| 5.  | N 51° 38' 18" W | 200.44 feet to MHW 44   |
| 6.  | N 60° 17' 58" W | 180.86 feet to MHW 42   |
| 7.  | N 58° 32' 19" W | 853.62 feet to a point on the BLA line;<br>thence leaving said BLA 114 line and running into Seven Mile Slough the<br>following 35 courses: |
| 8.  | N 30° 00' 06" E | 93.52 feet;   |
| 9.  | S 55° 24' 52" E | 143.24 feet;  |
| 10. | S 24° 23' 54" E | 19.06 feet;   |
| 11. | S 55° 45' 53" E | 325.35 feet;  |
| 12. | S 22° 23' 15" E | 31.02 feet;   |
| 13. | S 59° 22' 55" E | 81.77 feet;   |
| 14. | S 51° 47' 40" E | 24.21 feet;   |
| 15. | S 60° 02' 56" E | 359.18 feet;  |
| 16. | S 56° 00' 48" E | 24.60 feet;   |
| 17. | S 55° 29' 20" E | 195.49 feet;  |
| 18. | S 48° 07' 30" E | 18.06 feet;   |
| 19. | S 39° 08' 45" E | 142.46 feet;  |
| 20. | S 48° 17' 16" E | 25.00 feet;   |

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- |     |   |   |
|-----|---|---|
| 21. | S 53° 00' 07" E   | 22.26 feet;                                   |
| 22. | S 30° 21' 12" E   | 107.44 feet;                                  |
| 23. | S 17° 36' 19" E   | 27.60 feet;                                   |
| 24. | S 05° 40' 36" E   | 115.49 feet;                                  |
| 25. | S 10° 38' 57" W   | 24.53 feet;                                   |
| 26. | S 04° 21' 04" W   | 94.71 feet;                                   |
| 27. | N 85° 35' 40" W   | 17.22 feet;                                   |
| 28. | S 14° 42' 26" E   | 129.54 feet;                                  |
| 29. | S 76° 11' 36" w   | 93.20 feet;                                   |
| 30. | N 14° 42' 16" W   | 111.32 feet;                                  |
| 31. | N 45° 57' 46" W   | 26.38 feet;                                   |
| 32. | N 53° 43' 11" W   | 281.35 feet;                                  |
| 33. | N 45° 56' 23" W   | 105.25 feet;                                  |
| 34. | N 41° 33' 19" W   | 245.58 feet;                                  |
| 35. | N 40° 09' 26" W   | 162.76 feet;                                  |
| 36. | N 49° 50' 43" W   | 131.59 feet;                                  |
| 37. | N 54° 20' 01" W   | 209.77 feet;                                  |
| 38. | N 54° 53' 01" W   | 222.98 feet;                                  |
| 39. | S 52° 30' 39" W   | 60.52 feet;                                   |
| 40. | N 53° 13' 16" W   | 163.96 feet;                                  |
| 41. | N 48° 26' 23" W   | 10.94 feet;                                   |
| 42. | N 30° 37' 48" E   | 88.21 feet to a point on the BLA 114 line;    |
|     | thence along said BLA 114 line the following 4 courses: |   |
| 43. | S 58° 32' 19" E   | 682.45 feet to MHW 10;                        |
| 44. | S 39° 52' 58" E   | 495.71 feet to MHW 5;                         |
| 45. | S 46° 51' 16" E   | 225.28 feet to MHW 3;                         |
| 46. | S 55° 01' 25" E   | 192.67 feet (S 54° 57' 39" E, 192.50 feet per |
|     | B.L.A. 114) to MHW 1, the Point of Beginning            |   |

Parcel 1 containing 4.939 acres, more or less.

Parcel 2

Beginning at a point bearing N 58° 32' 19" W, 853.62 feet from that point designated as MHW 42 on a map entitled "Record of Survey of Owl Island", filed October 6, 1969, in Book 27 of Surveys at Page 9, Official Records of Sacramento County, thence along said bearing N 58° 32' 19" W, 30.00 feet; thence N 30° 00' 06" E, 180.00 feet; thence S 58° 32' 19" E, 30.00 feet; thence S 30° 00' 06" W, 180.00 feet, to the Point of Beginning.

Parcel 2 containing 0.124 acres, more or less.

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Parcel 3

Beginning at a point bearing N 58° 32' 19" W, 682.45 feet from that point designated as MHW 10 on a map entitled "Record of Survey of Owl Island", filed October 6, 1969, in Book 27 of Surveys at Page 9, Official Records of Sacramento County; thence leaving said BLA 114 line and running into Seven Mile Slough the following 12 courses:

1. S 30° 37' 48" W 88.21 feet;
2. N 48° 26' 22" W 34.00 feet;
3. N 58° 52' 55" W 43.14 feet;
4. N 48° 45' 31" W 20.88 feet;
5. N 58° 07' 26" W 88.04 feet;
6. N 17° 50' 08" E 18.20 feet;
7. N 03° 52' 02" E 34.94 feet;
8. N 59° 47' 10" W 55.92 feet;
9. N 80° 26' 48" W 83.32 feet;
10. N 00° 59' 02" E 38.51 feet; to a point on the BLA 114 line;  
thence along said BLA 114 line the following two courses:
11. S 73° 46' 41" E 109.47 feet;
12. S 58° 32' 19" E 251.54 feet to the Point of Beginning.

Parcel 3 containing 0.473 acres, more or less.

Parcel 4

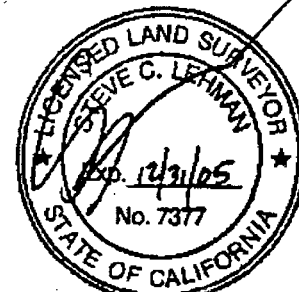
Beginning at a point bearing N 58° 32' 19" W, 883.62 feet from that point designated as MHW 42 on a map entitled "Record of Survey of Owl Island, filed October 6, 1969 in Book 217 of Surveys at page 9, Official Records of Sacramento County; thence leaving said BLA 114 line and running into Seven Mile Slough the following 7 courses:

1. N 30° 00' 06" E 50.00 feet;
2. N 58° 32' 20" W 253.13 feet;
3. S 30° 12' 50" W 50.21 feet;  
to a point on the BLA 114 line; thence along said BLA 114 line the following 2 courses:
4. S 58° 32' 20" E 229.13 feet to MHW 34
5. S 59° 02' 18" E 24.18 feet (S 58° 32' 19" E, 24.19 feet per B.L.A. 114) to the Point of Beginning.

Parcel 4 containing 0.292 acres, more or less.

Total of all the parcels = 5.83 acres.

END OF DESCRIPTION



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