

No fee for recordation  
Govt. Code Sec. 27383

RECORD AT REQUEST OF AND RETURN TO:  
San Joaquin Area Flood Control Agency  
Attention: Executive Director  
425 N. El Dorado St.  
Stockton, CA 95202

NO COUNTY TRANSFER TAX DUE  
PER GOV'T CODE SEC. 11922

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE SAN JOAQUIN AREA FLOOD CONTROL AGENCY AND  
THE CITY OF STOCKTON  
REGARDING THE SMITH CANAL GATE PROJECT**

This Memorandum of Understanding (this “**MOU**”) is by and between the SAN JOAQUIN AREA FLOOD CONTROL AGENCY (“**SJAFCA**” or “**Grantee**”) and the CITY OF STOCKTON, CALIFORNIA (the “**City**” or “**Grantor**”). SJAFCA and Stockton, and each of their respective successors and assigns, are sometimes hereinafter referred to individually as “**Party**” and collectively as “**Parties**.”

**R E C I T A L S**

The San Joaquin Area Flood Control Agency (SJAFCA), a Joint Powers authority between the Cities of Stockton, Lathrop, and Manteca, San Joaquin County, and San Joaquin County Flood Control and Water Conservation District is constructing a flood control project at the mouth of Smith Canal to remove approximately 5,000 parcels in the Smith Canal area from the FEMA 100-year floodplain. In addition, the project will reduce the risk of flooding to an additional 3,000 parcels that FEMA is proposing to remap in the 100-year floodplain.

Completion of the project will end Federal requirements for mandatory flood insurance (properties with federally backed mortgages) and building restrictions (all properties) on this area. In addition, this project will contribute toward the ultimate 200-year flood protection in combination with other area projects and in compliance with State law (SB 5).

The Project will consist primarily of a fixed wall, filled with granular material, that would extend approximately 800 feet from the north tip of Dad’s Point to the right bank of the San Joaquin River at the Stockton Golf and Country Club, and would feature a 50-foot-wide gate structure (Exhibit 1). During high flow and tide events, the gate would isolate Atherton Cove and Smith Canal from the San Joaquin River allowing existing levees to function as a secondary flood risk-reduction measure. The gate would be closed only as needed and for flood control, remaining open to allow for tidal movement, navigation, and recreation on Smith Canal.

SJAFCA approved construction of the Smith Canal Gate Project (the “**Project**”), which is located on several properties including Dad's Point, which is partially owned by the City and operated as a park (the “**Park**”), as depicted on Exhibit 2 attached hereto (the “**Joint Use Area**”);

The City will grant to SJAFCA and the Sacramento and San Joaquin Drainage District an non-exclusive easement over, under and across all or a portion of the Joint Use Area (the “**Access and Permanent Easement Deed**”) for the purposes of constructing, inspecting, operating, and maintaining the Project and Joint Use Area. The easement will be recorded in the Official Records of San Joaquin County;

SJAFCA will grant non-exclusive access rights to all or a portion of the Joint Use Area to the San Joaquin County Flood Control and Water Conservation District for the purposes of inspecting, operating, and maintaining the Project

pursuant to that certain unrecorded Joint Use Agreement dated \_\_\_\_\_, 202\_\_ by and between SJAFCA and the San Joaquin County Flood Control and Water Conservation District;

The Parties desire to memorialize the rights and obligations of the Parties in connection with the use, inspection, maintenance and repair of the Joint Use Area in connection with the Project; and

NOW THEREFORE, for and in consideration of the covenants and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grant of Use. The City hereby will grant an easement deed to SJAFCA and the Sacramento San Joaquin Drainage District for as long as the flood control structure is needed, a non-exclusive right to use the Joint Use Area (Exhibit 2) for the purposes described below. Said right of joint use shall be limited to those properties identified in Exhibit 2, and the City makes no warranty, express or implied, as to rights other than those set forth in this MOU. Subject to the conditions and restrictions contained herein,

2. Operation, Maintenance and Communication.

(a) In their use of the Joint Use Area, as allowed in the easement, SJAFCA agree to inspect, operate and maintain the portion of the Project within the Joint Use Area in a manner that allows the Park/open space area to be operated as a park or open space.

(b) City hereby grants permission to Grantee to blockade the Easement Area, as defined in the Easement Deed, for construction activities during the period between May 17, 2020, through November 30, 2022, and from time to time as is necessary to inspect, operate or maintain the Smith Canal Gate. For non-emergency work requiring the use of heavy equipment or barricading or restricting access to the Park, Grantor and Grantee further agree to provide written notice to the other Party's designated representative at least ten (10) business days prior to commencement of such work, in order to minimize public impacts.

(c) SJAFCA agrees to conduct all routine Operation and Maintenance (O&M) activities needed for the Joint Use Area.

3. SJAFCA acknowledges that the City previously made improvements to Dad's Point (a peninsula-like area located on the western side of Louis Park) for recreational purposes pursuant to a Land and Water Conservation Fund Agreement (LWCFA) between the City and the California Department of Parks and Recreation (CDPR). Accordingly, the land within Dad's Point improved by the City is subject to protection under Section 6(f)(3) of the Land and Water Conservation Fund Act and shall be retained and used for public outdoor recreation in perpetuity. Therefore, SJAFCA acknowledges that the Project and subsequent future improvement shall comply with the LWCFA. SJAFCA agrees to review and remedy requests from the CDPR or National Park System in connection the Project, subsequent future improvements, and temporary blockade of Dad's Point during the construction of the Project.

4. A Temporary Construction Easement/Staging Area (Exhibit 3) is provided for SJAFCA to be used for equipment, material storage, office trailer(s), or other construction related function. SJAFCA shall document the condition of the easement area prior to use and provide the same to the City. The area shall be placed in an equal or better condition upon completion of the Project.

The City operates and maintains a dual ramp boat launch facility with related docks at the eastern end of the Dad's Point. City grants permission to Grantee to temporarily close Louis Park Dad's Point, boat launch, and the entire parking lot during the construction of the SJAFCA project (May 2021- November 30, 2022)

SJAFCA Agrees to reimburse the City \$35,000 annually to cover i) loss of revenue related to the temporary suspension of ramp fees, and ii) City expenses related to the additional operations and maintenance, security, and other required services at the Morelli ramp needed to address the additional influx of boat ramp users from Louis Park boat ramp. Payment to the City shall be made within 30 days of May 15, 2021, for the first year and within 30 days of May 15, 2022,

for the second year, with the second year being prorated to coincide with the term of this agreement. SJAFCA payments shall be deposited to account No.: 6050-417-447002-640-000-60-00-000-000. The term of this agreement is May 15, 2021, through November 30, 2022, which coincides with the construction of the Smith Canal Gate project improvements on Dad's Point. Should the agreement be extended beyond November 30, 2022, SJAFCA will compensate the City on a prorated basis based on the additional months needed to safely open the ramp.

5. Indemnity.

(a) SJAFCA, including, but not limited to, its agents, officers, representatives, employees and all of their respective successors and assigns, shall not be responsible for any damage or liability occurring by reason of any act or omission by the City, or any of its agents, contractors, successors and assigns pursuant to this Agreement. It is also understood and agreed that pursuant to Section 895.4 of the Government Code, the City shall indemnify and hold SJAFCA, its agents, officers, representatives, employees and all of their respective successors and assigns, harmless from any damage or liability occurring by reason of any act or omission by the City arising under this Agreement.

(b) The City, including, but not limited to, its officers and employees, shall not be responsible for any damage or liability occurring by reason of any act or omission by SJAFCA, or any of its agents, contractors, successors and assigns pursuant to this Agreement. It is also understood and agreed that pursuant to Section 895.4 of the Government Code that SJAFCA shall indemnify and hold the City, its officers and employees, harmless from any damage or liability occurring by reason of any act or omission by SJAFCA arising under this Agreement.

6. General Provisions.

(a) Entire Agreement. Except as expressly set forth in this Agreement, no easements, rights or licenses with respect to the land or any real property affected hereby shall be acquired by any Party hereto, by implication or otherwise. This Agreement may only be amended or modified with the written consent of the Parties hereto or their successors or assigns.

(b) Covenants Run with the Land; Binding on Successors and Assigns. This Agreement and the rights and obligations of the Parties hereunder shall constitute covenants which run with the land and shall be binding on and inure to the benefit of the Parties and their respective successors, assigns and legal representatives.

(c) Interpretation. The headings, captions and titles contained herein are inserted solely for convenience and shall not be used in construing or interpreting this Agreement. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

(d) Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

(e) Notices. Any notice or other communication to any party given under this Agreement will be effective only if in writing delivered to whichever of the following addresses is applicable:

<u>If to the City:</u>	City of Stockton Attention: City Manager 425 N. El Dorado St. Stockton, CA 95202
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If to SJAFCA: San Joaquin Area Flood Control Agency  
Attention: Executive Director  
22 E. Weber Ave. Room 301  
Stockton, CA 95202

or to such different address as to which notice is given in the manner specified in this Section 6(e) and actually received at the address of the addressee provided for in this Section 6(e). Any notice or other communication required or permitted to be given will be deemed to have been received three days after deposit in any U.S. Postal Service post office box, postage prepaid, addressed as set forth above. Any notice or other communication delivered by other means will be deemed received only upon delivery to the address of the addressee provided for in this Section 6(e) or rejection of delivery at such address

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

CITY OF STOCKTON

SAN JOAQUIN AREA FLOOD CONTROL DISTRICT

By: \_\_\_\_\_  
HARRY BLACK  
CITY MANAGER

By: \_\_\_\_\_  
CHRIS ELIAS  
EXECUTIVE DIRECTOR

ATTEST:

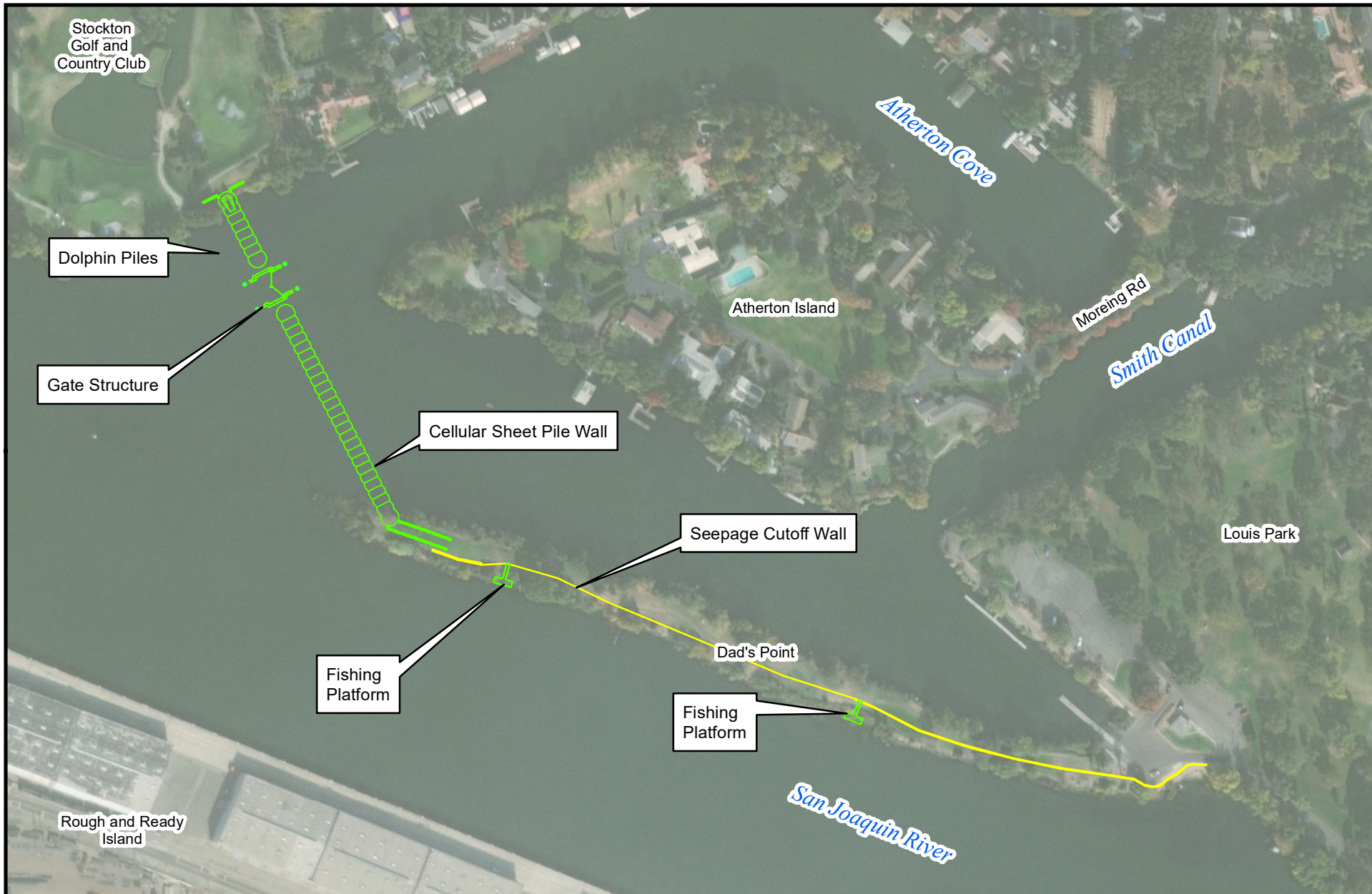
APPROVED AS TO FORM:

By: \_\_\_\_\_  
ELIZA GARZA  
CITY CLERK

By: \_\_\_\_\_  
SCOTT L. SHAPIRO  
AGENCY COUNSEL

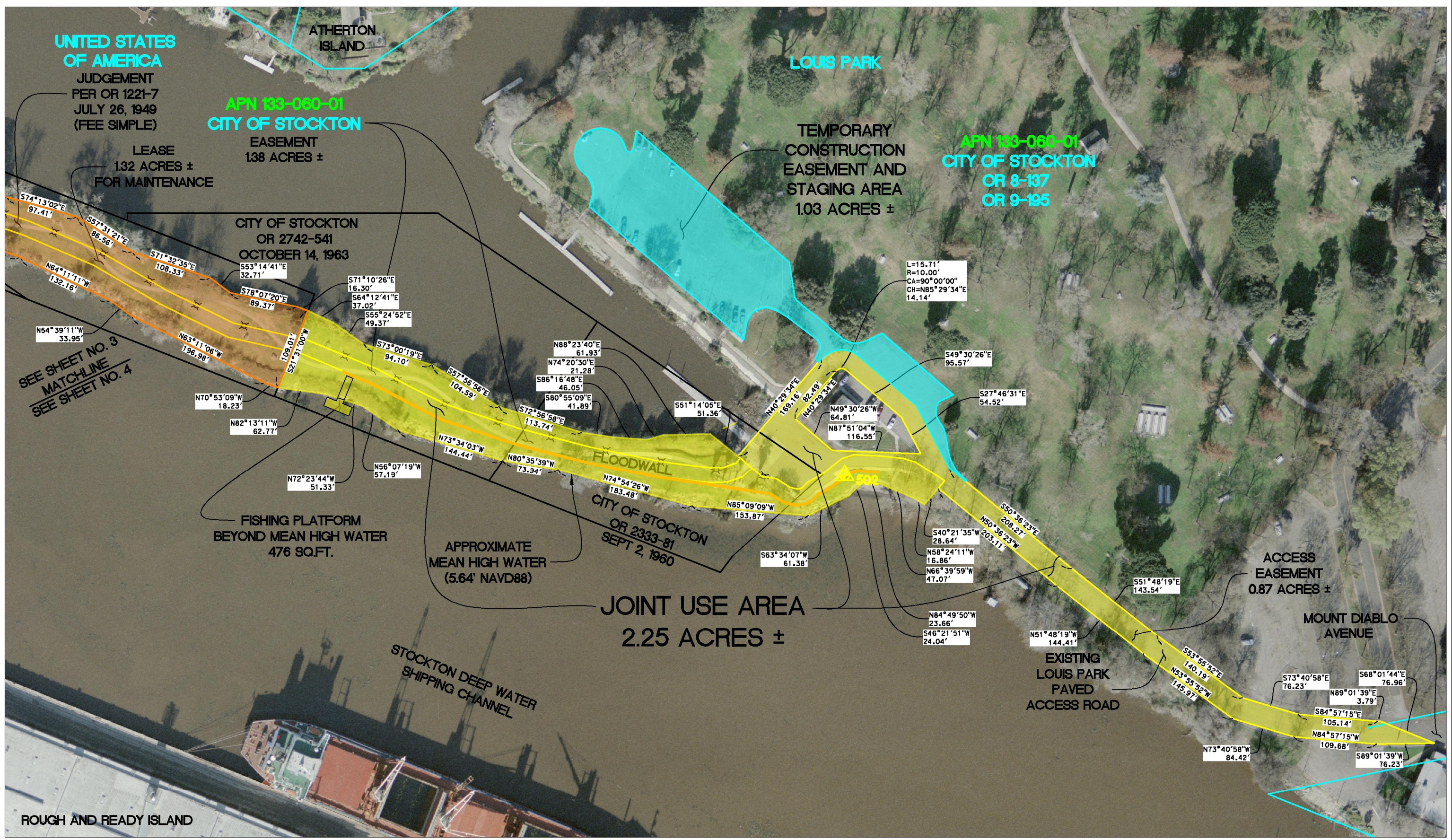
APPROVED AS TO FORM:


By: \_\_\_\_\_  
JOHN M. LUEBBERKE  
CITY ATTORNEY




<p><b>PETERSON . BRUSTAD . INC</b> ENGINEERING . CONSULTING</p> <p>80 Blue Ravine Road, Suite 280 Folsom, CA 95630</p> <p>Phone: (916) 608-2212 Fax: (916) 608-2232</p>	<p>N</p>	<p>0 150 300 Feet</p>	<p>San Joaquin Area Flood Control Agency</p>	
			<p><b>Project Overview</b></p>	

FILE SPEC: P:\2091\_SJAFCAL\_ID\040063\_Smith\_Canal\_Gate\_Final\_Design\04\_Survey\300\_Boundary\preliminary\SJAFCAL Exhibits\Real Estate Plan - Smith Canal Gate Impacts COS (February 2021).dwg  
PLOT DATE: Feb 19, 2021 10:41am






San Joaquin Area FLOOD CONTROL Agency



PETERSON . BRUSTAD . INC  
ENGINEERING . CONSULTING



NORTH ORIENTATION

PROJECT ENGINEER


**PRELIMINARY NOT FOR CONSTRUCTION**

NO.	DESCRIPTION	DATE	APPR.

DESIGN BY	BAS
DRAWN BY	BAS
CHECK BY	KFN
HORIZONTAL DATUM	CCS83, ZONE 3
VERTICAL DATUM	NAVD88

DRAWING SCALE  
1" = 60'

ORIGINAL DRAWING SCALE  
0 1/2 1"



KJELDEN SINNOCK NEUDECK  
CIVIL ENGINEERS & LAND SURVEYORS  
www.ksninc.com

711 N Pershing Avenue  
Stockton, CA 95203  
209-946-0268

1550 Harbor Drive, Suite 212  
West Sacramento, CA 95691  
916-403-5900

SAN JOAQUIN COUNTY AREA FLOOD CONTROL AGENCY  
SMITH CANAL GATE PROJECT  
STOCKTON, CALIFORNIA

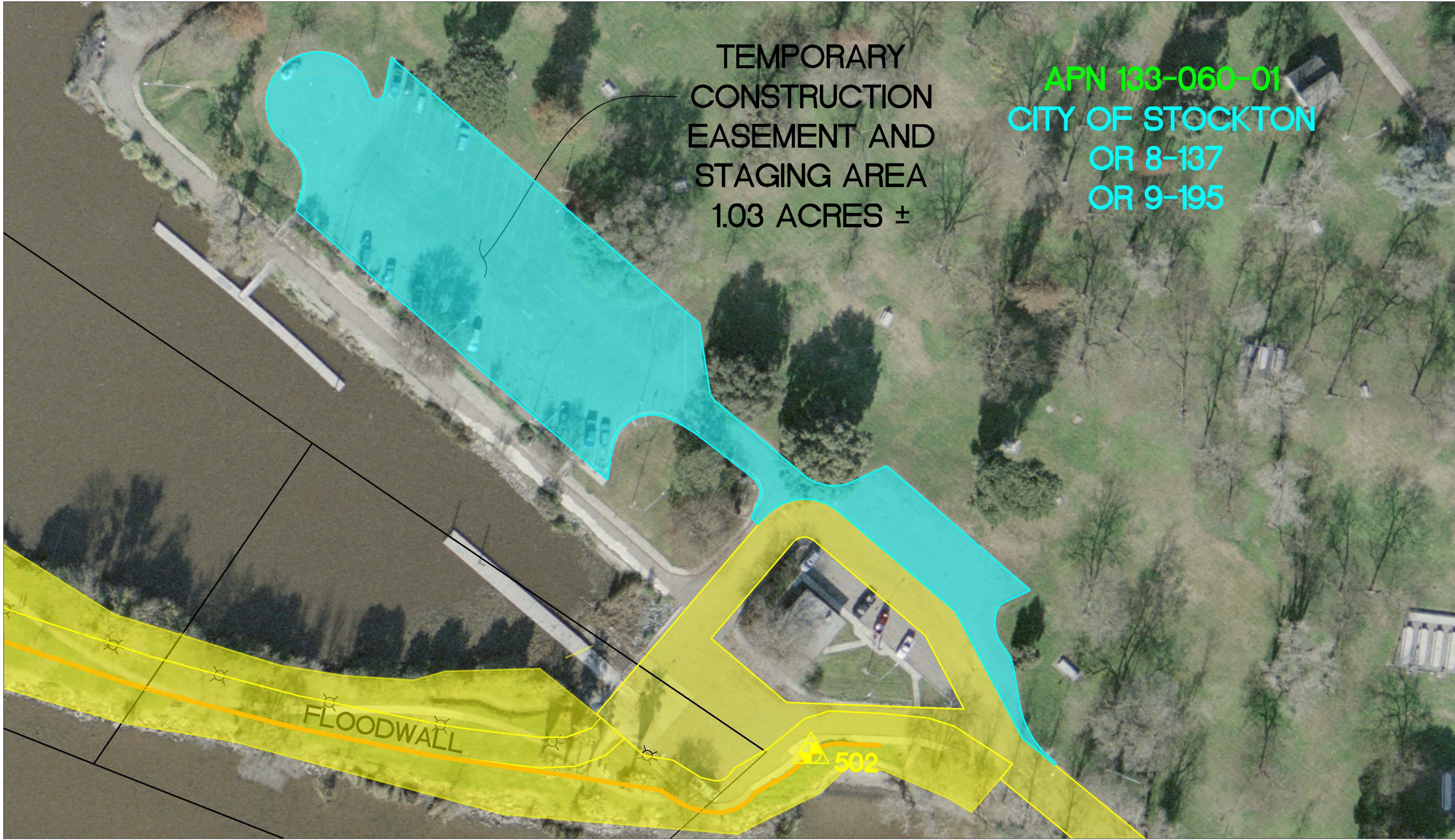
CITY OF STOCKTON - SJAFCA  
JOINT USE AREA

DATE  
FEBRUARY 2021

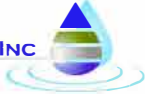
SHEET IDENTIFICATION  
**REP**

SHEET 4 OF 4  
KSN PROJECT FILE NO.  
2091-0063

FILE SPEC: P:\2091\_SJAFC\JDIQ\0063\_Smith\_Canal\_Gate\_Final\_Design\04\_Survey\300\_Boundary\preliminary\SJAFC\ Exhibits\Real Estate Plan - Smith Canal Gate Impacts COS (February 2021).dwg  
PLOT DATE: Feb 19, 2021 10:52am



PETERSON, BRUSTAD, INC.  
ENGINEERING • CONSULTING



NORTH ORIENTATION

PROJECT ENGINEER  
**PRELIMINARY  
NOT FOR  
CONSTRUCTION**

NO.	DESCRIPTION	DATE	APPR.

DESIGN BY BAS  
DRAWN BY BAS  
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HORIZONTAL DATUM  
CCS83, ZONE 3  
VERTICAL DATUM  
NA VD88

DRAWING SCALE  
1" = 30'  
ORIGINAL DRAWING SCALE  
0 1/2" 1"



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SAN JOAQUIN COUNTY AREA FLOOD CONTROL AGENCY  
SMITH CANAL GATE PROJECT  
STOCKTON, CALIFORNIA

CITY OF STOCKTON - SJAFC  
JOINT USE AREA

DATE  
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SHEET 4 OF 4  
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2091-0063