

**CALENDAR ITEM
C59**

A 25,26
S 12,14

03/29/12
W 26319
R. Boggiano

GENERAL LEASE - PUBLIC AGENCY USE

APPLICANT:

City of Modesto

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Tuolumne River, adjacent to Assessor's Parcel Number 102-012-001, near the city of Modesto, Stanislaus County.

AUTHORIZED USE:

For the use and maintenance of existing fill and bank protection not previously authorized by the Commission.

LEASE TERM:

20 years, beginning March 29, 2012.

CONSIDERATION:

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 interest.

OTHER PERTINENT INFORMATION:

1. Applicant owns the upland adjoining the lease premises.

2. In early 2008, the city of Modesto (City) completed the Tuolumne River Restoration Project which restored a section of the west riverbank on the Tuolumne River. Erosion produced as a result of high flows and upstream releases had exposed approximately 20 linear feet of a reinforced concrete sewer pipe located at the bank of the river. To repair the riverbank, the City placed approximately 700 cubic yards of soil backfill and rock riprap at the exposed location to help stabilize the existing structures and serve as a preventative measure against future erosion. The project area consists of an approximately 90-foot long section of the riverbank, including a 15-foot wide portion of the Tuolumne River. The

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City completed the project without prior approval by the Commission and is now applying for a new General Lease – Public Agency Use for the use and maintenance of the existing fill and bank protection in the bed of the Tuolumne River.

3. The project includes a five-year re-vegetation monitoring program with annual reports to be submitted to the California Department of Fish and Game.
4. A Mitigated Negative Declaration, SCH# 2006102058, was prepared for this project by the city of Modesto and adopted on February 27, 2007. The California State Lands Commission staff has reviewed such document, and the Mitigation Monitoring Program prepared in conformance with the provisions of CEQA (Pub. Resources Code, §21081.6) adopted by the city of Modesto.
5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 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 CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

California Department of Fish and Game
California Department of Water Resources

EXHIBITS:

- A. Land Description
- B. Site and Location Map
- C. Mitigation Monitoring and Reporting Plan

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that a (Mitigated) Negative Declaration, SCH # 2006102058, and a Mitigation Monitoring Program were prepared on February 27, 2007 for this Project and that the Commission has reviewed and considered the information contained therein.

Adopt the Mitigation Monitoring Program, as contained in Exhibit C, attached herto.

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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:

Authorize Issuance of a General Lease – Public Agency Use to the city of Modesto beginning March 29, 2012, for a term of 20 years, for the use and maintenance of existing fill and bank protection as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration being the public use and benefit, with the State reserving the right, at any time, to set a monetary rent as specified in the lease if the Commission finds such action to be in the State's best interest.

EXHIBIT A

W 26319

LAND DESCRIPTION

A parcel of submerged land lying in the bed of the Tuolumne River, adjacent to Government Lot 6, fractional Section 5, Township 4 South, Range 9 East, MDM, within the City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

COMMENCING at the North ¼ Corner of said Section 5, also being the Northwest corner of the First Addition to Sunset Acres as shown on the map filed in Volume 5 of Maps at Page 27, records of Stanislaus County; thence easterly along the North line of said Section 5 and the North line of said First Addition to Sunset Acres, 15.32 chains (1011.1 feet) to the Northeast corner of said First Addition to Sunset Acres; thence continuing easterly along the North line of said Section 5, 0.68 chains (44.9 feet) to the Meander Corner of the right (westerly) bank of the Tuolumne River; thence continuing easterly along the North line of said Section 5, approximately 55 feet to the right (westerly) bank of the Tuolumne River, said point being the POINT OF BEGINNING; thence continuing easterly along the projection of the North line of said Section 5, approximately 75 feet to the center of the Tuolumne River; thence southerly (downstream) along the centerline of the Tuolumne River, approximately 1050 feet to the easterly prolongation of the northerly line of the parcel labeled "City of Modesto, Excluded" on the map of the Durand Tract, filed in Volume 16 of Maps at Page 19, records of Stanislaus County; thence westerly along said easterly prolongation of the northerly line of said excluded parcel, approximately 65 feet to the right (westerly) bank of the Tuolumne River; Thence northerly along said right bank of the Tuolumne River, approximately 1055 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM any portion lying landward of the low water mark or the right bank of the Tuolumne River.

Containing 1.5 acres, more or less.

END DESCRIPTION



Evan A. Page
JAN 23 2012

EXHIBIT C

W 26319

BEST MANAGEMENT PRACTICES - MITIGATION MONITORING AND REPORTING PLAN

Note: The numbering of the topical headings below corresponds to the appropriate topical subsection in Section 2.2 of the Initial Study. Those subsections that do not require mitigation are not shown here.

2.2.1 AESTHETICS

Best Management Practices (BMPs)

Measure A-1: The City will implement re-vegetation measures that would include the planting of trees and appropriate ground cover. These restoration measures will be implemented at least 26 designed locations on the project site. The tree species planted would consist of a mixture of native willows and cottonwoods obtained from a local source. See also **Measure B-2** of **Section 2.2.4** (Biological Resources).

IMPLEMENTATION PROCEDURE	MONITORING AND REPORTING ACTIONS	MONITORING RESPONSIBILITY	MONITORING SCHEDULE
1. City drafts Site Habitat Re-vegetation Plan according to CDFG specifications and in consultation with a certified arborist.	1. City submits Plan to CDFG and USFWS for review.	1. City of Modesto	1. Prior to drafting construction specifications.
2. City incorporates the Plan into construction specifications	2. City revises Plan according to any input received from agencies.	2. City of Modesto	2. Prior to approval of construction specifications.
3. Contractor procures appropriate planting stock from a local source.	3. City confirms planting stock for Plan consistency.	3. City of Modesto	3. Prior to planting
4. Contractor implements Plan requirements as identified in construction specifications.	4. City confirms completion according to Plan.	4. City of Modesto	4. During and following construction operations.

2.2.3 AIR QUALITY

Best Management Practices (BMPs)

Measure AQ-1: The City will require the construction contractor to implement a dust abatement program, which should include following elements:

- Water all active construction areas at least twice daily, depending on type of operation, and wind exposure;
- Designate a person or persons to oversee the implementation of a comprehensive dust control program and to increase watering, as necessary;
- Construction grading activity should be discontinued in high wind conditions that cause excessive neighborhood dust problems, based on the opinion of the construction inspector;
- Cover all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer) in accordance with Section 23114 of the California Vehicle Code during transit to and from the site;
- Pave, apply water three times daily, or apply non-toxic soil stabilizers (e.g., latex acrylic copolymer) on any unpaved access routes, parking areas, and staging areas at construction sites, and cover inactive storage piles;
- Sweep daily (preferably with water sweepers) all paved access roads, parking areas, and staging areas at construction sites;
- Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets;
- Hydroseed or apply soil binders to inactive construction areas;
- Enclose, cover, water twice daily or apply soil binders to exposed stockpiles;
- Limit traffic on unpaved roads to 15 mph.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Replant vegetation in disturbed areas as quickly as possible.
- Minimize idling time (e.g., 10-minute maximum).
- Maintain properly tuned equipment.

Best Management Practices - Mitigations

- Limit the hours of operation of heavy-duty equipment and/or the amount of equipment used.

IMPLEMENTATION PROCEDURE	MONITORING AND REPORTING ACTIONS	MONITORING RESPONSIBILITY	MONITORING SCHEDULE
<ol style="list-style-type: none"> 1. City includes the preparation of a dust abatement program in construction specifications. 2. Contractor implements measures in the program. 	<ol style="list-style-type: none"> 1. City reviews contractor's dust abatement program. 2. Confirmation by City that measures are being implemented. 	<ol style="list-style-type: none"> 1. City of Modesto 2. City of Modesto 	<ol style="list-style-type: none"> 1. Prior to construction. 2. During Construction

2.2.4 BIOLOGICAL RESOURCES

Best Management Practices (BMPs)

Measure B-1: Prior to commencing construction, a qualified biologist will provide the work crew with instructions for avoiding the elderberry bush locations. Temporary fencing will be placed around the elderberry bushes as well as at the edge of the access path and at the drip-line locations. A qualified biological monitor will also be present while material is being passed over the bushes, and will monitor the fences. Accidental impacts will be reported to CDFG and U.S. Fish & Wildlife Service (USFWS), and, if necessary, appropriate mitigation for any accidental impacts.

IMPLEMENTATION PROCEDURE	MONITORING AND REPORTING ACTIONS	MONITORING RESPONSIBILITY	MONITORING SCHEDULE
<p>1. City includes construction limitations and habitat protection requirements in contractor specifications.</p> <p>2. City secures the services of a qualified biological monitor.</p> <p>3. Contractor complies with specifications and the monitor's instructions.</p>	<p>1. City reviews contractor specifications.</p> <p>2. Monitor provides the necessary instruction and direction to work crew. Reports to agencies as appropriate.</p> <p>3. Confirmation by City that measures have been implemented.</p>	<p>1. City of Modesto</p> <p>2. City of Modesto</p> <p>3. City of Modesto</p>	<p>1. Prior to approval of construction specifications.</p> <p>2. Prior to, during, and immediately following construction.</p> <p>3. During and after construction.</p>

Measure B-2: Existing and mature trees at the project site will be preserved to the extent feasible. During construction, activities and storage of equipment shall occur outside of the drip-lines areas of trees that are to be preserved. A revegetation program will be implemented for the restoration and enhancement of the disturbed area of the project site by the planting of native species of trees, shrubs and groundcover plants (also see **Measure A-1** in **Section 2.2.1**). The engineered bank stabilization and restoration measures will included at least 26 designed locations for the planting of trees. The location will be planted with a mixture of native willows and cottonwood procured from a local source.

If tree removal and construction activities cannot be limited to the non-breeding season for most birds, a nesting-bird survey conducted by a qualified biologist should be

conducted prior to, but no later than one month prior to any tree removal and/or other construction activity. Avoidance of the breeding season, or pre-construction surveys with attendant construction delays if nesting birds are found, would mitigate this impact to a less-than-significant level.

IMPLEMENTATION PROCEDURE	MONITORING AND REPORTING ACTIONS	MONITORING RESPONSIBILITY	MONITORING SCHEDULE
<p>1. City includes tree protection and replacement requirements in contractor specifications.</p> <p>2. Biological monitor provides instructions and direction to work crew.</p> <p>3. Contractor complies with specifications and the monitor's instructions.</p> <p>4. If necessary, City conducts a pre-construction nesting survey. Develop habitat protection plan per agency direction.</p>	<p>1. City reviews contractor specifications.</p> <p>2. Monitor oversees implementation of measures. Reports to agencies as appropriate.</p> <p>3. City confirms that measures have been implemented.</p> <p>4. City coordinates with CDFG and USFWS and confirms habitat plan is implemented.</p>	<p>1. City of Modesto</p> <p>2. City of Modesto</p> <p>3. City of Modesto</p> <p>4. City of Modesto</p>	<p>1. Prior to approval of construction specifications.</p> <p>2. Prior to, during, and immediately following construction.</p> <p>3. During and after construction.</p> <p>4. Prior to and during construction.</p>

Measure B-3: Prior to any site disturbance or tree removal, riparian habitat outside of the proposed work areas will be protected by installing orange barrier fencing around habitat to be preserved and restricting vehicular or mechanical use of equipment in these areas. The project proponent shall retain a qualified biologist to serve as a compliance monitor and to ensure that all mitigation measures pertaining to riparian habitat protection are properly implemented.

Work crews will be provided with pre-construction education with methods for the avoidance of a chance take of steelhead, Chinook salmon or Western pond turtles. A biologist will also monitor the site during construction, and will report of any incidents to either USFWS or CDFG, as appropriate.

The operation of heavy equipment in the active river channel will not occur. Temporary sediment settling basins and structures such as sediment fencing or straw bales shall be used to prevent sediment-laden runoff from entering the river channel. A qualified biologist will monitor construction operations taking place within the river.

Best Management Practices - Mitigations

IMPLEMENTATION PROCEDURE	MONITORING AND REPORTING ACTIONS	MONITORING RESPONSIBILITY	MONITORING SCHEDULE
<p>1. City includes provisions for riparian habitat protection in contractor specifications.</p> <p>2. City initiates consultation with NMFS and USFWS. City complies with any agency requirements. If required, City secures incidental take authorization.</p> <p>3. Monitor provides the necessary instruction and direction to work crew.</p> <p>4. Contractor complies with habitat protection measures and the monitor's instructions.</p>	<p>1. City reviews contractor specifications.</p> <p>2. City maintains ongoing consultation with agencies and reports as necessary.</p> <p>3. Monitor maintains observation of construction activities. Reports to agencies as appropriate.</p> <p>4. Confirmation by City that measures have been implemented.</p>	<p>1. City of Modesto</p> <p>2. City of Modesto</p> <p>3. City of Modesto</p> <p>4. City of Modesto</p>	<p>1. Prior to approval of construction specifications.</p> <p>2. Prior to, during, and immediately following construction.</p> <p>3. Prior to, during, and immediately after construction.</p> <p>4. Prior to, during, and immediately after construction.</p>

2.2.5 CULTURAL RESOURCES

Best Management Practices (BMPs)

Measure CR-1: Should undiscovered cultural resources, such as structural features, or unusual amounts of bone or shell, artifacts, human remains, or architectural remains be encountered during construction activities, the contractor would suspend work and contact City staff. A qualified cultural resource specialist would be retained and would perform necessary investigations to determine the significance of the find. The City would then implement mitigation deemed necessary for the recordation and/or protection of the cultural resources. In addition, pursuant to Sections 5097.97 and 5097.98 of the State Public Resources Code and Section 7050.5 of the State Health and Safety Code, in the event of the discovery of human remains, all work must be halted and the County Coroner will be immediately notified. If the remains are determined to be Native American, guidelines of the Native American Heritage Commission will be adhered to in the treatment and disposition of the remains.

IMPLEMENTATION PROCEDURE	MONITORING AND REPORTING ACTIONS	MONITORING RESPONSIBILITY	MONITORING SCHEDULE
<p>1. The City shall include the appropriate instructions in the constructions specifications.</p> <p>2. In the event that cultural resources are discovered, construction would stop and a qualified cultural resource specialist would be consulted. City would implement mitigation based upon the specialist recommendation.</p> <p>3. In the event human remains are found, work would stop and the procedures identified above will be implemented.</p>	<p>1. City reviews and signs off on construction specifications.</p> <p>2. The City shall retain the appropriate records of the find in the administrative file.</p> <p>3. In the event prehistoric human remains are encountered, agreement between City and Native Americans would be retained in administrative files.</p>	<p>1. City of Modesto</p> <p>2. City of Modesto</p> <p>3. City of Modesto</p>	<p>1. Prior to approval of construction specifications</p> <p>2. During construction.</p> <p>3. During construction and before construction re-commences.</p>

Best Management Practices - Mitigations

Measure CR-2: The City will notify a qualified paleontologist of unanticipated discoveries, made by either a qualified cultural resources specialist consulted under **Measure CR-1** or construction personnel and subsequently document the discovery as needed. In the event of an unanticipated discovery of a breas, true, and/or trace fossil during construction, excavations within 50 feet of the find will be temporarily halted or diverted until the discovery is examined by a qualified paleontologist. The paleontologist will notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find.

IMPLEMENTATION PROCEDURE	MONITORING AND REPORTING ACTIONS	MONITORING RESPONSIBILITY	MONITORING SCHEDULE
<p>1. The City shall include the appropriate instructions in the constructions specifications.</p> <p>2. In the event paleontological resources are discovered, the City will temporarily stop or divert construction and notify a qualified paleontologist and the procedures identified above will be implemented.</p> <p>3. Appropriate protection procedures would be implemented based on the recommendations of agencies and the paleontologist.</p>	<p>1. City reviews and signs off on construction specifications.</p> <p>2. The City shall retain the appropriate records of the find in the administrative file.</p> <p>3. City will confirm the recommended procedures are in place before re-commencing construction</p>	<p>1. City of Modesto</p> <p>2. City of Modesto</p> <p>3. City of Modesto</p>	<p>1. Prior to approval of construction specifications.</p> <p>2. During construction.</p> <p>3. During construction and before construction re-commences.</p>

2.2.7 HAZARDS AND HAZARDOUS MATERIALS

Best Management Practices (BMPs)

Measure HM-1: A Hazardous Materials Management/Spill Prevention Plan will be developed by the contractor and submitted to the Regional Water Quality Control Board for review and approval prior to construction. The approved plan will be given to all contractors working on the project. At least one copy will be on-site at all times. The purpose of the plan is to provide on-site construction personnel, environmental compliance monitors, and regulatory agencies with a detailed description of hazardous materials management, spill prevention, and spill response/cleanup measures associated with the construction of project elements.

IMPLEMENTATION PROCEDURE	MONITORING AND REPORTING ACTIONS	MONITORING RESPONSIBILITY	MONITORING SCHEDULE
1. City shall include requirement for the preparation of a Hazardous Materials Management/Spill Prevention Plan in construction specifications. 2. Contractor prepares and implements the Hazardous Materials Management/Spill Prevention Plan.	1. City reviews and signs off on Hazardous Materials Management/Spill Prevention Plan. 2. City confirms that the measures have been implemented.	1. City of Modesto 2. City of Modesto	1. Prior to approval of construction specifications. 2. During construction.

2.2.8 HYDROLOGY AND WATER QUALITY

Best Management Practices (BMPs)

Measure WQ-1: The City will prepare and require the contractor to implement a Stormwater Pollution Prevention Plan (SWPPP), which includes Best Management Practices (BMPs) to minimize potential water quality impacts during construction. At least one copy of the SWPPP will be kept at the project site throughout the entire construction phase. It is anticipated that a single SWPPP would be prepared and that the individual project phases would implement appropriate BMPs as appropriate.

The BMPs will be identified as specified by the California Storm Water Best Management Practices Handbook (Stormwater Quality Task Force, 2003) and/or the Manual of Standards for Erosion and Sediment Control Measures (ABAG, 1995). The BMPs include measures guiding the management and operation of construction sites to control and minimize the potential contribution of pollutants to storm runoff from these areas. These measures address procedures for controlling erosion and sedimentation and managing all aspects of the construction process to ensure control of potential water pollution sources. Erosion and sedimentation control practices include installation of silt fencing, straw wattle, soils stabilization, revegetation, and runoff control to limit increases in sediment in storm water runoff (e.g., detention basins, straw bales, silt fences, check dams, geofabrics, drainage swales, and sand bag dikes). Implementation of the plan starts with the commencement of construction and continues through the completion of the project. Runoff controls shall be monitored and maintained to ensure storm events, vandalism, or other activities do not diminish the effectiveness of these controls. Monitoring should occur after major storm events and on a scheduled basis to address potential vandalism of the control measures. Specific control measures and the appropriate maintenance program will be developed prior to initiating construction. Upon completion of the project, the City must submit a Notice of Termination to the RWQCB to indicate that construction is completed.

IMPLEMENTATION PROCEDURE	MONITORING AND REPORTING ACTIONS	MONITORING RESPONSIBILITY	MONITORING SCHEDULE
1. City shall prepare a SWPPP according to the requirements identified above.	1. City reviews and signs off on SWPPP.	1. City of Modesto.	1. Prior to approval of construction specifications.
2. Contractor implements the SWPPP.	2. City confirms that measures have been implemented.	2. City of Modesto.	2. During construction.
3. Contractor maintains effectiveness all runoff controls during construction.	3. Contractor monitors runoff controls and reports to City.	3. Contractor, with confirmation by City of Modesto	3. Throughout construction phase.

2.2.11 NOISE

Best Management Practices (BMPs)

Measure N-1: The City will require contractors to adhere to local ordinances regulating hours of construction (7:00 a.m. to 9:00 p.m. on weekdays; 9:00 a.m. and after 9:00 p.m. on weekends and holidays), where feasible, in order to minimize the potential for sleep disturbance and annoyance.

IMPLEMENTATION PROCEDURE	MONITORING AND REPORTING ACTIONS	MONITORING RESPONSIBILITY	MONITORING SCHEDULE
1. City shall include construction hours limitation requirements in construction specifications.	1. City reviews construction specifications.	1. City of Modesto	1. Prior to approval of construction specifications.
2. Contractor will adhere specified requirements.	2. City confirms construction hour limits are observed.	2. City of Modesto	2. During construction.

Measure N-2: To the extent feasible, the City will require contractors to locate fixed construction equipment such as compressors and generators as far as possible from noise-sensitive receptors. Contractors will shroud or shield all impact tools, and muffle or shield all intakes and exhaust ports on power construction equipment. Construction vehicles should be properly maintained and equipped with exhaust mufflers that meet state standards. Idling equipment should be shut off when not in use.

IMPLEMENTATION PROCEDURE	MONITORING AND REPORTING ACTIONS	MONITORING RESPONSIBILITY	MONITORING SCHEDULE
1. City shall include the above requirements in the construction specifications.	1. City reviews and approves construction specifications.	1. City of Modesto	1. Prior to approval of construction specifications.
2. Contractor implements noise abatement measures.	2. City confirms that measures have been implemented.	2. City of Modesto	2. During construction.

2.2.15 TRANSPORTATION / TRAFFIC

Best Management Practices (BMPs)

Measure T-1: The City will either draft or require the Contractor to submit a detailed Traffic Control Plan (TCP) to the City of Modesto. The TCP will be prepared in accordance with professional traffic engineering standards to show specific methods for maintaining traffic flows on roadways directly affected by project construction, and will include, at a minimum, the following elements:

- Haul routes minimizing truck traffic on local roadways will be used to the extent possible.
- The TCP will arrange for safe detours for vehicles, pedestrians and bicyclists at the vicinity of the construction site. The contractor will install appropriate barriers or fencing around construction zones and put up signage showing detours to ensure the safety of pedestrians and bicyclists.
- The construction contractor will be required to provide emergency access at all times during construction.
- Access for emergency vehicles will be provided at all times.
- The TCP will develop a Construction Parking Plan that includes an estimate of the number of workers that would be present on the site during various phases of construction and indicates where sufficient off-street parking would be provided. The TCP would be submitted to the Streets, Traffic and Transportations Section of the City of Modesto Public Works Department for review prior to construction. The City will enforce the TCP during construction.

IMPLEMENTATION PROCEDURE	MONITORING AND REPORTING ACTIONS	MONITORING RESPONSIBILITY	MONITORING SCHEDULE
1. The City shall either prepare or require the contractor to prepare a construction TCP.	1. City Public Works Department review and approve TCP.	1. City of Modesto	1. Prior to approval of construction specifications.
2. Contractor implements the TCP.	2. City confirms TCP is implemented.	2. City of Modesto	2. During construction.