

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Parks and Recreation

BOARD AGENDA # *B-3

Urgent

Routine

AGENDA DATE February 28, 2012

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval for the Director of the Department of Parks and Recreation to Enter Into an Agreement with the Yahi Bowman Archery Club for the Purpose of Using and Maintaining the Field Archery Range at Modesto Reservoir

STAFF RECOMMENDATIONS:

1. Authorize the Director of the Department of Parks and Recreation to enter into an Agreement with the Yahi Bowman Archery Club for the purpose of using and maintaining the field archery range at Modesto Reservoir.
2. Authorize waiving the daily entrance fee to Modesto Reservoir for participants of up to at least two (2) youth archery activity events, up to three (3) public archery tournaments, and up to ten (10) Saturday shoots conducted by the Yahi Bowman Archery Club pursuant to paragraphs 1.1.1 and 3.3 of the Agreement.

FISCAL IMPACT:

The proposed Agreement is anticipated to support participation in archery tournaments and, therefore, provide the Yahi Bowman Archery Club with revenue to help maintain the Stanislaus County-owned archery range at Modesto Reservoir. The County should continue to see a monetary benefit as the proceeds will help off-set the cost of the required maintenance and replacement of targets at the archery range. The anticipated revenue from this partnership should be between \$3,000 and \$4,000 a year.

BOARD ACTION AS FOLLOWS:

No. 2012-078

On motion of Supervisor Monteith, Seconded by Supervisor Chiesa
and approved by the following vote,

Ayes: Supervisors: Chiesa, Withrow, Monteith, De Martini and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: Chairman O'Brien

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval for the Director of the Department of Parks and Recreation to Enter Into an Agreement with the Yahi Bowman Archery Club for the Purpose of Using and Maintaining the Field Archery Range at Modesto Reservoir

DISCUSSION:

Upon Board of Supervisors approval on June 5, 2007, the Department of Parks and Recreation and the Yahi Bowman Archery Club (Archery Club) entered into a license Agreement authorizing the Archery Club to use and maintain the range at Modesto Reservoir. The Board also approved waiving the daily entrance fee to Modesto Reservoir for participants of up to at least two (2) youth archery activity events, up to three (3) public archery tournaments, and up to ten (10) Saturday shoots conducted by the Archery Club. The term of the existing agreement will expire on May 31, 2012.

During the five-year term of the current Agreement, Archery Club members worked on the archery range an average of 300 hours annually. In 2011 alone, Club members put in over 800 hours repairing and replacing targets and yardage markers. In addition, Club members maintained the area by mowing, providing weed abatement (purchasing and using two of their own weed eaters) and other general maintenance duties. The Club has done an excellent job of maintaining the range for public use. Annual youth events have been held for the Boy Scouts, the City of Modesto, and the Stanislaus County Police Activities League, and two public tournaments and a total of ten (10) Saturday shoots annually have also been sponsored.

The efforts of the Archery Club have significantly reduced the costs that would have been incurred by the Department of Parks and Recreation for daily maintenance and replacement of targets at the archery range. The Club has also provided staff for archery events for both the general public and youth events.

Under the proposed new Agreement (Attachment A), the Archery Club will use and maintain the field archery range at Modesto Reservoir for a period of five (5) years. A request has again been made that the daily entrance fees be waived for participants of up to at least two (2) youth archery activity events, up to (3) public archery tournaments, and up to ten (10) Saturday shoots conducted by the Archery Club pursuant to paragraphs 1.1.1 and 3.3 of the Agreement. The daily entrance fee waiver shall not apply to other Archery Club events, including but not limited to weekly or monthly Club or public shoots. The Archery Club will coordinate the maintenance of the range with the Department of Parks and Recreation and seek continued certification by the National Field Archery Association.

The requested waiver of fees is expected to support participation in Archery Club-sponsored tournaments and help offset expenses incurred by the Department of Parks and Recreation for range targets, maintenance, and other items needed to keep the archery range open and of high quality. The County shall reinstate the daily entrance fee to Modesto Reservoir for participants of the annual public archery tournaments and Saturday shoots when the annual participant level exceeds 860 participants. The Yahi Bowman schedule of 2012 events is provided in Attachment B.

The Parks and Recreation Department will continue to evaluate the outcome of this arrangement on a yearly basis.

Approval for the Director of the Department of Parks and Recreation to Enter Into an Agreement with the Yahi Bowman Archery Club for the Purpose of Using and Maintaining the Field Archery Range at Modesto Reservoir

POLICY ISSUE:

Approval of this agenda item to enter into an agreement with the Yahi Bowman Archery Club for the purpose of using and maintaining the field archery range at Modesto Reservoir supports the Board's priorities of Effective Partnerships and the Efficient Delivery of Public Services and can provide special interest recreational opportunities within the Stanislaus County park system.

STAFFING IMPACTS:

Approval of this agenda item is expected to complement staffing for maintenance and equipment replacement costs at Modesto Reservoir.

CONTACT PERSON:

Sonya K. Harrigfeld, Director of Parks and Recreation

Telephone: 209-525-6770



DEPARTMENT OF PARKS AND RECREATION
3800 Cornucopia Way, Suite C,
Modesto, Ca 95358-9492
Phone: (209) 525-6700
Fax: (209) 525-6774

ARCHERY RANGE LICENSE (USE) AGREEMENT

This License Agreement is entered into on June 1, 2012, by and between the **County of Stanislaus**, a political subdivision of the State of California ("County") and the **Yahi Bowmen Archery Club**, a non-profit association (the "Club").

RECITALS

WHEREAS, the County Department of Parks and Recreation proposes to operate and maintain a field archery range and facilities at Modesto Reservoir Regional Park (the "Park") that is open to the general public and for organized archery club events; and

WHEREAS, the Club is a National Field Archery Association ("NFAA") chartered club with approximately 30 members and is willing to assist the County in the maintenance of the archery range; and

WHEREAS, pursuant to Government Code section 25536 (a), and in consideration for the promise of the Club to assist in the maintenance of the archery range, the County is willing to authorize the Club to use the archery range;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereto agree as follow:

TERMS AND CONDITIONS

1. License.

1.1 The County hereby permits the Club, and all its members in good standing, upon payment of all applicable fees and charges (special club, Annual Permit fees), unless specifically waived by the County in this Agreement or another agreement, to enter the Park and that portion of the Park established for use as an archery range (the "Premises"), as shown on the attached plat, for the purpose of operating and maintaining a field archery range. This license is non-exclusive and is subject to and shall be subordinate to the use of the Park, including the archery range, by the County for any present and future purpose. The County shall have the right to enter upon the Premises at any time for the purpose of inspecting the condition of the Premises and for verifying compliance by the Club with the provisions of this Agreement and all applicable laws.

1.1.1 The County hereby waives the daily entrance fee to the Park for participants of youth archery activity events and up to three (3) annual public archery tournaments and up to 10 Saturday shoots conducted by the Club pursuant to paragraph 3.3 of the Agreement only. The waived daily entrance fee shall not apply to any other Yahi Bowmen events including but not limited to weekly or monthly club or public shoots.

1.1.1.1 The County shall reinstate the daily entrance fee to the Park for participants of the annual public archery tournaments and Saturday shoots when the annual participant level exceeds 860 participants.

1.1.2 The Club agrees to use its best efforts to promote its tournaments and events at the Park and to increase tournament and event participation.

1.2 It is understood that the property interest created by this Agreement may be subject to personal property taxation and that the Club will be subject to the payment of property taxes levied on such interest. The Club shall pay before delinquency all taxes, assessments or other charges levied or made as a result of the Club's possession or use of the Premises without contribution by the County, including the Club's personal property on the property.

2. Term.

2.1 The initial term of this license shall be for the period of five (5) years, commencing at 12:01 a.m. on June 1, 2012, and terminating, at 11:59 p.m. on May 31, 2017, unless terminated sooner as provided in this Agreement.

2.2 This Agreement may be relinquished by the Club at any time by giving at least 60 days prior written notice to the County. The County may revoke this Agreement and license at any time for cause and upon 90-day written notice without cause.

3. Use of Archery Range.

3.1 The Club agrees to establish use of the public archery range, and to obtain, and thereafter maintain, certification by the National Field Archery Association. The club shall have the right, during the term of the agreement, to erect such structures and to provide such equipment upon the Premises as may be reasonable and necessary for the purpose of establishing and maintaining a field archery range. No structure may be erected or altered upon the Premises until the type of use, design and proposed location or alteration shall have been approved in writing by the County.

3.2 The Premises shall be open daily to the public except that on the second Sunday of every month, the Premises shall be reserved for the exclusive use by the Club for its events.

3.3 The Club agrees to conduct up to at least two (2) youth archery activity events, up to three (3) public archery tournaments, and up to 10 Saturday shoots each year during the term of this Agreement.

3.4 The Club shall maintain the Premises in a clean and sanitary manner and shall comply with all laws, ordinances, rules, and regulations applicable to the Premises, enacted or promulgated by any public or governmental authority or agency having jurisdiction over the Premises or activities conducted on the Premises. The Club shall, at its own cost and expense, keep and maintain the Premises and the improvements on the Premises in good condition; provided, however, the Club is not responsible for the cost of material needed to maintain the Premises. The County shall not be obligated to make any improvements, alterations or repairs to the Premises or any portion thereof or improvements thereon, or to pay or reimburse the Club for any part of the cost thereof.

3.4.1 The Club shall coordinate with park staff on a monthly basis for assistance with the maintenance of the range as listed, but not limited to the following: mowing, weeding, trimming, tree trimming, painting, and general cleanup.

3.5 The Club shall not use the Premises or permit the Premises to be used by others in any manner that creates waste or nuisance, damages the Premises or adjoining property, or unreasonably disturbs other Park users. Within the limits of its legal powers, the Club shall protect against pollution of waters surrounding the Park and adjacent to the Premises, and neither the Club nor any member of the Club shall discharge waste or effluent onto the Premises in any manner that might contaminate water sources or otherwise constitute a nuisance.

3.6 The Club shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, vestiges, remains or objects of antiquity* located or found upon the Premises. In the event such items are discovered on the Premises, the Club shall immediately notify the County or an authorized representative of the County.

3.7 The Premises shall not be used or permitted by the Club to be used in violation of any law or ordinance or for any unlawful purpose. The Club shall not allow or permit hunting or trapping on the Premises. The Club shall not sponsor, allow or permit gambling, on the Premises. The Club shall not sell, store or dispense, or permit the, sale, storage or dispensing of beer or other intoxicating liquors unless specifically authorized in writing

by the Director of the Department of Park and Recreation. The Club shall not use the Premises or permit the Premises to be used by others for any illegal or immoral business or purpose, or for any activity that would constitute a nuisance. It is understood that overnight camping is not to be permitted on the Premises.

4. Improvements.

4.1 All buildings, structures, installations, facilities or other improvements placed or constructed on the Premises by the Club shall be and remain the personal property of the Club so long, as this Agreement is in effect. Upon termination of this Agreement, either through expiration or earlier termination as herein provided, any and all such improvements affixed to the Premises shall become and remain the property of the County free and clear of all costs to the County.

4.2 The County may require the removal at any time of all or any part of any improvements constructed, made or installed without the required consent of County. Unless otherwise agreed in writing, the County may require that any or all improvements be removed by the expiration or earlier termination of this Agreement, notwithstanding their installation may have been consented to by the County. Any other improvement placed upon the Premises by the Club and not permanently affixed to the Premises, shall be removed by the Club within 30 days after termination of this Agreement, but if not removed within that period, such improvements shall be treated as abandoned property as provided herein.

4.3 If the Club abandons, vacates or surrenders the Premises, or is dispossessed by process of law, or otherwise, personal property belonging to the Club and left on the Premises, including any improvements, shall be kept for a reasonable time by the County, but in no event longer than 15 days after the County gives the Club written notice to remove such property from the Premises, after which time, if not so removed, it may be treated by the County as abandoned and may be disposed of by any means deemed appropriate by the County, including sale or disposal at a scrapper or at a landfill. Such procedure is in lieu of any process prescribed by law, including the provisions of Chapter 5 (commencing with Section 1980) of Title 5, Part 4, Division 3 of the California Civil Code, and Club specifically waives any rights under said Chapter 5.

5. Insurance and Indemnification.

5.1 The Club shall take out, and maintain during, the term of this Agreement and any extended term of this Agreement, a comprehensive general liability insurance policy covering bodily injury, personal injury, property damage with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Club under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

5.2 The Club agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Club's defense and indemnification obligations as set forth in this Agreement.

5.3 The Club's insurance coverage shall be primary insurance regarding the acts and omissions of the Club and its members related to the archery range. Any insurance or self-insurance maintained by the County or its officers and employees shall be excess of the Club's insurance and shall not contribute with Club's insurance.

5.4 At least ten (10) days prior to the date the Club occupies the Premises, the Club shall furnish County with certificates of insurance and applicable endorsements effecting coverage required by this Agreement. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

5.5 The limits of insurance described herein shall not limit the liability of the Club.

5.6 To the fullest extent permitted by law, Club shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the Club's occupation and use of the Premises.

6. Assignment.

6.1 The parties expressly agree that the Club shall not assign, sublet, encumber or otherwise transfer its rights under this Agreement, or any right or interest in the Premises, without the prior written consent of the County, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of this Agreement or any interest therein without the County's written consent, either by voluntary or involuntary act of Club, or by operation of law or otherwise, shall, at the option of County, terminate this Agreement. As a condition of assignment, the assignee shall execute an express written assumption of all of the obligations of Club under this Agreement.

6.2 The County may accept performance of the Club's obligations from any person other than Club pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of any rent or performance shall constitute a waiver or estoppels of the County's right to exercise its remedies for the default or breach by the Club of any of the terms, covenants, or conditions of this Agreement.

6.3 The consent of the County to any assignment shall not constitute consent to any subsequent assignment by the Club or to any subsequent or successive assignment by the assignee. However, the County may consent to subsequent assignments of this Agreement or any amendments or modifications thereto without notifying the Club or anyone else liable on this Agreement and without obtaining their consent, and such action shall not relieve such persons from liability under this Agreement.

7. Miscellaneous Provisions.

7.1 Notices. All notices permitted or required by this Agreement or by law to be served on or given to either party hereto by the other party, shall be in writing and shall be effective when personally delivered to the party to whom it is directed, or in lieu of personal service, when deposited in the United States mail addressed as follows, or any other address designated by the party:

To County:

Stanislaus County
Department of Parks and Recreation
Attn: Susan M. Garcia, C.P.M., A.P.P.
3800 Cornucopia Way, Suite C
Modesto, CA 95358

To Club:

Yahi Bowmen Archery Club
Attn.: Ed Andrade
P.O. Box 576742
Modesto, CA 95357

7.2 Waiver. Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified or amended as provided herein.

7.3 Amendment. This agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed by an officer of the Club and by the Director of the County Department of Parks and Recreation.

7.4 Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between an of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.


7.5 Advice of Attorney. Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

7.6 Construction. Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had, in fact, drafted this Agreement.

7.7 Governing Law and Venue. This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

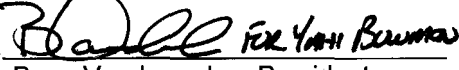
IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

COUNTY OF STANISLAUS

By: 
Sonya K. Harrigfeld, Director
Department of Parks and Recreation

"County"

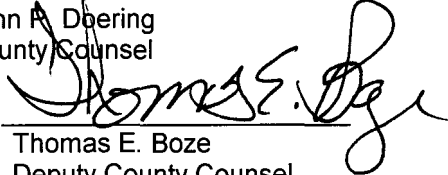
YAH! BOWMEN ARCHERY CLUB

By: 
Barry Vandermolten, President

"Club"

APPROVED AS TO FORM:

John A. Doering
County Counsel

By: 
Thomas E. Boze
Deputy County Counsel



**Yahi Bowmen Archery Club
2012 Event Schedule
Public is invited to all events**

- 2012 Tournament schedule 4/1, 5/20 & 10/28
- Saturday 3Ds 6/2, 6/9, 6/16, 6/23, 6/30, 7/7, 7/14, 7/21, 7/28, 8/4
- 2012 CBH-SAA Youth day 1/21
- 2012 Modesto City Youth 5/21
- Anticipate additional youth events as the year progresses.
- 2nd Sunday of the month Club Shoots