

# Staff Report 30

## **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:**

Sovereign land in the Tuolumne River, adjacent to Assessor's Parcel Numbers 037-037-001 and 056-025-002, near Modesto, Stanislaus County.

## **AUTHORIZED USE:**

Use and maintenance of one existing buried 60-inch-diameter reinforced concrete pressure pipe (RCPP) and one existing buried 60-inch-diameter concrete cylinder pipe (CCP) sewer force main for wastewater conveyance.

## **TERM:**

20 years, beginning July 1, 2022.

## **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 interests.

## **SPECIFIC LEASE PROVISIONS:**

- Lessee agrees and acknowledges that the hazards associated with climate change may require additional maintenance or protection strategies regarding the improvements on the lease premises.
- Lessee shall perform inspections of the subject pipes and provide Commission staff with reports regarding their integrity and repair in accordance with the schedule detailed in the lease.
- Lessee shall conduct burial depth surveys of the existing CCP crossing at least once every five (5) years from the start date of the Lease. If any survey, initial or

subsequent, determines that the pipeline has suffered a loss of pipeline cover or become exposed, Lessee shall submit a remediation plan to Lessor within 120 days of the completion of the survey for Lessor's review and approval.

- Lessee shall execute a reimbursement agreement with Lessor to pay for any and all reasonable costs and expenditures paid or incurred by the Commission, its staff, or both for review and approval of any plan or related materials required, including but not limited to any review or preparation of reports, documents, or other actions as required pursuant to the California Environmental Quality Act (CEQA), plan reviews, or amendments. Payment by Lessee shall be in a form and manner which is determined by Lessor's staff and is consistent with the requirements of State law.

## **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:**

On November 21, 1968, the Commission authorized issuance of a 49-year Public Agency Permit (Right-of-Way), for construction of a buried 60-inch-diameter sewer force main in the Tuolumne River ([Item 06, November 21, 1968](#)). On July 11, 1997, the Commission authorized: 1) termination of the 49-year permit, for one existing 60-inch-diameter sewer force main and 2) the issuance of a 25-year General Lease - Public Agency Use, for installation of one buried 60-inch-diameter RCPP industrial/sanitary pipeline and continued use of one existing buried 60-inch-diameter CCP sewer force main in the Tuolumne River ([Item 03, July 11, 1997](#)). That lease expired on June 30, 2022. The Applicant is now applying for a General Lease – Public Agency Use. The facilities are used for wastewater conveyance and provide critical infrastructure which facilitate sanitation processes. The facilities have existed at this location for many years, as shown in the Applicant's lease application and Commission records.

The CCP has been under lease since October 1968 and used for conveyance of primary treated domestic wastewater. The RCPP has been under lease since July 1997 and used for transportation of raw industrial cannery waste. The pipelines move industrial and domestic wastewater through existing sewer force mains under the bed of the Tuolumne River. The pipes are the only connection between the Sutter Primary Treatment Plant and the Jennings Treatment Plant. According to the Applicant, "[t]hese treatment plants are the combined processes that service over

200,000 residents, including the City of Modesto, Empire and parts of the City of Ceres." The pipes also support recycled water projects that assist with drought response and climate change. The pipes and the broader conveyance system is monitored by City engineers and plant managers.

The buried pipes will not substantially interfere with the Public Trust needs and values at this location. Per an August 2022 burial survey the elevation of the top of pipe was 2½ feet below the Tuolumne River. Based on the submerged location and infrequent boating traffic, the pipes are at low risk for anchor strikes. The River is available to the public for navigation and other Public Trust uses, which on occasion include small fishing boats. Staff has reviewed design plans, inspections reports, and a burial depth survey and concluded that the facilities are acceptable for continued operation. The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease also has a limited 20-year term and does not grant the lessee exclusive rights to the lease premises, which allows the Commission flexibility to determine if the Public Trust needs of the area have changed over time. Upon termination of the lease, the Lessee may be required to remove all improvements from State land and restore the lease premises to its natural state.

**CLIMATE CHANGE:**

The Tuolumne River in the lease area is not tidally influenced and, therefore, would not be subject to sea level rise. However, as stated in *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, drought, 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. The pipelines are located approximately 2½ feet under the River; therefore, it is unlikely that they would be affected by climate change.

Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are located in an area that is subject to the effects of climate change.

**CONCLUSION:**

For all the reasons above, staff believes the issuance of this lease will not substantially impair the public rights to navigation and fishing or substantially

interfere with Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

## **OTHER PERTINENT INFORMATION:**

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1. Approval or denial of the application 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 as authorized by law. If the Commission denies the application, the Applicant, as the prior lessee, may be required to remove the existing 60-inch-diameter RCPP and existing 60-inch-diameter CCP sewer force main and restore the premises to their original condition. The lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Leading Climate Activism" and "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

## **EXHIBITS:**

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

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt

project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

**PUBLIC TRUST AND STATE’S BEST INTERESTS:**

Find that the proposed lease will not substantially impair the public rights to navigation or substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

**AUTHORIZATION:**

Authorize issuance of a General Lease – Public Agency Use to the Applicant beginning July 1, 2022, for a term of 20 years, for the use and maintenance of one existing buried 60-inch-diameter reinforced concrete pressure pipe and one existing buried 60-inch-diameter concrete cylinder pipe sewer force main, 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 if the Commission finds such action to be in the State’s best interest.

**EXHIBIT A**

**LEASE 4074**

**LAND DESCRIPTION**

A 30-foot-wide strip of submerged land situate in the bed of the Tuolumne River, Stanislaus County, State of California, and lying 15 feet on each side of the following described centerline:

COMMENCING at a the southwest corner of Lot "A" (Park) of that certain subdivision titled "Galas Brothers Subdivision Unit No.1" as shown upon that certain map filed in Book 41 of Maps, at Page 40, Stanislaus County Records; thence along the southerly boundary of said Lot "A" (Park), South 89°41'20" East 1053.24 feet to the southeast corner of said Lot "A" (Park); thence leaving said southerly boundary, North 19°10'43" East 1694.80 feet to a point on a line located equidistant between the centerlines of two existing concrete outfall sewer pipelines, said point being the POINT OF BEGINNING; thence along said line, North 0°07'43" West 196 feet to the terminus of said centerline.

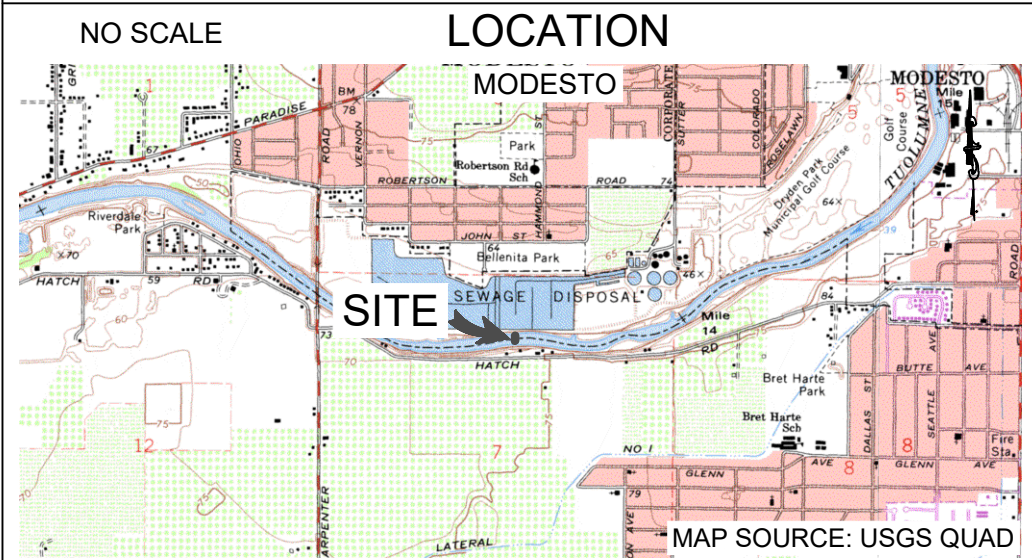
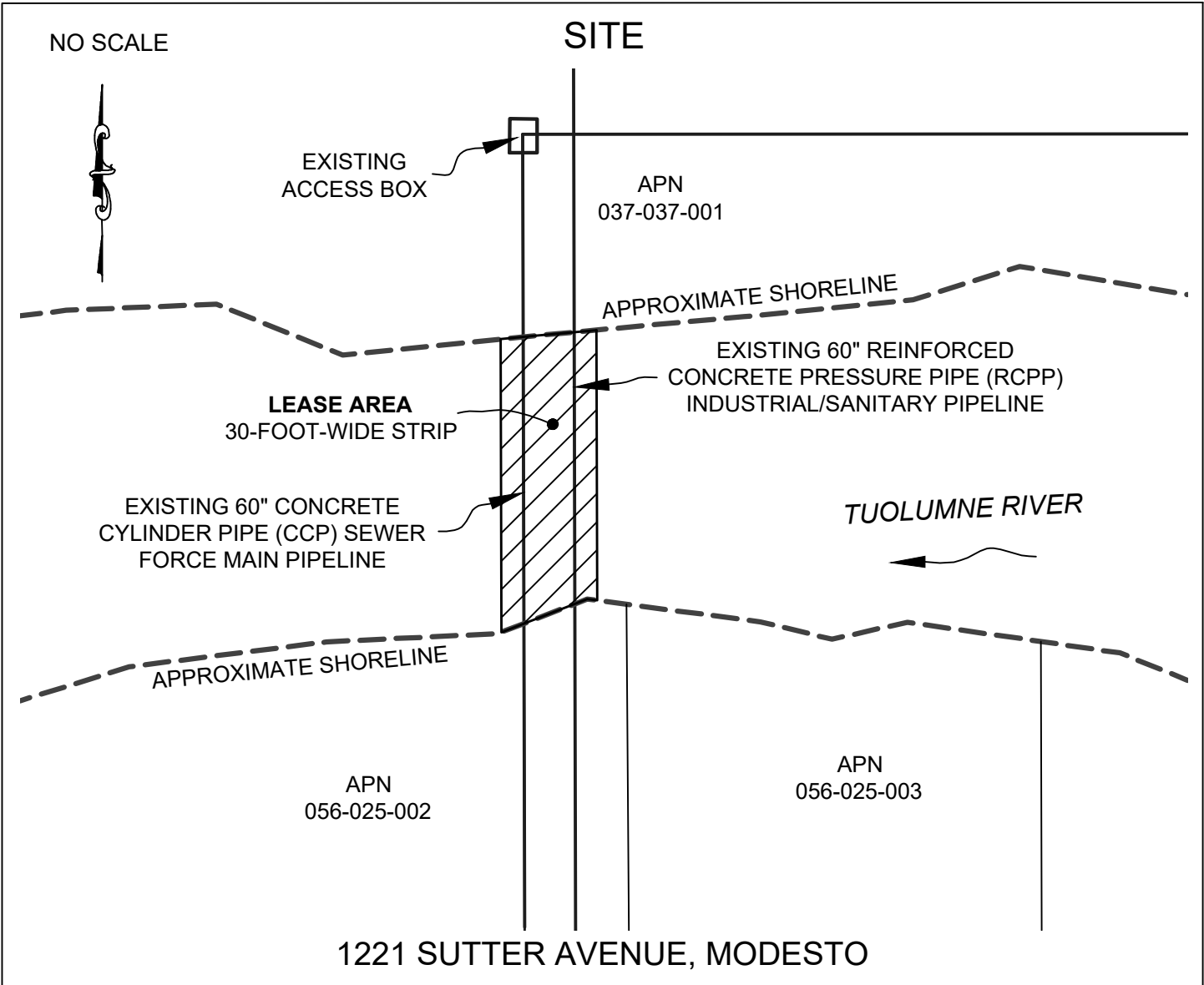
The sidelines of said strip shall be lengthened or shortened to terminate on the low water marks on the left and right banks of the Tuolumne River.

EXCEPTING THEREFROM any portions lying landward of the low water marks on the left and right banks of the Tuolumne River.

**END OF DESCRIPTION**

Prepared 08/25/2022 by the California State Lands Commission Boundary Unit





**EXHIBIT B**  
 LEASE 4074  
 CITY OF MODESTO  
 APNs 037-037-001 &  
 056-025-002  
 GENERAL LEASE -  
 PUBLIC AGENCY USE  
 STANISLAUS COUNTY



JWP 8/25/2022

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.