

# Staff Report 45

## APPLICANT:

City of Modesto

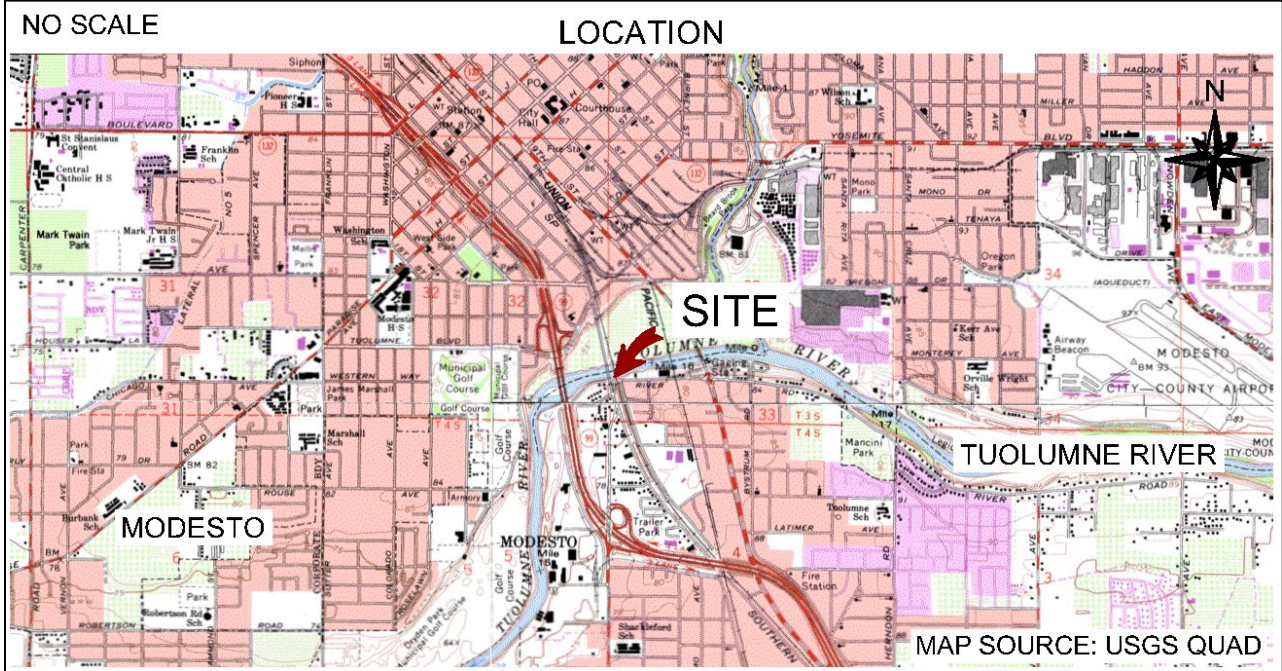
## PROPOSED ACTION:

Issuance of a General Lease – Public Agency Use.

## AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Tuolumne River, adjacent to 7th Street, Modesto, Stanislaus County (as shown in Figure 1).

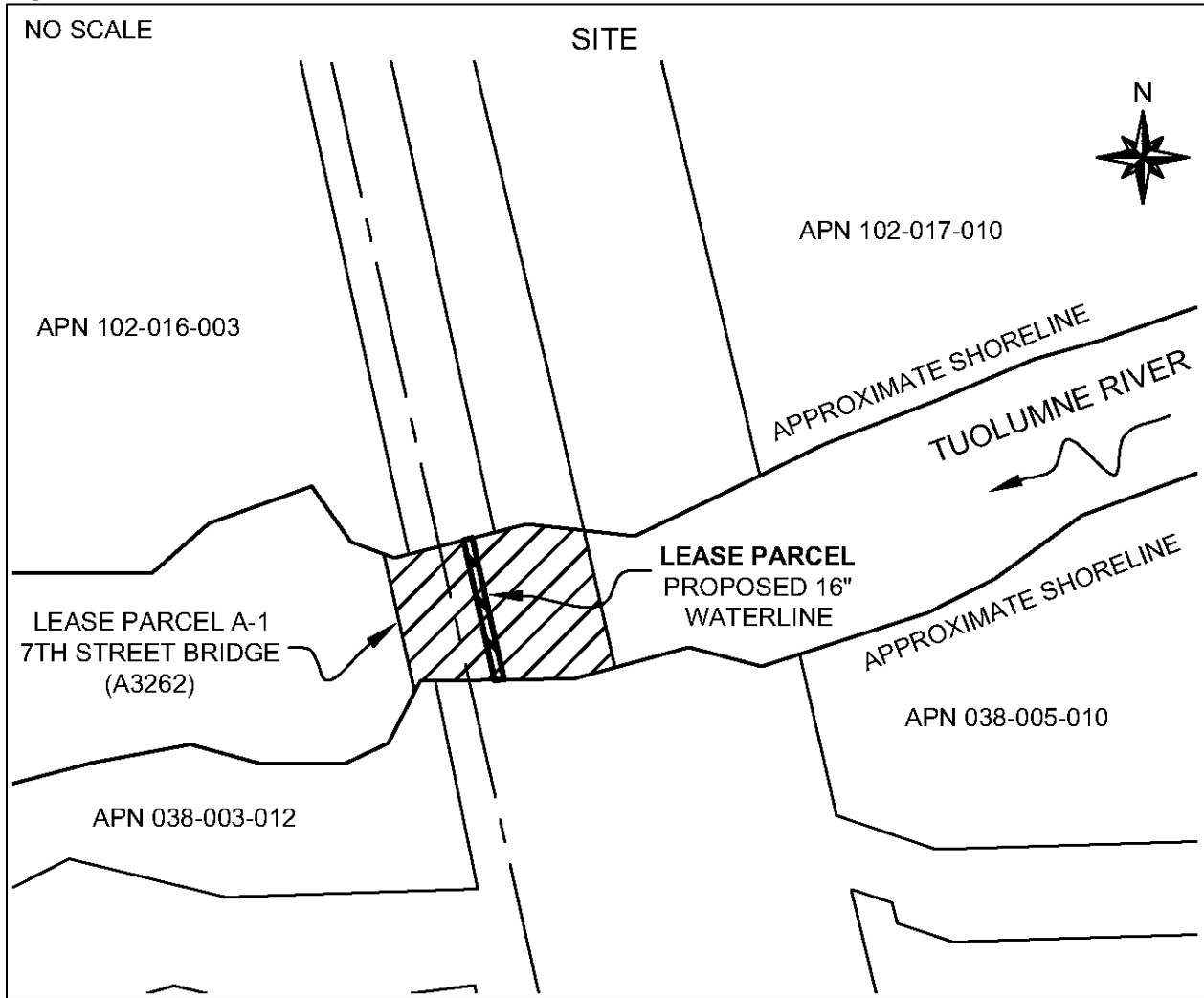
Figure 1. Location



**AUTHORIZED USE:**

Installation and use of a 16-inch-diameter water line attached to the new 7<sup>th</sup> Street Bridge (as shown in Figure 2).

**Figure 2. Site Map**



NOTE: This depiction of the lease premises is based on unverified information provided by the Applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

**TERM:**

19 years; beginning February 1, 2024.

**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.

**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.
- Within 60 days of completing the construction of authorized improvements, Lessee will provide Lessor with photographs and a set of "as-built" plans that will 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. Once approved by Lessor's Executive Officer or designee and Lessee, the revised Exhibits shall replace the Exhibits incorporated in the Lease at the time of Lease execution. The revised Exhibits shall be incorporated in this Lease as though fully set forth herein.
- 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 herein, 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 December 9, 2022, the Commission authorized a General Lease – Public Agency Use to the County of Stanislaus for construction, use, and maintenance of

a new bridge, known as the 7<sup>th</sup> Street Bridge; construction, use, and maintenance of a temporary pedestrian and bicycle crossing; and removal of the existing bridge ([Item 32, December 9, 2022](#)). That lease will expire March 14, 2043. The City of Modesto (Applicant) is now applying for installation and use of a 16-inch-diameter water line attached to the new 7<sup>th</sup> Street Bridge.

The 16-inch-diameter ductile iron pipe water line will be installed along the east side of the new 7<sup>th</sup> Street Bridge and will be supported within one of the hollow bridge bays. The water line will connect existing water lines at the intersections north and south of the bridge and will provide water service to nearby communities, particularly the Sunrise Mobile Home Estates on the south end of the bridge. Therefore, the project is considered a public use and benefit. In addition, the water line will be attached to the bridge and will not impede or impair Public Trust uses on sovereign land in the Tuolumne River.

The proposed lease requires the Lessee to obtain all necessary permits for the project. Furthermore, the proposed water line will not significantly alter the land, the lease does not alienate the State's fee simple interest, and neither permanently impairs public rights. The lease requires the Lessee to conduct all repair and maintenance work safely and indemnify the Commission in the event of any liability resulting from the proposed action. The lease is limited to a 19-year term, does not extend beyond the lease term for the bridge, 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.

### **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.

Due to these potential changes, the bridge and attached water line could need reinforcement in the future to withstand higher levels of flood exposure and more frequent storm events. Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement of the bridge and attached water line. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are located in an area that may be subject to the effects of climate change.

### **CONCLUSION:**

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the term of the proposed lease; is consistent with the Public Trust Doctrine; 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 will not be authorized to install the water line. The 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" and "Leading Climate Activism" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. An Environmental Impact Report (EIR), State Clearinghouse No. 2013092059, was prepared by County of Stanislaus and certified on May 23, 2017, for this project. Commission staff reviewed the EIR and Mitigation Monitoring and Reporting Program pursuant to the provisions of CEQA (Pub. Resources Code, § 21081.6) and adopted by the lead agency.

The Commission considered the EIR at its December 9, 2022, meeting ([Item 32, December 9, 2022](#)). As part of the Commission's approval of the lease, the Commission adopted an independent Mitigation Monitoring Program, Findings, and Statement of Overriding Considerations made in conformance with the State CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15091, 15093, and 15096), as contained on file in the Sacramento office of the Commission and incorporated

by reference hereto. The Commission's previously adopted Mitigation Monitoring Program remains in full force and effect.

No substantial changes to the project, to the circumstances in which the project occurs, or other new information requires an additional subsequent or supplemental EIR for the project to continue. The Applicant will be required by the terms of the proposed lease to continue to implement the Commission's previously imposed Mitigation Monitoring Program.

4. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq. At the time the Commission considered the EIR in 2022, staff concluded that such activity would not affect those significant lands and the Commission found the activity to be consistent with its use classification pursuant to Public Resources Code section 6370 et seq.

## **APPROVALS REQUIRED:**

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- California Department of Fish and Wildlife
- Central Valley Flood Protection Board
- Central Valley Regional Water Quality Control Board
- U.S. Army Corps of Engineers

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

Find that an EIR, State Clearinghouse No. 2013092059, was prepared by the County of Stanislaus and certified on May 23, 2017, for this project and that the Commission has reviewed and considered the information contained therein; that in the Commission's independent judgement, the scope of activities to be carried out under the lease to be issued by this authorization have been adequately analyzed; that none of the events specified in Public Resources Code section 21166 or the State CEQA Guidelines section 15162 resulting in any new or substantially more severe significant impact has occurred; and, therefore no additional CEQA analysis is required.

Find that the Commission's previously adopted Mitigation Monitoring Program remains in full force and effect.

**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 proposed lease will not substantially impair the public rights to navigation, fishing, and commerce; or substantially interfere with the Public Trust needs and values at this location, at this time, and for the term of the lease; is consistent with the Public Trust; and is in the State's best interests.

**AUTHORIZATION:**

1. Authorize issuance of a General Lease – Public Agency Use to the Applicant beginning February 1, 2024, for a term of 19 years, for installation and use of a 16-inch-diameter water line attached to the new 7<sup>th</sup> Street Bridge; 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.
2. Authorize the Executive Officer or designee to replace Exhibits in the lease upon submission, review, and approval of as-built plans detailing the final location of the improvements following construction.