

**STAFF REPORT  
C38**

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S 5

06/21/18  
PRC 7147.1  
D. Tutov

**GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE**

**APPLICANT:**

Jessica D. Flores and Mitchell Flores

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Filled and unfilled sovereign land in the historic bed of San Joaquin River at Atherton Cove, adjacent to 2308 Virginia Lane, near Stockton, San Joaquin County.

*AUTHORIZED USE:*

Continued use and maintenance of an existing boat dock, two ramps, covered boathouse, cantilevered deck, pilings, and bulkhead previously authorized by the Commission; and filled land not previously authorized by the Commission.

*LEASE TERM:*

10 years, beginning February 23, 2018.

*CONSIDERATION:*

**Boat dock, two ramps, covered boathouse, cantilevered deck, filled land, and pilings:** \$1,841 per year, with an annual Consumer Price Index adjustment.

**Bulkhead:** 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:*

Liability insurance in an amount no less than \$1,000,000 per occurrence.

**STAFF ANALYSIS AND RECOMMENDATION:**

**Authority:**

Public Resources Code sections 6005, 6216, 6301, 6321, 6321.2, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

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**Public Trust and State's Best Interests Analysis:**

On September 13, 2007, the Commission authorized a 10-year General Lease - Recreational Use to David G. Gifford, Trustee of the David G. Gifford 2006 Revocable Trust, dated December 4, 2006 ([Item C38, September 13, 2007](#)). That lease expired on September 12, 2017. On February 23, 2018, the upland was deeded to Jessica D. Flores and Mitchell Flores. The Applicant is now applying for a General Lease – Recreational and Protective Structure Use for an existing boat dock, two ramps, covered boathouse, cantilevered deck, pilings, bulkhead and filled land. The subject improvements are privately owned and maintained. The adjacent upland parcel is privately owned and developed with a residence.

The existing boat dock, covered boathouse, two ramps, and pilings are for the docking and mooring of boats. Recreational boating and fishing are water-dependent uses and generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating and fishing facilities as an authorized use of Public Trust lands (Pub. Resources Code, § 6503.5). The filled land, cantilevered deck and bulkhead do not substantially interfere with the needs and values of the Public Trust at this location, at this time, and for the foreseeable future, as defined by the term of the proposed non-exclusive lease. The bulkhead will maintain and improve the integrity of the river channel, which will help protect the Public Trust resource of the river for recreational and navigational purposes by the public.

The subject facilities have existed for more than 25 years at this location. During a boundary analysis of the historic location of the San Joaquin River at Atherton Cove, staff determined that the historic bank of the river extended landward of the existing bulkhead. Therefore, filled land that was not part of the previous lease and not previously authorized by the Commission is being included in the lease. The proposed lease does not alienate the State's fee simple interest, nor does it permanently impair public rights. The proposed lease also includes certain provisions protecting the public use of the proposed lease area, including a limited lease term of 10 years and a non-exclusive use provision. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition.

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.

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### **Climate Change:**

Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The lease area is located on the San Joaquin River, which is a tidally influenced site vulnerable to flooding at current sea levels. The facilities associated with this lease area are noted above.

This area will also be at a higher risk of flood exposure given future projection scenarios of sea-level rise: the region could see up to 1 foot of sea-level rise (from year 2000 levels) by 2030, 2 feet by 2050, and possibly more than 5 feet by 2100 (National Research Council 2012). Rising sea levels can lead to more frequent flood inundation in low lying areas and larger tidal events. In addition, as stated in *Safeguarding California* (California Natural Resources Agency 2014), climate change is projected to increase the frequency and severity of natural disasters related to flooding and storms (especially when coupled with sea-level rise). In tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris. Conversely, prolonged droughts could dramatically reduce river flow and water levels, leading to loss of public access and navigability. Climate change and sea-level rise will further influence coastal and riverine areas by changing erosion and sedimentation rates. In rivers and tidally influenced waterways, flooding and storm flow, as well as runoff, will likely increase scour and decrease bank stability at a faster rate.

The combination of these projected conditions increases the likelihood of damage and could affect access to structures within the lease premises during the term of the lease. The boat dock, two ramps, and covered boat house are adaptable to variable water levels, but may require more frequent maintenance to avoid dislodgement and ensure continued function during and after storm seasons. The cantilevered deck, bulkhead, and pilings may need reinforcement and possibly replacement to withstand higher levels of flood exposure. Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are located in an area that may be subject to effects of climate change, including sea-level rise.

### **Conclusion:**

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time,

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and for the foreseeable term of the proposed lease; and is in the best interests of the State.

**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.
2. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (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.

**EXHIBITS:**

- A. Land Description
- B. Site and Location Map

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

Find that the activity 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 will not substantially interfere with 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 issuance of a General Lease – Recreational and Protective Structure Use to Jessica D. Flores and Mitchell Flores beginning February 23, 2018, for a term of 10 years, for the use and maintenance of an existing boat dock, two ramps, covered boathouse, cantilevered deck, pilings, and bulkhead previously authorized by the Commission and filled

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land not previously authorized by the Commission, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration for the boat dock, two ramps, covered boathouse, cantilevered deck, filled land, and pilings: \$1,841, with an annual Consumer Price Index adjustment; consideration for the bulkhead: 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; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**PRC 7147.1**

**LAND DESCRIPTION**

A parcel of tide and submerged land, whether filled or unfilled, situate in the bed of the Atherton Cove (formerly the bed of the San Joaquin River), lying adjacent to Swamp and Overflowed Land Survey 443, patented December 19, 1867, County of San Joaquin County, State of California and more particularly described as follows:

All those lands underlying an existing three slip u-shaped dock, seven (7) pilings, three (3) unattached pilings, two ramps, covered boat house, cantilevered deck, bulkhead and fill area lying adjacent to and southeasterly of those lands as described in "Exhibit A" of that Individual Grant Deed, recorded December 07, 2005 in Document Number 2006-256226 in Official Records of said County.

TOGETHER any applicable impact area(s).

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the right bank of the historic San Joaquin River.

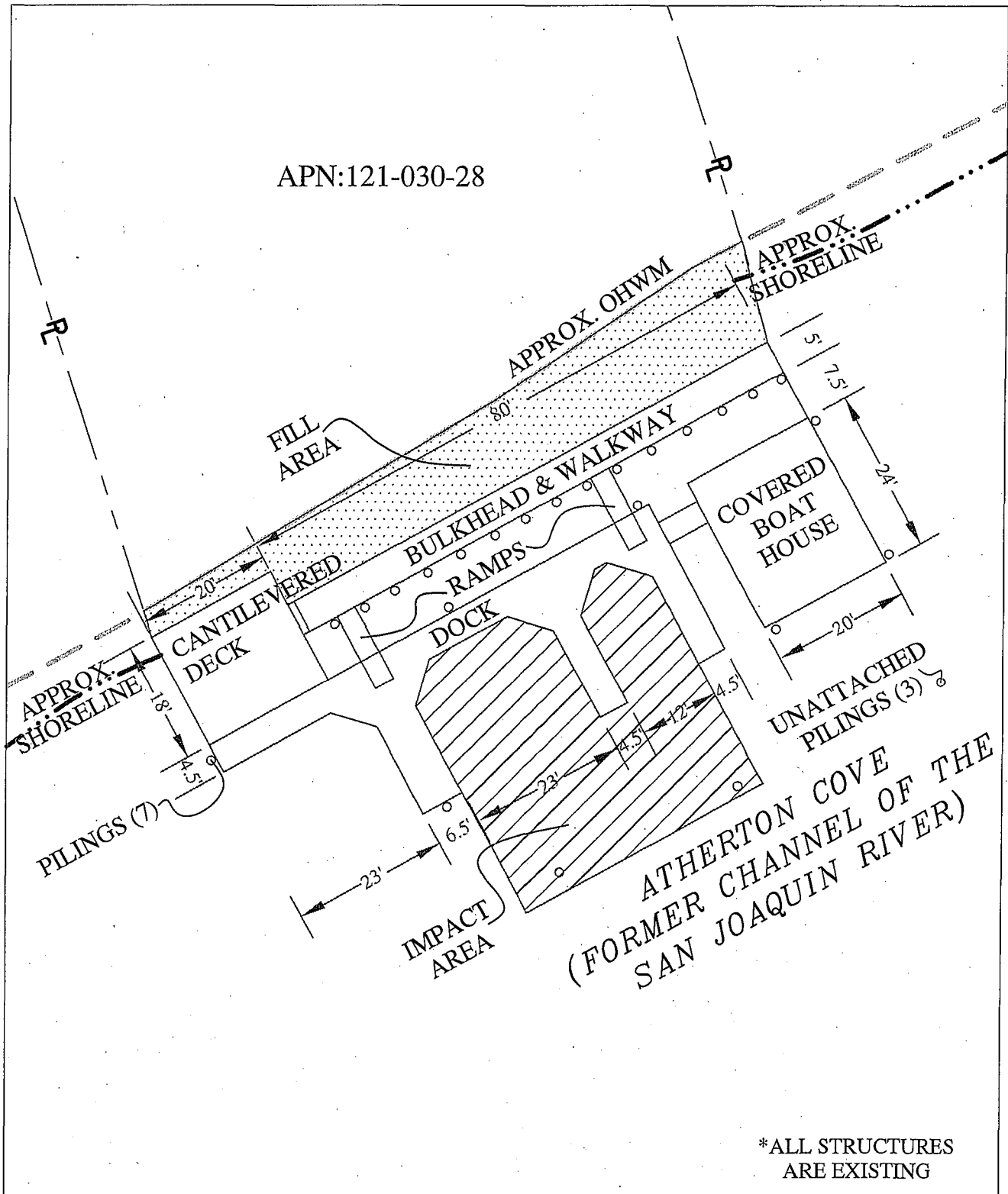
Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

PREPARED 4/09/18 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



APN:121-030-28



ATHERTON COVE  
(FORMER CHANNEL OF THE  
SAN JOAQUIN RIVER)

\*ALL STRUCTURES  
ARE EXISTING

### EXHIBIT A

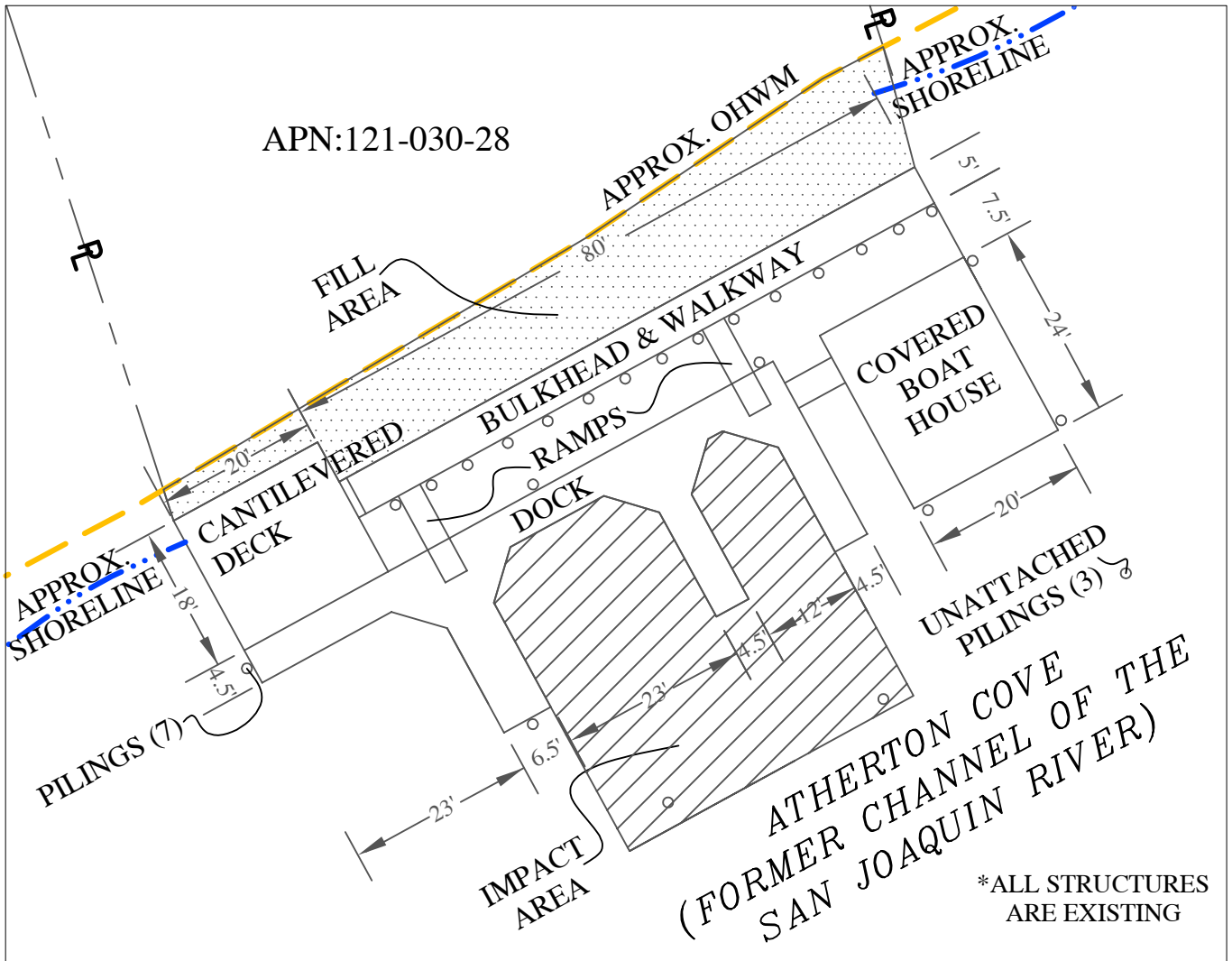
LAND DESCRIPTION PLAT  
PRC 7147.1, FLORES  
SAN JOAQUIN COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

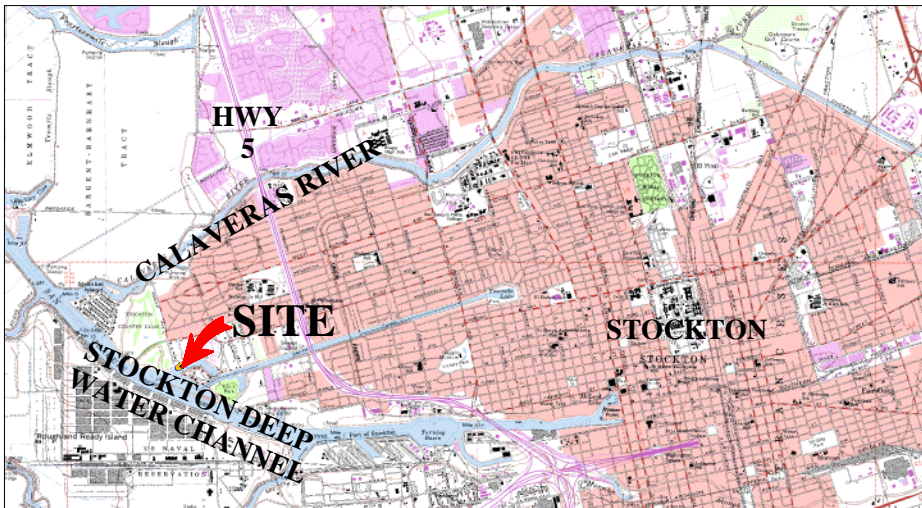
# SITE



2308 Virginia Lane, Atherton Cove

NO SCALE

# LOCATION



MAP SOURCE: USGS QUAD

## Exhibit B

PRC 7147.1  
 FLORES  
 APN:121-030-28  
 GENERAL LEASE -  
 RECREATIONAL & PROTECTIVE  
 STRUCTURE 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.