

# Staff Report 22

## **APPLICANT:**

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City of Modesto

## **PROPOSED ACTION:**

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Issuance of a General Lease – Public Agency Use

## **AREA, LAND TYPE, AND LOCATION**

Approximately 3,056 square feet of sovereign land in the Tuolumne River adjacent to 700–734 Neece Drive, Modesto, Stanislaus County.

## **AUTHORIZED USE:**

Construction, use, and maintenance of a concrete non-motorized boat launch ramp and riprap bank protection.

## **TERM:**

20 years beginning June 29, 2021.

## **CONSIDERATION:**

The public use and benefit; with the State reserving the right at any time to set a monetary rent if the Commission, in its sole discretion, finds such action to be in the State's best interests.

## **SPECIFIC PROVISIONS:**

- At all times while construction activities are taking place in the River, Lessee shall install warning signs and buoys, upstream and downstream of the construction site, in order to provide to the public that construction activities are taking place in the River and to exercise caution.
- No later than 60 days after construction is complete, Lessee will provide Lessor with photographs and a set of "as-built" plans that show where the improvements have been placed. Lessor shall then replace Exhibit A (Land

Description) and Exhibit B (Site and Location Map) to this Lease as necessary to accurately reflect the final location of the authorized improvements.

- Lessee shall comply with the Mitigation Monitoring Program for the Project as contained in Exhibit C, adopted by Lessor and by reference made a part of this Lease, except as modified by specific provision of this Lease or as modified by Lessor as permitted by law. In the event of any conflict between the provisions of the Mitigation Monitoring Program and this Lease, the provisions of the Lease shall prevail.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

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

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

The City of Modesto (Applicant) has submitted an application requesting a General Lease – Public Agency Use, for the construction, use, and maintenance of a new V-grooved concrete non-motorized boat launch ramp and public access facility in the Tuolumne River, Stanislaus County, as part of its larger Neece Drive Non-Motorized Boat Launch and River Access Project (Project).

The Applicant, in cooperation with the Tuolumne River Regional Park Joint Powers Authority, proposes the development of a new boat-launch facility that will enhance and expand the recreational opportunities within the Tuolumne River Regional Park. The proposed facilities will provide access for launching canoes, kayaks, rafts, and shallow-water rescue watercraft. The goal of the Project is to create a park where the recreational experience is oriented towards the Tuolumne River, its waters, natural resources, and processes. The proposed Project's design accommodates multiple purposes, including recreation, wildlife habitat, and education and interpretation.

The proposed Project will be located just west of the Highway 99 overpass, adjacent to Neece Drive, and will provide an access road from Neece Drive to the boat launch ramp. The proposed non-motorized boat launch will extend the width of the boat launch ramp. The proposed non-motorized boat launch will extend into the Tuolumne River from the planned parking facility along the western bank. The proposed concrete ramp would be approximately 8 inches thick and would include cutoff walls along its perimeter extending approximately 4 feet below the top of the ramp to offer additional protection against erosion, and if needed,

additional rock slope protection would be placed along the perimeter of the proposed ramp for additional protection.

The upland portion of the Project includes a compacted gravel lot, loading and staging area, and pedestrian access trails and picnic areas with lighting, fencing, and landscaping. ADA parking spaces would be provided.

Pre-construction activities could include cofferdam installation if the flow in the river at the time of construction encroaches within the proposed boat launch. Installation of a temporary cofferdam would be required to dewater the area. Project activities would also include installation of sump pumps at the bottom of the demolition site to allow a dry work area for construction of the proposed boat launch. Additional improvements to the north bank alternate channel, including minor earthwork and temporary erosion control, may be made to direct diverted flows and minimize or prevent impacts to the channel.

Construction activities for the boat launch would include grading of the proposed boat launch area, subgrade preparation, excavation of cutoff wall trenches, and reinforcing steel placement. Concrete would be placed utilizing a concrete pump truck. If necessary, additional rock slope protection would be placed around the perimeter of the boat launch using a crane, excavator, or front loader operating atop the boat launch. After construction activities are completed and cofferdams are no longer needed, the cofferdam sheet piles would be removed using equipment similar to that used for installation. Applicant anticipates that construction activities would begin in late summer 2021 and be completed by December 2021.

The proposed boat launch facilitates recreational boating because it is used for ingress and egress of non-motorized recreational watercraft into the Tuolumne River. The proposed project will also provide a new access point for emergency response river access. Recreational boating is water-dependent and 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 lands (Pub. Resources Code, § 6503.5). The proposed Project would be one of only a few facilities in the area that facilitate access to the river for the boating public and will therefore promote increased public access for water-oriented activities and uses of sovereign lands within the central valley.

The proposed lease does not alienate the State's fee simple interest in the underlying land, nor will it permanently impair public rights. The proposed lease would be limited to a 20-year term, does not grant the lessee exclusive rights to the

lease premises, and ensures public access to the Tuolumne River. Upon termination of the lease, the lessee may be required to remove all improvements from State land. The proposed lease also requires the lessee to indemnify the State for any liability incurred as a result of the lessee's activities thereon.

### **CLIMATE CHANGE:**

The project area is not tidally influenced and therefore would not be subject to sea-level rise. However, as stated in the *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, fire, drought, extreme heat, and storms. In rivers, 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 will further influence riverine areas by changing erosion and sedimentation rates, and flooding and storm flow, as well as runoff, will likely increase scour, decreasing bank stability at a faster rate.

Due to these potential changes, the ramp could need reinforcement in the future to withstand higher levels of flood exposure and more frequent storm events. In addition, the structure is not adaptable to variable water levels and may require more frequent maintenance to ensure continued function during and after storm seasons or to avoid dislodgement of any appurtenant facilities.

Regular maintenance, as required by 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.

### **ENVIRONMENTAL JUSTICE:**

Staff is aware of existing environmental justice concerns within the Central Valley regarding the need for more "public access" points along the State's inland waterways. As part of its review of the application, staff sent letters to several Environmental Justice organizations in the area requesting comment/feedback on the proposed Project. No responses were received. However, based on its review, staff believes that the proposed Project would promote and facilitate the use of the State's inland waters by the recreating public through the creation and enhancement of recreational opportunities within the Tuolumne River, at this location. Outdoor recreation has been proven to have social, economic, and health benefits, which would create a positive impact for many of the surrounding communities.

## **CONCLUSION:**

For all the reasons above, staff believes the issuance of this lease for the proposed Project is consistent with the common law Public Trust Doctrine, and is in the State's best interest.

## **OTHER PERTINENT INFORMATION:**

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1. Approval or denial of an application for the use of State land is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands. A lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Meeting Evolving Public Trust Needs", "Prioritizing Social, Economic, and Environmental Justice" and "Leading Climate Activism" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. A Master EIR for the Tuolumne River Regional Park Master Plan, State Clearinghouse No. 2000022028, was prepared by the City of Modesto and certified on December 12, 2001. A Master EIR for the Urban Area General Plan Update, State Clearinghouse No. 2007072023, was prepared by the City of Modesto and certified on October 14, 2008. Both Master EIRs contemplated the proposed project within the scope of their respective analyses.

Pursuant to Public Resources Code section 21157.1, the City of Modesto prepared an initial study to determine whether the proposed project would create any significant impact not examined in the Master EIRs and whether the project could be found within the scope of these previous reports. The City of Modesto issued a Finding of Conformance (Pub. Resources Code, §§ 21157.1, subd. (c) and 21157.6, subd. (b)) on October 25, 2018, stating the proposed project would not require additional environmental review and identifying all relevant mitigation measures from the Master EIRs.

Staff has reviewed these documents and prepared an independent Mitigation Monitoring Program (MMP) (attached, Exhibit C) that incorporates the mitigation measures from the City of Modesto's Finding of Conformance and recommends its adoption by the Commission.

4. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon participation from the agency

nominating such lands through the California Environmental Quality Act (CEQA) review and permitting process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

## **APPROVALS REQUIRED:**

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U.S. Army Corps of Engineers  
Central Valley Regional Water Quality Control Board  
California Department of Fish and Wildlife  
State Office of Historic Preservation  
Central Valley Flood Protection Board  
San Joaquin Valley Air Quality Control Board

## **EXHIBITS:**

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- A. Land Description
- B. Sit and Location Map
- C. Mitigation Monitoring Program

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

Find that a Finding of Conformance for Master EIRs, State Clearinghouse No. 200022028 and 2007072023, was prepared for this project by the City of Modesto and issued on October 25, 2018, and that the Commission has reviewed and considered the information contained therein.

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

### **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.

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the issuance of this lease for the proposed Project is consistent with the common law Public Trust Doctrine, because the facilities will promote and enhance

water-dependent recreation, navigation, and safety services, and is in States best interest.

**AUTHORIZATION:**

1. Authorize the issuance of a 20-year, General Lease – Public Agency Use, to the Applicant, beginning June 29, 2021, for the construction, use, and maintenance of a concrete non-motorized boat launch ramp and public access facility as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration is the public use and benefit, with the state reserving the right at any time to set a monetary rent if the Commission, at its sole discretion, finds such action to be in the State's best interests.
2. Authorize the Executive Officer or designee to update and replace Exhibit A (Land Description) and Exhibit B (Site and Location Map), upon completion of project and receipt of "as-built" plans for the facilities occupying state lands, to accurately reflect the final location of the authorized improvements.

## EXHIBIT A

A2826

### 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., County of Stanislaus, State of California, more particularly described as follows:

A 31' wide strip of land, lying 18' northeasterly and 13' southwesterly of the following described line. COMMENCING at City of Modesto Brass Cap monument stamped 2223 as shown on that Record of Survey filed in Book 22 of Surveys, Page 51, Stanislaus County Records; thence S72°40'35"E 3,616.07 feet to the POINT OF BEGINNING; thence S45°16'19"E 196' to the terminus of said strip.

The sidelines of said strip shall be lengthened or shortened so as to commence at the Low Water Mark of the right bank of the Tuolumne River and terminate at a line perpendicular to said strip.

The Basis of Bearings of this description is the line between 2" City of Modesto Brass Cap monuments stamped 2223 and 2224 taken as N81°08'16"E as shown on that Record of Survey filed in Book 22 of Surveys, Page 51, Stanislaus County Records.

### END OF DESCRIPTION

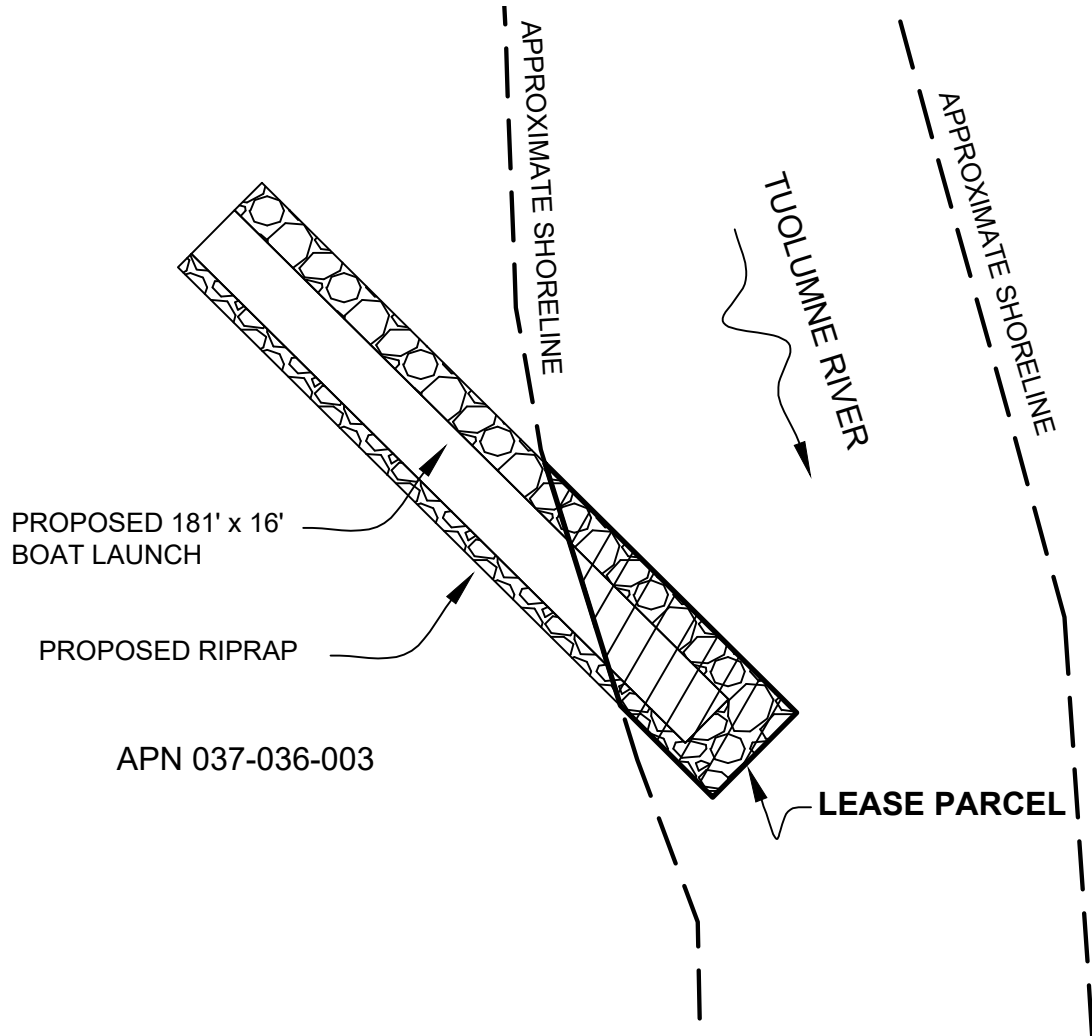
Prepared 11/24/2020 by the California State Lands Commission Boundary Unit.





NO SCALE

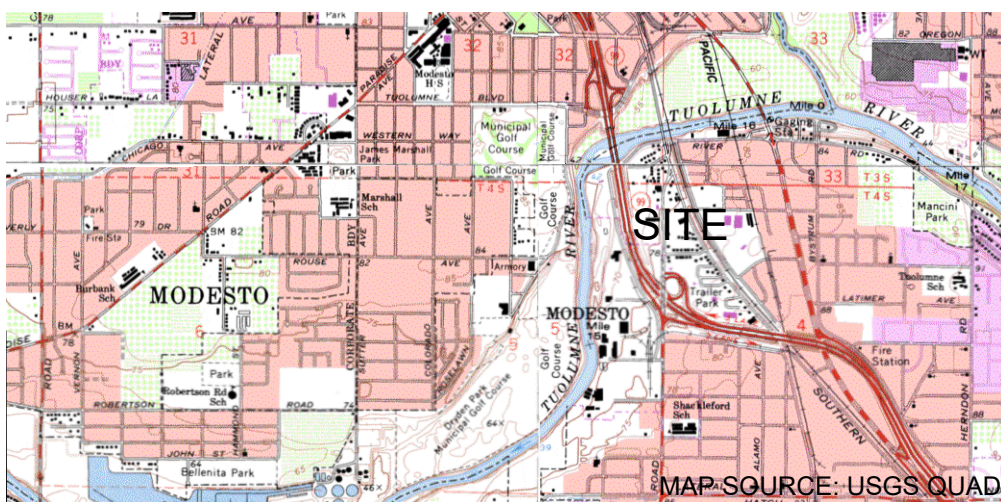
## SITE



TUOLUMNE RIVER, NEAR MODESTO

NO SCALE

## LOCATION



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.

## EXHIBIT B

A2826  
CITY OF MODESTO  
APN 037-036-003  
GENERAL LEASE -  
PUBLIC AGENCY USE  
STANISLAUS COUNTY



DJF 11/23/2020

**EXHIBIT C**  
**CALIFORNIA STATE LANDS COMMISSION**  
**MITIGATION MONITORING PROGRAM**

**NEECE DRIVE BOAT LAUNCH AND RIVER ACCESS**  
(A2826, State Clearinghouse No. 200022028 and 2007072023)

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The California State Lands Commission (Commission or CSLC) is a responsible agency under the California Environmental Quality Act (CEQA) for the Neece Drive Boat Launch and River Access Project (Project). The CEQA lead agency for the Project is the City of Modesto.

In conjunction with approval of this Project, the Commission adopts this Mitigation Monitoring Program (MMP) for the implementation of mitigation measures for the portion(s) of the Project located on Commission lands. The purpose of a MMP is to impose feasible measures to avoid or substantially reduce the significant environmental impacts from a project identified in an Environmental Impact Report (EIR) or a Mitigated Negative Declaration (MND). State CEQA Guidelines section 15097, subdivision (a), states in part:<sup>1</sup>

*In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.*

The lead agency issued a Finding of Conformance (Pub. Resources Code, § 21157.1, subd. (c).) for two Master EIRs, State Clearinghouse No. 200022028 and 2007072023, adopted two respective MMPs (see Exhibit C, Attachment C-1), and remains responsible for ensuring that implementation of the mitigation measures outlined in the Finding of Conformance occurs in accordance with its programs. The Commission's action and authority as a responsible agency apply only to the mitigation measures listed in Table C-1 below. The full text of each mitigation measure as identified in the Finding of Conformance, set forth in each Master EIR prepared by the CEQA lead agency, and provided in Attachment C-1, is incorporated by reference in this Exhibit C. Any mitigation measures adopted by the Commission that differ substantially from those adopted by the lead agency are shown as follows:

- Additions to the text of the mitigation measure are underlined; and
- Deletions of the text of the mitigation measure are shown as ~~strikeout~~ or as otherwise noted.

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<sup>1</sup> The State CEQA Guidelines are found at California Code of Regulations, title 14, section 15000 et seq.

**Table C-1. Project Impacts and Applicable Mitigation Measures**

Potential Impact	Mitigation Measure (MM) <sup>2</sup>	Difference Between CSLC MMP and Lead Agency MMP
Toxic air contaminant impacts	<b>AQ-18</b>	None
PM10 impacts	<b>AQ-39</b>	None
Noise impacts from construction	<b>N-2, N-3</b>	None
Discharges into federal and State waters	<b>SWPH-4, SWPH-6, MM Bio-2</b>	None
Impacts to special-status species	<b>SWPH-5, SWPH-9, SWPH-11, SWPH-13, MM Bio-3</b>	None
Impacts to wetlands, riparian habitat, and aquatic habitat	<b>SWPH-13, MM Bio-1, MM Bio-3</b>	None
Impacts to tribal cultural resources	<b>AH-9, AH-11, AH-13, AH-14, AH-15, AH-16, CR-1, CR-2</b>	CR-1 only, see below.
Impacts to river flow velocity	<b>HYDRO-2</b>	None
Debris dams and river hazard blockage impacts	<b>HYDRO-3, HYDRO-4</b>	None
Contaminated soil/water	<b>MM HazMat-4</b>	None

**Mitigation Measure CR-1:** If previously undiscovered historic or unique archaeological resources (including but not limited to charcoal, obsidian or chert flakes, grinding bowls, shell fragments, bone, pockets of dark, friable soils, glass, metal, ceramics, wood or similar debris) are discovered, the following measures shall be Implemented to ensure that impacts to these resources are less-than-significant. The final disposition of archaeological, historical, and paleontological resources recovered on state lands under the jurisdiction of the California State Lands Commission must be approved by the Commission.

- a) Work shall halt within 100 feet of the discovery until a professional archaeologist certified by the Registry of Professional Archaeologists (RPA) has had an opportunity to evaluate the significance of the find and suggest appropriate mitigation(s), as determined necessary.
- b) If the discovery is Native American, federally-recognized tribes in the county shall be consulted about the find to incorporate their suggestions for mitigation or protection.
- c) If the discovery is historic, archival research may be necessary by a qualified historian. If the project may alter the archaeological integrity and data values of the discovery, it will be evaluated for the California Register. If the resource is eligible for the California Register of Historical Resources, data recovery measures shall be implemented by a professional meeting the Secretary of Interior's Professional Qualifications Standards.

<sup>2</sup> See Attachment C-1 for the full text of each MM taken from the MMPs prepared by the CEQA lead agency.

## **ATTACHMENT C-1**

**Selected Mitigation Measures from  
the Mitigation Monitoring Programs Adopted by the City of Modesto  
for the Urban Area General Plan Update and  
the Tuolumne River Regional Park Master Plan**

## City of Modesto Urban Area General Plan Update

### **AQ-18:** Air Quality Measures to Reduce Construction Impacts

1. The following mitigation measures shall be implemented by the city of Modesto, and incorporated into development plans and public facility plans as appropriate:
  - a. The City of Modesto shall work with the SJVAPCD to reduce particulate matter emissions from construction, grading, excavation, and demolition to the maximum extent feasible.
  - b. If required by Regulation VIII (Fugitive Dust Rules) of the San Joaquin Valley Unified Air Pollution Control District, the City of Modesto shall require all access roads, driveways, and parking areas serving new commercial and industrial development to be constructed with materials that minimize particulate emissions and are appropriate to the scale and intensity of use.
2. The following measures should be strongly encouraged, and incorporated into development plans and public facility plans, when it is shown to be appropriate and feasible:
  - a. The City of Modesto should reduce PM10 emissions from City-maintained roads to the maximum extent feasible
  - b. The City of Modesto should adopt a standard set of construction-related mitigation measures that can be adapted to all new, non-emergency construction projects in the City.

**AQ-39:** The City of Modesto should work with the SJVAPCD to reduce particulate emissions from construction, grading, excavation, and demolition to the maximum extent feasible in accordance with the requirements of SJVAPCD Regulation VIII. Regulation VIII was adopted to reduce the amount of particulate matter suspended in the atmosphere as a result of emissions generated from anthropogenic (man-made) fugitive dust sources. (General Plan Policy VII-H.2[hh])

**N-2:** Additionally, the noise ordinance prohibits the loud and raucous operation or use of any of the following before 7:00 a.m. or after 9:00 p.m. daily (except Saturday and Sunday and state or federal holidays, when the prohibited time shall be before 9:00 a.m. and after 9:00 p.m.):

A hammer, or any other device or implement used to pound or strike an object.

1. An impact wrench, or other tool or equipment powered by compressed air.
2. A hand-powered saw.
3. Any tool or piece of equipment powered by an internal-combustion engine such as, but not limited to, chain saw, backpack blower, and lawn mower.
4. Any electrically powered (whether by alternating current electricity or by direct current electricity) tool or piece of equipment used for cutting, drilling, or shaping wood, plastic, metal, or other materials or objects, such as, but not limited to, a saw, drill, lathe, or router.
5. Any of the following: heavy equipment (such as but not limited to bulldozer, steam shovel, road grader, back hoe), ground drilling and boring equipment (such as but not limited to derrick or dredge), hydraulic crane and boom equipment, portable power generator or pump, pavement equipment (such as but not limited to pneumatic hammer, pavement breaker, tamper, compacting equipment), pile-driving equipment, vibrating roller, sand blaster, gunite machine, trencher, concrete truck, and hot kettle pump.

6. Any construction, demolition, excavation, erection, alteration, or repair activity. In the case of urgent necessity and in the interest of public health and safety, the Chief Building Official may issue a permit for exemption from these. Such period shall not exceed three (3) working days in length while the emergency continues but may be renewed for successive periods of three (3) days or less while the emergency continues. The Chief Building Official may limit such permit as to time of use and/or permitted action, depending upon the nature of the emergency and the type of action requested.

**N-3:** The City of Modesto shall require construction activities to comply with the City's noise ordinance (Title 4, Chapter 9), and noise-reducing construction practices to be implemented as conditions of approval for development projects where substantial construction-related noise impacts would be likely to occur (e.g., where construction would include extended periods of pile driving, where construction would occur over an unusually long period, or where noise-sensitive uses like homes and schools would be in the immediate vicinity, etc.). The city should consider potential mitigation measures, including, but not limited to, the following:

Construction equipment and vehicles should be equipped with properly operating mufflers according to the manufacturers' recommendations. Air compressors and pneumatic equipment should be equipped with mufflers, and impact tools should be equipped with shrouds or shields.

Equipment that is quieter than standard equipment should be utilized.

Haul routes that affect the fewest number of people should be selected. (UAGP VII-G.3[a])

**SWPH-4:** The federal CWA (33 U.S.C. Section 121 et seq.) establishes regulations for the protection of waters from pollution. Section 404 of the Act establishes a permit program, administered by the U.S. Army Corps of Engineers (USACE), regulating the discharge of fill material into "waters of the United States," including wetlands (USACE 33 CFR 328.3). Discharges can be authorized by either individual or general (i.e., nationwide) permits. The USACE regulates the discharge of dredged fill material for non-water-dependent uses into special aquatic sites, including wetlands and vernal pools. Filling of these features may occur only if there is no practicable alternative that would have less adverse impact. An alternatives analysis is required prior to issuance of a permit by the USACE. The stream channels of the Tuolumne and Stanislaus Rivers and Dry Creek would be subject to Section 404 jurisdiction. Other wetlands, such as fresh emergent wetlands and vernal pools, would potentially be subject to Section 404 regulation, but would need to have a hydrologic connection to one of the rivers or creeks to qualify as a water of the United States. Where filling of a water of the United States would affect a threatened or endangered species, as may happen in vernal pools, the USACE would consult with the USFWS regarding compliance with the ESA.

Separately, Executive Order 11990 (issued by President Clinton) avoids direct or indirect support of new federal construction in wetlands whenever practical alternatives exist. In the context of the Master EIR, it applies to actions undertaken or funded by the federal government, such as issuance of "incidental take" permits by the USFWS, individual Section 404 permits by the USACE, and federally funded state or local road projects. The order stipulates that new construction must provide the public an opportunity for review of proposed activities, evaluate practical alternatives, and identify practical measures to minimize the harm to wetlands.

All projects that have a federal component and that may affect state water quality (including projects that require federal agency approval, such as issuance of a Section 404 permit) must

also comply with Section 401 of the CWA. Thus, applicants for a Section 404 permit must also obtain certification from the Regional Water Quality Control Board (RWQCB). For effects on wetlands that are not under USACE jurisdiction, and therefore are not regulated under Section 404, applicants must still consult with the RWQCB for effects on waters of the state. The RWQCB generally issues waste discharge requirements for these effects.

**SWPH-5:** The DFG is responsible for maintaining all native fish, wildlife, plant species, and natural communities in California for their intrinsic and ecological values as well as for their direct benefits to people. The DFG also administers the CESA. The CESA applies to plant and animal species that have been listed as threatened or endangered by the State Fish and Game Commission. CESA's policies protect, restore, and enhance threatened or endangered species. The CESA mandates that state agencies should not approve projects that would jeopardize the continued existence of threatened or endangered species, if reasonable and prudent alternatives are available. The DFG may issue an incidental take permit when the potential impacts to listed species can be fully mitigated and the project proponent has committed to that mitigation (Fish and Game Code 2080 et seq.).

**SWPH-6:** The DFG is also responsible for the streambed alteration agreements program. Under Fish and Game Code 1600, et seq, activities that would result in the diversion, obstruction or change in the natural flow or bed, channel or bank of a stream, lake or river; would use materials from a streambed; or would result in the deposition of debris, waste, or other material into a streambed must first be approved by the DFG through issuance of a streambed alteration agreement. The purpose of the streambed program is to limit damage to stream habitats. Streambed Alteration Agreement requirements would apply to Dry Creek, the Tuolumne and Stanislaus Rivers, and all of the canals.

**SWPH-9:** For proposed development consistent with the adopted Urban Area General Plan on lands within the Baseline Developed Area and Redevelopment Plan Area, exclusive of lands within the Dry Creek and Tuolumne River Comprehensive Planning Districts, an assessment of whether any potential habitat for special-status species is present within proposed development areas shall be made. No further biological study is warranted unless habitat is present or if specific information concerning the known or potential presence of significant biological resources is identified in future updates of the California Natural Diversity Database, or through formal or informal input received from resource agencies or other qualified sources. (UAGP Policy VII-E.2[a])

**SWPH-11:** All areas occupied or potentially occupied by special-status species shall be avoided and preserved, where feasible. Areas that can be avoided shall be protected by fencing, signage, or establishment of buffer zones appropriate to the species and/or habitat involved. Generally, a minimum 100-foot buffer of undeveloped land would be necessary. This buffer area should be improved through sustainable habitat restoration. The protected habitat shall be required to be managed so as to contribute to the long-term conservation of the species and ecosystems on which they depend.

Where it is determined that state and/or federally listed species are present, consultation shall be carried out with the CDFG and/or USFWS in accordance with the California and/or federal Endangered Species Acts to determine mitigation measures to avoid and minimize impacts to those species. If other special-status species are determined to be present and cannot be avoided, species-specific mitigation measures shall be implemented to minimize impacts to those species through informal consultation with CDFG and/or USFWS. The mitigation measures and other recommendations of these agencies shall be incorporated into the

development plan. Where a Community Plan is prepared, these shall become policies of the plan. (UAGP Policy VII-E.3[b])

### **SWPH-13: Policies for Sensitive Biological Habitats**

- a. Avoid disturbance in wetland areas, including vernal pools and riparian communities along rivers and streams. Avoidance of these areas would include implementing a no-disturbance buffer at least 100 feet from the high water mark of channels that have no riparian vegetation and 250 feet from the outermost high water edge of the all marsh wetlands, vernal pools, and swales. Riparian vegetation shall be protected with a 200-foot wide no-disturbance buffer delineated from the high water mark of the surface water body. If complete avoidance is not possible, the disturbance to the wetland shall be minimized to the maximum extent possible, with restoration of the disturbed area provided. The topsoil within the wetland shall be removed and kept separate from other spoils to be used in restoration. New vegetation should consist of similar native species to those removed. Activities within or near wetlands shall occur only under permit (either individual or nationwide) from the U.S. Army Corps of Engineers. Prior to development, wetland areas shall be delineated by a qualified biologist in accordance with the delineation standards of the Corps.
- b. Where wetlands or other sensitive habitats cannot be avoided, replacement habitat at a nearby off-site location shall be provided in accordance with the requirements of the applicable federal or state agency. The replacement habitat should be substantially equivalent to the nature of the habitat lost and should be provided at a ratio suitable to assure that, at a minimum, there is no net loss of habitat acreage or value. The replacement habitat shall be set aside in perpetuity for habitat use. Typically, the U.S. Fish and Wildlife Service and California Department of Fish and Game require a ratio of three replacement acres for every one acre of riparian or wetland habitat lost.
- c. Confine work in or near streams, wetlands, and vernal pools to the dry season between May 1 and October 1. Minimize road widths at stream or wetland crossings, and construct roads at right angles to reduce adverse impacts to riparian corridors.
- d. Preserve existing and mature native trees to the extent feasible, except when such trees are diseased or otherwise constitute a hazard to persons or property. During construction, all activities and storage of equipment should occur outside the drip lines of any trees to be preserved.
- e. All areas within identified riparian corridors shall be maintained in a natural state, or limited to recreation and open space uses. Recreation should be limited to passive forms of recreation, with any facilities constructed to be non-intrusive to wildlife or sensitive species.
- f. New landscaping within or immediately adjacent to the identified riparian corridors should employ native species ecologically consistent with natural riparian habitats.
- g. Within the identified riparian corridors, environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses consistent with these values shall be allowed (e.g., nature education and research, fishing, habitat enhancement and protection).
- h. Any tree removal shall occur during the nonbreeding season for birds (mid-September through January). If construction activities or tree removal must occur during the breeding season (February through mid-September), surveys for active nests shall be conducted by a qualified biologist no more than 30 days prior to the start of construction. A minimum no-disturbance buffer of 250 feet shall be delineated around active nests until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.



- i. The study site may contain elderberry shrubs. All projects within the study area should evaluate the project site conditions for the potential for elderberry shrubs removal. If elderberry shrubs are present, appropriate mitigation should be discussed and prior to any subsequent project approvals, early consultation with USFWS is recommended. The removal and trimming of elderberry shrubs is regulated by the U.S. Fish and Wildlife Service (USFWS).
- j. Burrowing owls are known to occur within the study area. Impacts to burrowing owls and their nest burrows must be avoided in order to comply with the Federal Migratory Bird Treaty Act (MBTA) and Department of Fish and Game (DFG) Code Sections 3503, 3503.5, and 3513. If any ground-disturbing activities occur during the burrowing owl nesting season (approximately February 1 through August 31), implementation of avoidance measures is required. DFG recommends that a preconstruction site survey be conducted no more than 30 days before the onset of any ground-disturbing activities. Further, if preconstruction surveys determine that during the nonbreeding season burrowing owls occupy the site, a passive relocation effort shall be installed. DFG's Staff Report on Burrowing Owl Mitigation (California Department of Fish and Game 1995) recommends that impacts to occupied burrows be avoided by implementation of a no-construction buffer zone of a minimum of 250 feet, unless a qualified biologist approved by DFG verifies through noninvasive methods that either: 1) the burrowing owls have not begun egg laying and incubation; or 2) that juveniles from the occupied nest are foraging independently and are capable of independent survival. Failure to implement this buffer zone could cause adult burrowing owls to abandon nests, cause eggs or young to be directly impacted (crushed), and/or result in reproductive failure.

The DFG Staff report on Burrowing Owl Mitigation also recommends that a minimum of 6.4 acres of foraging habitat per pair or unpaired resident burrowing owl should be acquired and permanently protected to offset the loss of foraging and burrowing habitat.

- k. The State-threatened Swainson's hawk is known to nest within the study area. Due to loss of suitable foraging habitat and existing nesting habitat that may occur during area development, mitigation measures compensating for these potential losses of habitat should be included. DFG's Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (California Department of Fish and Game 1994) recommends that for projects that occur within 1 mile of an active nest tree, 1.5 acres of habitat be protected in perpetuity for every acre of Swainson's hawk foraging habitat affected; for projects that occur within 5 miles of an active nest tree, 0.75 acre of habitat should be protected in perpetuity for every acre of foraging habitat impacted; and for projects within 10 miles of an active nest tree, 0.5 acre of habitat should be protected in perpetuity for every acre of foraging habitat impacted. The project sponsor should provide funding of a sufficient long-term endowment for the management of the protected properties.

The project area contains mature trees that could be used as nesting habitat. DFG considers the removal of known raptor nest trees, even outside of the nesting season, to be a significant impact under CEQA and, in the case of Swainson's hawk, could also result in "take" under the CESA. This is especially true in species such as Swainson's hawk, which exhibit high site fidelity to their nest and nest trees year after year (California Department of Fish and Game 1994). To avoid such impacts, surveys for nesting raptors should be conducted following the survey methodology developed by the Swainson's Hawk Technical Advisory Committee (2000) prior to any disturbance within 5 miles of a potential nest tree). Impacts to known nest trees should be avoided at all times of year. If avoidance of a known nest tree is not feasible, consultation with DFG is warranted prior to taking any action, and a determination of "take" potential under CESA or under Fish and Game Code Sections 3503.5 and 3513 will be made. Project-related

“take” (as defined in Section 86 of the Fish and Game Code) of Swainson’s hawk must be completely avoided or a State Incidental Take Permit, pursuant to Section 2081 of the Fish and Game Code, would be warranted.

**AH-9:** For all proposed development within an archaeological resource study area a combination of archival research, particularly through the Central California Information Center at Turlock, and preliminary surface field reconnaissance as well as consultations with the Native American Heritage Commission (NAHC) and those individuals and organizations identified by the NAHC shall be employed to identify any areas that may have been used by Native Americans. Areas containing prehistoric deposits shall be recorded and mapped. Only in those areas where proposed development might affect the resources will an evaluation of their significance be necessary. (UAGP Policy VII.F.2[f])

**AH-11:** If land designated or proposed to be designated for development within the City of Modesto contains a sacred or traditional place, the City shall conduct consultations with the Native American Heritage Commission and the appropriate Native American groups and individuals for the purpose of determining the level of confidentiality required to protect the cultural place and for the purpose of developing treatment with appropriate dignity of the cultural place in any corresponding management plan. Avoid and preserve sacred sites whenever feasible. (UAGP Policy VII.F.2[h])

**AH-13:** If Phase II archaeological evaluations are recommended, a report of all such surveys and excavations with recommendations shall be completed prior to Project approval. (UAGP Policy VII.F.2[j])

**AH-14:** Any project that involves earth-disturbing activities shall require consultation by the applicant for the purposes of determining archaeological and cultural resources impacts and creating appropriate mitigation to address such impacts. (UAGP Policy VII.F.2[k])

**AH-15:** Any project that involves earth-disturbing activities within previously undisturbed soils in an area determined to be archaeologically or culturally sensitive by the City of Modesto through consultation with the Project Applicant and a qualified archaeologist shall be subject to archaeological and Native American monitoring during all ground-disturbing activities. (UAGP Policy VII.F.2[l])

**AH-16:** Any project that involves earth-disturbing activities within previously undisturbed soils in an area determined to be archaeologically or culturally sensitive by the City of Modesto through consultation with the Project Applicant and a qualified archaeologist and the Native Americans will be required to have the following mitigation measures, at a minimum:

1. If prehistoric archaeological remains are discovered during the project construction (inadvertent discoveries), all work in the area of the find shall cease, and a qualified archaeologist shall be retained by the project sponsor to investigate the find, and make recommendations as to treatment and mitigation. In the event of the discovery of a burial, human bone or suspected human bone, all excavation or grading in the vicinity of the find shall halt immediately and the area of the find shall be protected and the project applicant immediately shall notify the County Coroner of the find and comply with the provisions of Cal. Health and Safety Code Section 7050.5, including Cal. Public Resources Code Section 5097.98, if applicable. If human remains are identified, the project sponsor will also retain a Native American monitor.
2. A qualified archaeological monitor will be present and will have the authority to stop and redirect grading activities, in consultation with the Native Americans and their designated

monitors, to evaluate the significance of any Native American archaeological resources discovered on the property.

3. Native American monitors from the appropriate Native American Tribes, as determined by the Native American Heritage Commission (NAHC) shall be allowed to monitor all groundbreaking activities, including all archaeological testing and data recovery excavations that are likely to affect Native American resources, as determined by a qualified archaeologist. The project proponent will be responsible for compensating Native American monitors. If human remains are discovered, the NAHC will assign a Most Likely Descendent (MLD).
4. The landowner agrees to relinquish ownership of all Native American human remains and associated burial artifacts that are found within the project area, to the appropriate Native American MLD, as assigned by the NAHC, for proper treatment and disposition. The MLD will decide whether standard archaeological analysis will be allowed on human remains and associated artifacts from burials. (UAGP Policy VII.F.2[m])

## **Tuolumne River Regional Park Master Plan**

Mitigation Measure Bio-1: To minimize disturbance to riparian habitat outside of the proposed area of disturbance, the following measures shall be implemented:

- a. For any TRRP Master Plan project, prior to any grading 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.

**Implementation Timing:** Prior to grading and tree removal.

**Implementation Responsibility:** Modesto Parks, Recreation & Neighborhoods Department (Parks Planning and Development Division)  
Modesto Operations and Maintenance Department (Parks Division)

**Monitoring Responsibility:** Modesto Park, Recreation & Neighborhoods Department (Parks Planning and Development Division)

- b. Prior to project implementation, a Section 404 permit shall be obtained from USACE and a Section 1600 Streambed Alteration Agreement shall be obtained from CDFG. Additional mitigation for impacts to riparian areas will be developed through consultation with USACE and CDFG. A detailed riparian restoration plan shall be submitted to USACE as part of the 404 permit application. The plan must be approved by USACE prior to project Implementation. Mitigation monitoring shall be conducted annually by a qualified biologist for 5 years or until the success criteria are met. Annual monitoring reports shall be submitted to USACE and CDFG.

**Implementation Timing:** Prior to implementation of project activities within waterways.

**Implementation Responsibility:** Modesto Parks, Recreation & Neighborhoods Department (Parks Planning and Development Division)

Modesto Community Development Department (Planning Division)

**Monitoring Responsibility:** Modesto Park, Recreation & Neighborhoods Department  
(Parks Planning and Development Division)

Modesto Community Development Department (Planning Division)

Mitigation Measure Bio-2: The following mitigation measures shall be implemented to ensure impacts to Water of the U.S. are less-than-significant.

- a. For any TRRP Master project, prior to grading or tree removal, a qualified biologist shall make a determination whether potential jurisdictional Waters of the U.S., including wetlands are present in the project area.
- b. If potential jurisdictional Waters of the U.S., including wetlands, are present, a determination shall be made through the formal Section 404 wetland delineation process if any jurisdictional areas would be filled or otherwise disturbed as a result of the project. Authorization of a Section 404 and Section 10 permit shall be secured from USACE and a Section 1600 agreement shall be secured from CDFG, as appropriate.
- c. As part of the permitting process, mitigation for impacts to jurisdictional Waters of the U.S. will be identified and implemented. Waters of the U.S. will be replaced or rehabilitated on a "no-net-loss" basis in accordance with USACE regulations. Habitat restoration, rehabilitation, and/or replacement shall be at a location and by methods agreeable to USACE.

**Implementation Timing:** Prior to grading and tree removal.

**Implementation Responsibility:** Modesto Parks, Recreation & Neighborhoods  
Department (Parks Planning and Development Division)

Modesto Community Development Department (Planning Division)

**Monitoring Responsibility:** Modesto Park, Recreation & Neighborhoods Department  
(Parks Planning and Development Division)

Modesto Community Development Department (Planning Division)

- d. For all projects with the potential to affect jurisdictional Waters of the U.S., all grading plans will include adequate setback for waters to be preserved. Measures to minimize erosion and runoff into seasonal and perennial Waters of the U.S. will be prepared for all projects covered by the Master Plan. Appropriate runoff controls such as berms, storm gates, detention basins, overflow collection areas, filtration systems, and sediment traps shall be implemented to control siltation and the potential discharge of pollutants into preserved drainages. All 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 during project design.

**Implementation Timing:** Erosion control measures shall be incorporated into grading plans. Monitoring of runoff controls shall occur on an ongoing basis.

**Implementation Responsibility:** Modesto Parks, Recreation & Neighborhoods  
Department (Parks Planning and Development Division)

Modesto Community Development Department (Planning Division)

**Monitoring Responsibility:** Modesto Park, Recreation & Neighborhoods Department  
(Parks Planning and Development Division)

**Mitigation Measure Bio-3:** The following mitigation shall be implemented for any project covered by the TRRP Master Plan that has the potential to affect perennial aquatic habitat.

- a. The operation of heavy equipment in the active river channel shall 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. All 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 during project design.
- b. River-adjacent construction activities shall occur during summer months when flows are low and rain is unlikely. Construction of bridges and near-river facilities shall be conducted during the summer when flows are low and rain is unlikely or as otherwise appropriate to avoid impacts during fish migrations and sensitive life stages. Construction shall not occur near the river from September through December, as this is the period when most ESA species would be in the river in appreciable numbers.

**Implementation Timing:** During construction. Monitoring of runoff controls shall occur on an ongoing basis.

**Implementation Responsibility:** Modesto Parks, Recreation & Neighborhoods Department (Parks Planning and Development Division)

Modesto Community Development Department (Planning Division)

Modesto Engineering and Transportation Department (Construction Administration Office Division)

**Monitoring Responsibility:** Modesto Park, Recreation & Neighborhoods Department (Parks Planning and Development Division)

Modesto Engineering and Transportation Department (Construction Administration Office Division)

Modesto Engineering and Transportation Department (Engineering Division)

- c. The project proponent shall consult with NMFS and USFWS under Section 7 of ESA to determine a future course of action, including whether incidental take authorization is needed. Through consultation and negotiations with the federal agencies, appropriate mitigation and avoidance measures will be determined and implemented.

**Implementation Timing:** After detailed grading and project plans are developed; consultation shall occur prior to construction near the Tuolumne River or Dry Creek.

**Implementation Responsibility:** Modesto Parks, Recreation & Neighborhoods Department (Parks Planning and Development Division)

Modesto Community Development Department (Planning Division)

**Monitoring Responsibility:** Modesto Park, Recreation & Neighborhoods Department (Parks Planning and Development Division)

Modesto Community Development Department (Planning Division)

**Mitigation Measure CR-1:** Construction personnel shall be instructed about the potential for discovery of unknown cultural resources, and the need for proper and timely reporting of such findings. If previously undiscovered historic or unique archaeological resources (including but not limited to charcoal, obsidian or chert flakes, grinding bowls, shell fragments, bone, pockets of dark, friable soils, glass, metal, ceramics, wood or similar debris) are discovered, the

following measures shall be implemented to ensure that impacts to these resources are less-than-significant.

- a. Work shall halt within 100 feet of the discovery until a professional archaeologist certified by the Registry of Professional Archaeologists (RPA) has had an opportunity to evaluate the significance of the find and suggest appropriate mitigation(s), as determined necessary.
- b. If the discovery is Native American, federally-recognized tribes in the county shall be consulted about the find to incorporate their suggestions for mitigation or protection.
- c. If the discovery is historic, archival research may be necessary by a qualified historian.

If the project may alter the archaeological integrity and data values of the discovery, it will be evaluated for the California Register. If the resource is eligible for the California Register of Historical Resources, data recovery measures shall be implemented by a professional meeting the Secretary of Interior's Professional Qualifications Standards.

**Implementation Timing:** Prior to project grading or construction; during project grading and construction.

**Implementation Responsibility:** Modesto Parks, Recreation & Neighborhoods Department (Parks Planning and Development Division)

Engineering and Transportation Department (Construction Administration)

**Monitoring Responsibility:** Modesto Parks, Recreation & Neighborhoods Department (Parks Planning and Development Division)

Engineering and Transportation Department (Construction Administration)

Mitigation Measure CR-2: Construction personnel shall be instructed about the potential for discovery of human remains, and the need for proper and timely reporting of such finds. In the event that such remains are encountered, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains, in accordance with State law. The Stanislaus County coroner would be contacted and appropriate measures implemented. These actions would be consistent with the State Health and Safety Code Section 7050.5, which prohibits disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery.

The County Coroner, upon recognizing the remains as being of Native American origin, shall contact the Native American Heritage Commission within 24 hours. The Commission has various powers and duties to provide for the ultimate disposition of any Native American remains, as does the assigned Most Likely Descendant.

**Implementation Timing:** Prior to project grading or construction.

**Implementation Responsibility:** Modesto Parks, Recreation & Neighborhoods Department (Parks Planning and Development Division)

Engineering and Transportation Department (Construction Administration)

**Monitoring Responsibility:** Modesto Parks, Recreation & Neighborhoods Department (Parks Planning and Development Division)

Engineering and Transportation Department (Construction Administration)

Mitigation Measure Hydro-2: Detailed grading plans shall be developed in accordance with standard hydrologic and hydraulic engineering practices to ensure that the proposed grading does not result in any increase in base flood water surface elevations. The grading design shall not significantly increase river flow velocities.

**Implementation Timing:** Prior to grading implementation.

**Implementation Responsibility:** Modesto Parks, Recreation & Neighborhoods Department (Parks Planning and Development Division)

Modesto Community Development Department (Development Services)

**Monitoring Responsibility:** Modesto Parks, Recreation & Neighborhoods Department (Parks Planning and Development Division)

Mitigation Measure Hydro-3: The following mitigation measures shall be implemented to avoid hazards related to construction in the floodway:

- a. Once detailed plans have been developed for the proposed structures, hydrologic and hydraulic analyses shall be performed in accordance with standard engineering practices to ensure that the proposed structures do not result in any increase in base flood water surface elevations.
- b. Scour analyses shall be performed once detailed plans have been developed for the proposed structures. If necessary, erosion control measures shall be incorporated in the final design. The most natural bank stabilization approach shall be used for erosion control. Where feasible and appropriate, the project proponents will use biotechnical bank protection methods that allow restoration of riparian streambank vegetation and shaded riverine aquatic habitat. Examples of biotechnical methods include live vegetation, live log crib walls, large woody debris bundles, erosion mats, and brush mattresses (brush layering).
- c. Structures shall be designed to allow adequate open space to pass flow and floating debris traveling downstream.
- d. Structures shall be designed to withstand the forces of floodwaters to minimize damages during flood events.

**Implementation Timing:** Prior to Notice to Proceed.

**Implementation Responsibility:** Modesto Engineering and Transportation Department (Engineering Division)

**Monitoring Responsibility:** Modesto Community Development Department (Planning Division) (concurrent with additional environmental review)

Mitigation Measure Hydro-4: Detailed riparian planting schemes shall be developed in accordance with standard hydrologic and hydraulic engineering practices to ensure that the proposed structures do not result in any increase in base flood water surface elevations. The riparian planting scheme shall be designed to prevent creating floating debris dams during flood events that would impact flood conveyance.

**Implementation Timing:** Prior to implementation of riparian planting schemes.

**Implementation Responsibility:** Modesto Engineering and Transportation Department (Engineering Division)

Modesto Parks, Recreation & Neighborhoods Department (Parks Planning and Development Division)

**Monitoring Responsibility:** Modesto Parks, Recreation & Neighborhoods Department (Parks Planning and Development Division)

Mitigation Measure HazMat-4: A Phase I Environmental Site Assessment (ESA) shall be conducted in accordance with American Society for Testing and Materials (ASTM) guidelines prior to the approval of development for any parcel within the TRRP Master Plan area. The Phase I ESA will include the findings of a site reconnaissance and investigation of prior uses of

the property that could have resulted in contamination. If a significant likelihood of contamination is revealed by the Phase I ESA, a Phase II and/or III assessment may be required, which would involve soil and/or water quality sampling and could result in remediation requirements in accordance with State and federal regulations. Implementation of this measure will ensure that this impact is reduced to a less-than-significant level.

**Implementation Timing:** Prior to ground disturbance in the TRRP planning area.

**Implementation Responsibility:** Modesto Parks, Recreation & Neighborhoods Department (Parks Planning and Development Division)

Operations and Maintenance Department (Parks Division)

Engineering and Transportation Department (Engineering Division)

**Monitoring Responsibility:** Modesto Parks, Recreation & Neighborhoods Department (Parks Planning and Development Division)