

# Staff Report 28

## **APPLICANT:**

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City of Lathrop

## **PROPOSED ACTION:**

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Issuance of a General Lease – Public Agency Use

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

Sovereign land in the San Joaquin River, adjacent to 18151 Inland Passage Way and 250 Saddler Oak Drive, near Lathrop, San Joaquin County.

## **AUTHORIZED USE:**

Construction, use, and maintenance of a 20-inch-diameter outfall pipeline, bank protection, and temporary sheet pile coffer dam; and use and maintenance of an existing storm drain outfall and bank protection not previously authorized by the Commission.

## **TERM:**

20 years, beginning June 23, 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 sea level rise 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, 6503, 6503.5, and 6505.5; California Code of Regulations, title 2, sections 2000 and 2003.

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

The Applicant has applied for a General Lease – Public Agency Use for the construction, use, and maintenance of a 20-inch-diameter outfall pipeline, bank protection, and temporary sheet pile coffer dam; and the use and maintenance of an existing storm drain outfall and bank protection not previously authorized by the Commission.

The Applicant proposes to establish a direct discharge of highly treated wastewater from its Consolidated Treatment Facility (CTF) to the San Joaquin River. Currently, recycled water generated at the CTF is stored in ponds and used for urban and agricultural irrigation. With implementation of the proposed project, the majority of CTF effluent will be discharged to the San Joaquin River during the winter when irrigation demands are low and river flow is relatively high. Less effluent will be discharged during the irrigation season when reuse of CTF recycled water would be maximized for landscape irrigation.

The Applicant plans to start construction in mid-July 2022. The effluent discharge pipeline will be constructed across and through the levee and be connected to a new outfall structure to be installed on the waterside of the levee on State

sovereign land in the San Joaquin River. Reclamation District (RD) No. 17 is the local levee maintaining agency that owns and maintains the levee where the project site is located.

An approximately 16-foot-wide, 250-foot-long trench extending from the landside toe of the levee to the waterside outfall location will be excavated. Before any construction on the waterside of the levee, a sheet pile coffer dam will be erected, and the area inside the coffer dam will be dewatered to provide a dry work area. A concrete headwall will then be installed. The remaining riverbank above and below the outfall structure up to approximately 50 feet upstream and downstream of the outfall will be stabilized with riprap. Following installation of the pipe, headwall, and riprap, the sheet pile coffer dam will be removed.

Upon review of the application, staff discovered an existing storm drain outfall and bank protection near the proposed outfall project site that was installed without prior Commission authorization. The existing outfall was constructed almost 30 years ago and consists of a 48-inch-diameter pipe, a 12-inch-diameter pipe, and a concrete headwall. The outfall is still in use primarily for air release. The Applicant performed a site inspection on May 18, 2022 and noted a minor deficiency in the existing flap gate on the 12-inch-diameter pipeline. The pipeline is still operational, and repair work will be completed within the next coming weeks.

The proposed and existing outfalls, temporary sheet pile coffer dam, and bank protection will not substantially interfere with Public Trust needs and values at this location because they are or will be located partially under a levee embankment and extend minimally beyond the embankment. The amount of riverbank near the project site that is available for fishing or for visiting the river is extensive. The new outfall structure will remove a very limited area from access to the river and riverbank. In addition, the new outfall will not be located in an area with extensive recreation. Although fishing occurs along the river nearby the project site, implementation of the proposed project will not meaningfully reduce opportunities for people to fish.

The proposed lease is limited to a 20-year term and does not alienate the State's fee interest or grant the lessee exclusive rights to the lease premises. Upon termination of the lease lessee may be required to remove all improvements from State land and restore the lease premises to its natural state.

**CLIMATE CHANGE:**

Climate change impacts, including sea level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The San Joaquin River at this location is tidally

influenced and vulnerable to flooding at current sea levels and at a higher risk of flood exposure given projected scenarios of sea level rise.

The California Ocean Protection Council updated the State of California Sea-Level Rise Guidance in 2018 to provide a synthesis of the best available science on sea level rise projections and rates. Commission staff evaluated the “high emissions,” “medium-high risk aversion” scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The San Francisco tide gauge was used for the projected sea level rise scenario for the lease area as listed in Table 1.

**Table 1. Projected Sea Level Rise for San Francisco**

Year	Projection (feet)
2030	0.8
2040	1.3
2050	1.9
2100	6.9

Source: Table 13, State of California Sea-Level Rise Guidance: 2018 Update

Note: Projections are with respect to a 1991 to 2009 baseline.

This effect could increase the San Joaquin River’s inundation levels within the lease area, and this risk of flood exposure is likely to increase with time. In addition, 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, fire, drought, extreme heat, and storms (especially when coupled with sea level rise).

In rivers, creeks, and tidally influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm-created debris as well as decreased bank stability and structure. Conversely, climate-change induced droughts could decrease river levels and flow for extended periods of time. Climate change and sea level rise will further influence riverine areas by changing erosion and sedimentation rates. Flooding, storm flow, and runoff will likely increase scour and decrease bank stability at a faster rate.

The combination of these projected conditions could increase the likelihood of damage to the proposed fixed outfall and existing storm drain facilities during the term of the lease. These features may need reinforcement and possibly replacement to withstand higher levels of flood exposure and more frequent storm events. Although riprap bank protection provides additional stability and will reduce the amount of erosion and scour experienced during future events.

Regular maintenance, as referenced in the lease, may reduce the likelihood of severe structural degradation or dislodgement. Pursuant to the proposed lease, the Applicant acknowledges that the lease premises and adjacent upland are located in an area that may be subject to the effects of climate change, including sea level rise.

**TRIBAL COORDINATION AND CONSULTATION:**

The Applicant contacted the California Native American Heritage Commission (NAHC) to request a search of the sacred lands file and an updated list of Native American contacts for the project area. The NAHC response letter indicated that the Sacred Lands record search was negative and provided contacts for two tribes associated with the project area: North Valley Yokuts Tribe and the Confederated Villages of Lisjan. An outreach letter was sent to the Confederated Villages of Lisjan on April 20, 2020, but no response was received. In addition, notification letters were sent to the Buena Vista Rancheria Me-Wuk Indians and the North Valley Yokuts Tribe in accordance with AB 52 on April 20, 2020, as these two tribes formerly requested that the City provide notification of proposed projects. Neither the Buena Vista Rancheria Me-Wuk Indians nor the North Valley Yokuts Tribe responded to the notification letters. In an Environmental Impact Report (EIR) prepared by the Applicant for the project, the Applicant evaluated impacts to Tribal cultural resources and imposed mitigation measures 3.5-2 and 3.5-3 in the Mitigation Monitoring and Reporting Program, which provide inadvertent discovery measures for the protection of archeological and Tribal cultural resources.

**CONCLUSION:**

For all the reasons above, staff believes the issuance of this lease will not substantially impair the public rights to navigation, fishing, and commerce; 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 may not conduct the proposed Project activities within lands under the Commission's jurisdiction.

Upon expiration or prior termination of the lease, the lessee also 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. **Existing Storm Drain Facilities:** Staff recommends that the Commission find 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.

4. **New Outfall Construction:** An EIR, State Clearinghouse No. 2019110339, was prepared for this project by the City of Lathrop (City) and certified on March 23, 2021. As part of its project approval, the City made a Statement of Facts and Findings and adopted a Mitigation Monitoring and Reporting Program. Staff reviewed these documents and prepared an independent Mitigation Monitoring Plan (attached, Exhibit C) that incorporates the City's document and recommends its adoption by the Commission.

Findings made in conformance with the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15091) are contained in the attached Exhibit D.

5. 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 staff's consultation with the persons nominating such lands and through the CEQA review process, it is staff's opinion that the project, as proposed, is consistent with its use classification.

## **APPROVALS OBTAINED:**

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U.S. Army Corps of Engineers  
California Department of Fish and Wildlife  
Central Valley Regional Water Quality Control Board  
Central Valley Flood Protection Board  
Reclamation District No. 17

## EXHIBITS:

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- A. Land Description
- B. Site and Location Map
- C. Mitigation Monitoring Program
- D. Statement of Findings

## RECOMMENDED ACTION:

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It is recommended that the Commission:

### CEQA FINDING:

**Existing Storm Drain Facilities:** 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).

**New Outfall Construction:** Find that an EIR, State Clearinghouse No. 2019110339, was prepared for this Project by the City of Lathrop and certified on March 23, 2021, and that the Commission has reviewed and considered the information contained therein.

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

Adopt the Findings, made in conformance with California Code of Regulations, title 14, sections 15091 and 15096, subdivision (h), as contained in the attached Exhibit D.

### 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.

### SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

**AUTHORIZATION:**

1. Authorize issuance of a General Lease – Public Agency Use to the Applicant beginning June 23, 2022, for a term of 20 years, for the construction, use, and maintenance of a 20-inch-diameter outfall pipeline, bank protection, and temporary sheet pile coffer dam, and use and maintenance of an existing storm drain outfall and bank protection, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; and 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.
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 new improvements following construction.



## EXHIBIT A

A 3566

### LAND DESCRIPTION

Two parcels of tide and submerged land situate in the bed of the San Joaquin River, lying adjacent to fractional Section 3, Township 2 South, Range 6 East, M.D.M. as shown on Official Government Township Plat approved on September 16, 1869, County of San Joaquin, State of California, more particularly described as follows:

#### PARCEL 1

A strip of tide and submerged land 100 feet wide, lying 50 feet on each side of the following described centerline:

BEGINNING at a point on the centerline of the proposed 20 inch in diameter pipeline (recycle water outfall) having California Coordinate System 1983, Zone 3, coordinates of Northing (y) = 2113077.18 feet, Easting (x) = 6328603.48 feet as shown on the Drawing No. C3.0 "Levee Crossing Plan and Profile" prepared by KPFF on April 4, 2021 and from which a NGS monument "BRIDGES" bears South 03° 37' 51" West 2783.30 feet, more or less, said monument having CCS83, Zone 3 (Epoch 1991.35), coordinates of X = 2110299.47 feet and Y = 6328427.22 feet; thence from said point of beginning along said centerline of the proposed pipeline to the point of TERMINUS of said centerline having CCS83 coordinates of Northing (y) = 2112855.45 feet, Easting (x) = 6328365.12 feet.

The sidelines of said strip are to be lengthened or shortened as to begin at the ordinary high water mark of the right bank of the San Joaquin River and to terminate at a line lying perpendicular to the terminus of said centerline and at any angle point intersections.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the right bank of the San Joaquin River.

#### PARCEL 2

Bounded on the north by a line 15 feet southerly and parallel with the southerly line of Parcel "A" as shown on that certain Tract Map No. 3438 filed November 16, 2006, in Book 41 of Maps and Plats, at page 20 in the Office of County Recorder of San Joaquin County;

Bounded on the south by a line 30 feet southerly and parallel with southerly line of said Parcel "A" as shown on said Tract Map No. 3438;

Bounded on the east by the ordinary high water mark of the right bank of the San Joaquin River;

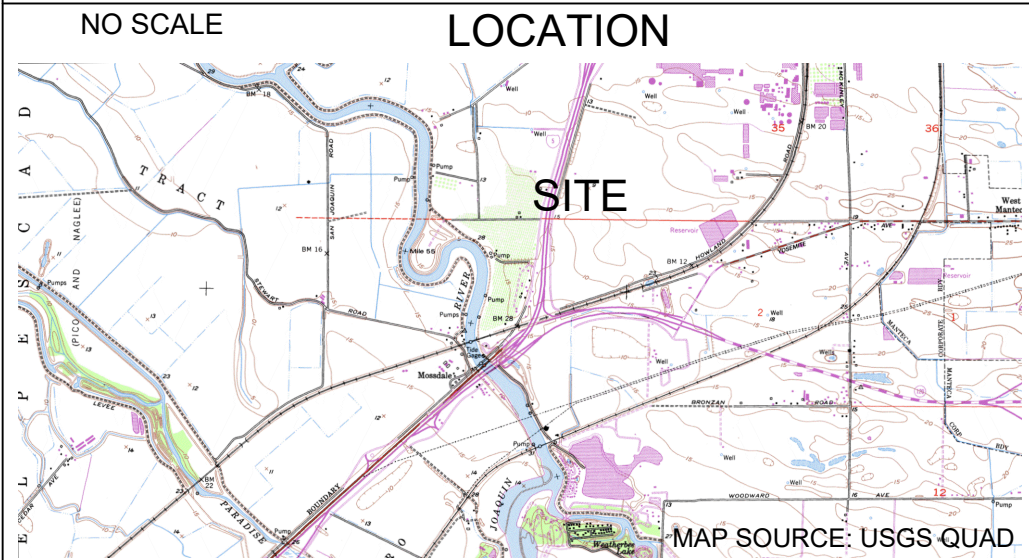
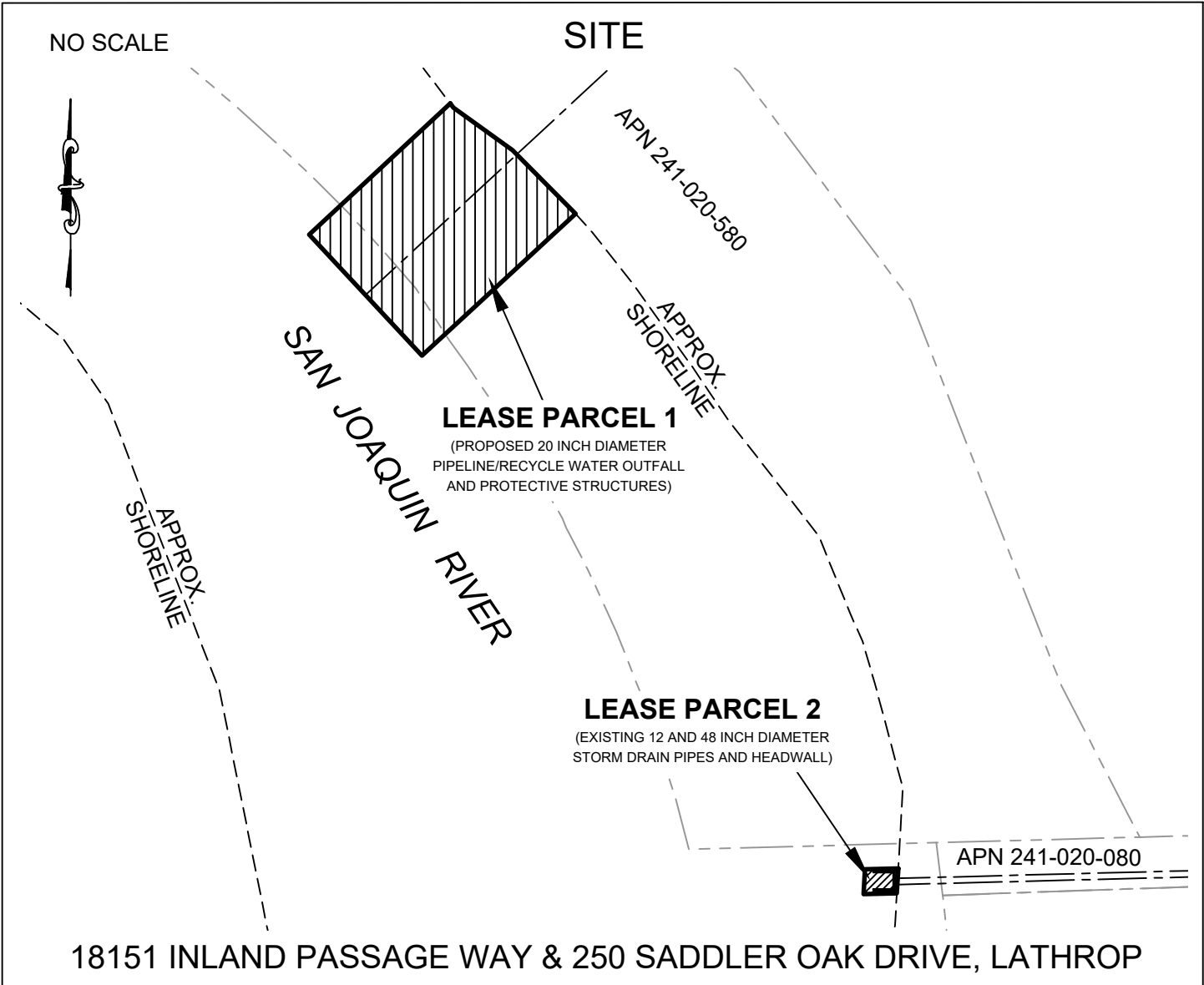
Bounded on the west by a line 30 feet westerly and parallel with the ordinary high water mark of the right bank of said River.

### **END OF DESCRIPTION**

A Parcel 1 description is based on Applicant provided design plans for a proposed pipeline together with any and all appurtenances pertaining thereto, to be built at a later date within the Lease time frame. This description is to be updated once final as-built plans are submitted.

Prepared May 19, 2022, by the California State Lands Commission Boundary Unit.





**EXHIBIT B**  
A 3566  
CITY OF LATHROP  
APNs 241-020-580 & -080  
GENERAL LEASE -  
PUBLIC AGENCY USE  
SAN JOAQUIN COUNTY



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 C**  
**CALIFORNIA STATE LANDS COMMISSION**  
**MITIGATION MONITORING PROGRAM**  
**LATHROP CONSOLIDATED TREATMENT FACILITY SURFACE WATER**  
**DISCHARGE PROJECT**  
(A3566, State Clearinghouse No. 2019110339)

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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 Lathrop Consolidated Treatment Facility (CTF) Surface Water Discharge Project (Project). The CEQA lead agency for the Project is City of Lathrop (City).

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 State 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<sup>1</sup> section 15097, subdivision (a), states in part:

*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 certified an EIR, State Clearinghouse No. 2019110339, adopted a Mitigation Monitoring and Reporting Program (MMRP) for the whole of the Project (see Attachment C-1), and remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with its program. 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 set forth in the MMRP 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

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

- Deletions of the text of the mitigation measure are shown as ~~strikeout~~ or as otherwise noted.

**TABLE C-1. PROJECT IMPACTS AND APPLICABLE MITIGATION MEASURES**

<b>Potential Impact</b>	<b>Mitigation Measure (MM)<sup>2</sup></b>	<b>Difference Between CSLC MMP and Lead Agency MMRP</b>
3.2-1. Result in Short-Term Emissions of Criteria Air Pollutants and Precursors	3.2-1	None
3.3-1. Cause Disturbance to or Loss of Valley Elderberry Longhorn Beetle	3.3-1a and 1b	None
3.3-2. Cause Disturbance to or Loss of Western Pond Turtle	3.3-2	None
3.3-3. Cause Disturbance to or Loss of Swainson's Hawk, White-Tailed Kite, Cooper's Hawk, Sharp-Shinned Hawk, and Other Nesting Raptors	3.3-3	None
3.3-4. Cause Disturbance to or Loss of Loggerhead Shrike, California Horned Lark, and Other Nesting Birds	3.3-4	None
3.3-5. Cause Disturbance to or Loss of Riparian Brush Rabbit	3.3-5	None
3.3-6. Cause Disturbance to and Loss of Waters of the United States and State	3.3-6	None
3.3-7. Cause Disturbance to or Loss of Riparian Habitat	3.3-7	None
3.4-2. Cause Direct Fish Injury or Mortality during Construction Resulting in Impacts on Fish Populations	3.4-2	None
3.5-2. Cause a Substantial Adverse Change in the Significance of Archaeological Resources	3.5-2	See below
3.5-3. Cause a Substantial Adverse Change in the Significance of a Tribal Cultural Resource	3.5-3	None
3.5-4. Disturb Human Remains	3.5-4	None
3.8-1. Create a Significant Health Hazard from the Routine Transport, Use, or Disposal of Hazardous Materials, Including Reasonably Foreseeable Upset or Accidents	3.8-1	None

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

**Addition to MM 3.5-2:** Title to all archaeological sites, and historic or cultural resources on or in the tide and submerged lands of California is vested in the State and under the jurisdiction of the California State Lands Commission. Commission staff shall be notified of any cultural resource specimens discovered on lands under the jurisdiction of the Commission. The final disposition of archaeological and historical resources from such lands must be approved by the Commission. In addition, if requested by a Tribe, a Native American Monitor shall remain onsite during Project construction.

**ATTACHMENT C-1**

**MITIGATION MONITORING AND REPORTING PROGRAM ADOPTED BY THE  
CITY OF LATHROP**

Mitigation Monitoring and Reporting Program for the  
**Lathrop Consolidated Treatment Facility**  
**Surface Water Discharge Project**

State Clearinghouse No. 2019110339



Prepared for



City of Lathrop

February 2021



Mitigation Monitoring and Reporting Program for the  
**Lathrop Consolidated Treatment Facility  
Surface Water Discharge Project**

State Clearinghouse No. 2019110339



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February 2021

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# LIST OF ABBREVIATIONS

CEQA	California Environmental Quality Act
City	City of Lathrop
DTSC	Department of Toxic Substances Control
MMRP	mitigation monitoring and reporting program
PRC	Public Resources Code

# 1 MITIGATION MONITORING AND REPORTING PROGRAM

In accordance with the California Environmental Quality Act (CEQA) (Public Resources Code [PRC] Section 21000 et seq.), the City of Lathrop (City) prepared an environmental impact report (EIR) for the Lathrop Consolidated Treatment Facility Surface Water Discharge Project (State Clearinghouse No. 2019110339) that identified significant impacts and mitigation measures that would reduce the identified impacts to less-than-significant levels, where feasible.

CEQA (PRC Section 21081.6) and the State CEQA Guidelines (Sections 15091[d] and 15097) require public agencies to “adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment.” This mitigation monitoring and reporting program (MMRP) has been prepared for the proposed project because the EIR identifies significant adverse impacts related to project implementation, and mitigation measures have been identified to reduce those impacts. Adoption of this MMRP would occur along with approval of the proposed project.

## 1.1 PURPOSE OF MITIGATION MONITORING AND REPORTING PROGRAM

This MMRP has been prepared to ensure that all required mitigation measures are implemented and completed in a satisfactory manner before and during project construction and operation, as applicable.

The MMRP table provided below has been prepared to assist the responsible parties in implementing the mitigation measures. The table identifies the impact; the individual mitigation measures; the specific actions required before, during, and after construction; the implementing party; and mitigation timing. The table also includes a column to confirm implementation of the mitigation measures after project approval. The numbering of mitigation measures follows the numbering sequence found in the EIR. Mitigation measures that are referenced more than once in the EIR are not duplicated multiple times in the MMRP table.

## 1.2 ROLES AND RESPONSIBILITIES

The City is responsible for overall administration of the MMRP and for verifying that the construction contractor or other designated party has completed the necessary actions for each measure. The party responsible for implementing each item will identify the staff members responsible for coordinating with the City on the MMRP.

## 1.3 MITIGATION MONITORING AND REPORTING PROGRAM TABLE

Table 1, which identifies the mitigation measures applicable to the proposed project, includes the table columns identified and described below:

- ▶ **Impact:** This column presents all the impacts disclosed in the EIR for which mitigation was identified.
- ▶ **Mitigation Measure:** This column presents all the mitigation measures identified in the EIR, each of which has been adopted and incorporated into the project.
- ▶ **Action(s):** For every mitigation measure, one or more actions are described. The actions delineate the means by which the mitigation measures will be implemented and, in some instances, the criteria for determining whether a measure has been successfully implemented. Where mitigation measures are particularly detailed, the action may refer back to the measure.
- ▶ **Implementing Party:** This column identifies the entity responsible for undertaking the required action.
- ▶ **Timing:** Implementation of the action must occur before or during some part of project approval, project design, or project construction or on an ongoing basis. This column identifies the timing for implementation of each mitigation measure.
- ▶ **Completion of Implementation:** The City is responsible for ensuring that mitigation measures are successfully implemented. The “Completion of Implementation” column is to be used by the City to indicate when implementation of a mitigation measure has been completed. The City, at its discretion, may delegate implementation responsibility or portions thereof to qualified consultants or contractors.

**Table 1 Lathrop Consolidated Treatment Facility Surface Water Discharge Project Mitigation Monitoring and Reporting Program**

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Completion of Implementation
<b>3.2 Air Quality</b>					
<p><b>Impact 3.2-1: Result in Short-Term Emissions of Criteria Air Pollutants and Precursors</b></p>	<p><b>Mitigation Measure 3.2-1: Apply Tier-4 Emissions Standards to Achieve a 30-Percent Reduction in NO<sub>x</sub> Emissions from Diesel-Powered Off-Road Equipment</b></p> <p>If project implementation requires two construction crews to construct the effluent discharge pipeline, the City shall require the construction contractor to use off-road construction equipment that meets EPA’s Tier 4 emissions standards as defined in 40 Code of Federal Regulations. The construction equipment shall reduce construction emissions of NO<sub>x</sub> by 30 percent from the statewide average as estimated by CARB, such that NO<sub>x</sub> emissions do not exceed 100 lb/day. The construction contractor shall provide a plan for approval by the City that demonstrates that heavy-duty off-road vehicles (50 horsepower [hp] or more) to be used 8 hours or more during project construction achieve this 30-percent reduction. The plan shall have two components: an initial report submitted before construction and a final report submitted after project completion.</p> <p>The initial report shall be submitted to the City prior to the issuance of grading permits and shall provide project and construction company information; and the equipment type, hp rating, engine model year, projected hours of use, and CARB equipment identification number for each piece of equipment in the plan. The final report shall document the end of the job, phase, or calendar year to demonstrate continued project compliance.</p> <p>This requirement shall be applied to a future construction scenario that requires the use of two effluent discharge pipeline construction crews operating off-road heavy-duty equipment within the project site at the same time CTF modifications are being constructed. Future construction of the effluent discharge pipeline that could be implemented by one construction crew at the same time as CTF modifications are being constructed shall not be subject to the requirements of this mitigation measure.</p>	<p>If this mitigation measure is required, confirm that the mitigation measure is included in the construction contract before contract is issued.</p> <p>If this mitigation measure is required, confirm that the initial report has been submitted before construction begins.</p> <p>If this mitigation measure is required, confirm that the final report has been submitted after construction is completed.</p>	<p>City of Lathrop Public Works Department</p>	<p>Conduct one-time check of the construction contract before contract is executed.</p> <p>Conduct one-time check of the initial report before grading permits are issued.</p> <p>Conduct one-time check of the final report after construction is completed.</p>	

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Completion of Implementation
<b>3.3 Terrestrial Biological Resources</b>					
<b>Impact 3.3-1: Cause Disturbance to or Loss of Valley Elderberry Longhorn Beetle</b>	<b>Mitigation Measure 3.3-1a: Seek Coverage under the SJMSCP</b> Prior to any project grading or vegetation removal, the City will seek coverage under the SJMSCP for authorized take and to mitigate habitat impacts on covered special-status species. Coverage involves compensation for habitat impacts on covered special-status species. Coverage also requires implementation of incidental take and minimization measures and payment of fees for conversion of habitat for covered special-status species. Fees paid may fund the preservation and/or creation of habitat in preserves to be managed in perpetuity. Obtaining coverage for a project includes incidental take authorization under Section 10(a) of the ESA, California Fish and Game Code Section 2081, and the MBTA. Coverage under the SJMSCP would fully mitigate all habitat impacts on covered special-status species that have no limitations to take coverage.	Confirm that City obtained coverage under the SJMSCP. Confirm that the compensation requirements are fulfilled and that the incidental take and minimization measures required for SJMSCP coverage are implemented during construction.	City of Lathrop Public Works Department through coordination with San Joaquin Council of Governments (SJCOG)	Conduct one-time check that coverage was sought before project grading or vegetation removal begins. Conduct one-time check to confirm that compensation requirements are fulfilled. Field-check as needed to confirm that incidental take and minimization measures are implemented.	
	<b>Mitigation Measure 3.3-1b: Conduct Survey for and Protect Valley Elderberry Longhorn Beetle</b> The City will implement the following measures, outlined in the SJMSCP, to avoid, minimize, and mitigate impacts on valley elderberry longhorn beetle: a) A qualified biologist will be retained by the City to conduct a preconstruction survey to count and measure elderberry stems and determine whether valley elderberry longhorn beetle exit holes are present before implementation of the project for all elderberry shrubs within or adjacent to the project footprint. b) The following measures will be implemented for all elderberry shrubs that will be retained on the project site: <ul style="list-style-type: none"> <li>▶ A construction setback of 20 feet from the dripline of each elderberry shrub/cluster will be established.</li> <li>▶ Brightly colored flags and/or fencing will be placed around elderberry shrubs as close as possible to construction limits during project activities.</li> <li>▶ Measures will be implemented during ground-disturbing activities on the project site to avoid altering the hydrology</li> </ul>	Confirm that the mitigation measure is included in the construction contract. Confirm that a qualified biologist has conducted a preconstruction survey. If elderberry shrubs cannot be avoided, confirm shrubs are transplanted during the dormant season or new shrubs are planted within SJMSCP preserves, as appropriate. Perform field-checks, as needed, to confirm adherence to mitigation measures.	City of Lathrop Public Works Department and through coordination with SJCOG	Conduct one-time check of the construction contract before contract is executed. Conduct one-time survey before construction begins. Transplant or plant elderberry shrubs during dormant season (November 1 through February 15). Conduct field-checks, as needed, to confirm adherence to mitigation measures.	

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Completion of Implementation
	<p>of the site or otherwise affecting the vigor or likelihood of survival of elderberry shrubs.</p> <ul style="list-style-type: none"> <li>▶ The City and its construction contractor will ensure that project activities, such as truck traffic or other use of machinery, do not create excessive dust on the project site, such that the growth or vigor of elderberry shrubs is adversely affected. Enforcing a speed limit and watering dirt roadways are examples of methods that may be used to ensure that excessive dust is not created.</li> <li>▶ Areas that are disturbed temporarily will be restored to predisturbance conditions (e.g., matching preconstruction contours, slopes, and drainage patterns). Erosion control measures (e.g., use of hay bales, filter fences, or other accepted equivalents) will be installed around disturbed areas within 100 feet of the dripline of elderberry shrubs.</li> <li>▶ No insecticides, herbicides, fertilizers, or other chemicals will be used within 100 feet of the dripline of elderberry shrubs.</li> </ul> <p>c) The following measures will be implemented for any elderberry shrubs that cannot be avoided and removed from the project site:</p> <ul style="list-style-type: none"> <li>▶ All elderberry shrubs with evidence of valley elderberry longhorn beetle exit holes (as determined during the preconstruction survey) that cannot be avoided during project construction will be transplanted by the City to a U.S. Fish and Wildlife Service- (USFWS-) approved valley elderberry longhorn beetle mitigation site during the dormant period for elderberry shrubs (November 1 through February 15).</li> <li>▶ If elderberry shrubs with evidence of valley elderberry longhorn beetle exit holes cannot be transplanted, the City will provide mitigation within SJMSCP preserves at a ratio of three new plants for each stem 1 inch in diameter or greater (as determined during the preconstruction survey) to be removed from the project site.</li> </ul> <p>For all elderberry shrubs without exit holes that cannot be avoided during project construction, the City will provide mitigation within SJMSCP preserves at a ratio of three new plants for each stem 1 inch in diameter or greater (as determined during the preconstruction survey) to be removed from the project site.</p>				

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Completion of Implementation
<p><b>Impact 3.3-2: Cause Disturbance to or Loss of Western Pond Turtle</b></p>	<p><b>Mitigation Measure 3.3-2: Conduct Western Pond Turtle Preconstruction Survey and Relocation</b>  The City will implement the following measures to avoid potentially significant impacts on western pond turtle, consistent with the avoidance and minimization measures in the SJMSCP. All mitigation listed below will be limited to construction within 0.3 mile of suitable aquatic habitat:</p> <ul style="list-style-type: none"> <li>▶ A preconstruction survey for western pond turtle shall be conducted by a qualified biologist before work is conducted in aquatic habitat suitable for the species. If no pond turtles are observed, no further mitigation is necessary.</li> <li>▶ During coffer dam installation and draining of the proposed new outfall location, a qualified biologist shall be present to survey for western pond turtles. If pond turtles are observed, a qualified biologist, with approval from California Department of Fish and Wildlife (CDFW), shall relocate pond turtles to the nearest area with suitable aquatic habitat that will not be disturbed by project-related construction activities.</li> <li>▶ If nesting areas for pond turtles are identified on the project site, a buffer area of 300 feet shall be established around the nesting site (which may be immediately adjacent to the river or extend up to 400 feet away from the river in uplands). These buffers shall be indicated by temporary fencing if construction has or will begin before nesting periods have ended. (The period from egg laying to emergence of hatchlings is normally April to November.)</li> </ul>	<p>Confirm that the mitigation measure is included in the construction contract before contract is executed.</p> <p>Confirm that a qualified biologist has conducted a preconstruction survey.</p> <p>If pond turtles are observed during coffer dam installation or draining of the proposed new outfall location, confirm that a qualified biologist has relocated them before construction begins to the nearest area with suitable aquatic habitat that will not be disturbed by project-related construction activities.</p> <p>If nesting areas for pond turtles are identified on the project site, confirm that a buffer area of 300 feet has been established and maintained around the nesting site before and during construction.</p>	<p>City of Lathrop Public Works Department and through coordination with SJCOG</p>	<p>Conduct one-time check of the construction contract before contract is executed.</p> <p>Conduct one-time survey before construction begins.</p> <p>Conduct field-checks, as needed, to confirm that the qualified biologist is relocating turtles and establishing buffers around nesting areas as the need arises.</p> <p>Conduct field-checks, as needed, to confirm that buffers around nesting areas are established during the period from egg laying to emergence of hatchlings (normally April to November).</p>	
<p><b>Impact 3.3-3: Cause Disturbance to or Loss of Swainson's Hawk, White-Tailed Kite, Cooper's Hawk, Sharp-Shinned Hawk, and Other Nesting Raptors</b></p>	<p><b>Mitigation Measure 3.3-3: Protect Swainson's Hawk, White-Tailed Kite, Cooper's Hawk, Sharp-Shinned Hawk, and Other Nesting Raptors</b>  The City will implement the following measures consistent with the SJMSCP to avoid, minimize, and mitigate impacts on Swainson's hawk, white-tailed kite, Cooper's hawk, sharp-shinned hawk, and other nesting raptors:</p> <ul style="list-style-type: none"> <li>▶ Although no tree removals are anticipated, if removal of a known nest tree is required, it shall be removed between September 16 and February 14. If removal of the tree occurs between November 1 and February 14, a qualified biologist will be retained to conduct a preactivity survey of the tree because</li> </ul>	<p>Confirm that the mitigation measure is included in the construction contract before contract is executed.</p> <p>Confirm that a qualified biologist has conducted a preactivity survey for great horned owl in any known nest tree to be removed between November 1 and February 14.</p> <p>Confirm that a qualified biologist has conducted preconstruction</p>	<p>City of Lathrop Public Works Department and through coordination with SJCOG and CDFW (if active raptor nests are present)</p>	<p>Conduct one-time check of the construction contract.</p> <p>Conduct preactivity surveys for great horned owl between November 1 and February 14.</p> <p>Conduct preconstruction surveys for active nests no more than 14 days and no less</p>	



Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Completion of Implementation
	<p>great horned owls start nesting early and could occupy hawk nests early in the season.</p> <ul style="list-style-type: none"> <li>▶ If project activity would commence between February 15 and September 15, a qualified biologist will be retained to conduct preconstruction surveys for active nests on and within 0.5 mile of the project site no more than 14 days and no less than 7 days before work begins.</li> <li>▶ If an occupied nest is present, CDFW guidelines recommend implementation of 0.25-mile buffer for Swainson’s hawk in developed areas and a 500-foot buffer for other raptors, but the size of the buffer may be adjusted if a qualified biologist and CDFW determine that reducing the buffer size would not be likely to adversely affect the nest. No project activity will commence within the buffer area until a qualified biologist confirms that the nest is no longer active or that the young have fully fledged. Monitoring of the nest by a qualified biologist will be required if the activity has potential to adversely affect the nest. If construction activities cause the nesting bird to vocalize, make defensive flights at intruders, get up from a brooding position, or fly off the nest, then the no-disturbance buffer shall be increased until the agitated behavior ceases.</li> </ul>	<p>surveys for active nests on and within 0.5 mile of the project site before construction begins if project activity would commence between February 15 and September 15.</p> <p>If an occupied nest is present, confirm that a buffer around the nest tree is established, the size to be determined by a qualified biologist and CDFW. Confirm that a qualified biologist monitors the nest if activity has potential to adversely affect it. If construction activities cause the nesting bird to exhibit agitated behavior, confirm that the no-disturbance buffer is increased until the behavior ceases.</p>		<p>than 7 days before work begins if project activity would commence between February 15 and September 15.</p> <p>Conduct field-checks, as needed, to confirm that buffers are established and, if necessary, increased and that nests are monitored during activities in the vicinity of occupied nests.</p>	
<p><b>Impact 3.3-4: Cause Disturbance to or Loss of Loggerhead Shrike, California Horned Lark, and Other Nesting Birds</b></p>	<p><b>Mitigation Measure 3.3-4: Protect Loggerhead Shrike, California Horned Lark, and Other Nesting Birds</b></p> <p>Consistent with the avoidance and minimization measures in the SJMSCP, the City will implement the following measures to reduce impacts on loggerhead shrike, California horned lark, and other nesting birds:</p> <ul style="list-style-type: none"> <li>a) A qualified biologist shall conduct a preconstruction survey for any project activity that would occur during the nesting bird season (February 1–August 31) and within 100 feet of suitable nesting habitat, including shrubs, riparian vegetation, trees, and barren areas within the CTF. The survey shall be conducted within 14 days before project activity begins.</li> <li>b) If no loggerhead shrike, California horned lark, or other nesting birds are found, no further mitigation is required. If active nests are found, the qualified biologist shall establish a</li> </ul>	<p>Confirm that the mitigation measure is included in the construction contract before contract is executed.</p> <p>Confirm that a qualified biologist has conducted a preconstruction survey for any project activity that would occur during the nesting season and within 100 feet of suitable nesting habitat.</p> <p>If active nests for loggerhead shrike, California horned lark, or other nesting birds are found, confirm that the qualified biologist has established a no-disturbance buffer</p>	<p>City of Lathrop Public Works Department and through coordination with SJCOG and CDFW (if nesting birds are present)</p>	<p>Conduct one-time check of the construction contract before the contract is executed.</p> <p>Conduct preconstruction survey during the nesting season (February 1–August 31) within 14 days before project activity begins.</p> <p>Establish no-disturbance buffers around the nest locations before construction begins for</p>	

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Completion of Implementation
	<p>no-disturbance buffer around the nest location. A setback of 100 feet from nesting areas for loggerhead shrike shall be established and maintained during the nesting season for the period encompassing nest building and continuing until fledglings leave nests. This setback applies whenever construction or other ground-disturbing activities must begin during the nesting season in the presence of nests that are known to be occupied. Setbacks shall be marked by brightly colored temporary fencing. For other protected birds, the qualified biologist shall determine the buffer distance based on bird species; listing status; and other factors, including distance from construction activity, type and duration of construction, and whether the nest is within the line of sight of construction activity. The size of the buffer may be adjusted if the qualified biologist and the City, in consultation with CDFW, determine that such an adjustment would not be likely to adversely affect the nest.</p>	<p>around the nest location. The size of the buffer may be adjusted if the qualified biologist and the City, in consultation with CDFW, determine that such an adjustment would not be likely to adversely affect the nest.</p>		<p>the period encompassing nest building and continuing until fledglings leave the nests. This setback would apply whenever construction or other ground-disturbing activities must begin during the nesting season in the presence of nests that are known to be occupied.</p>	
<p><b>Impact 3.3-5: Cause Disturbance to or Loss of Riparian Brush Rabbit</b></p>	<p><b>Mitigation Measure 3.3-5: Protect Riparian Brush Rabbit</b>  The City will consult with the USFWS under ESA and with CDFW under CESA to obtain the required incidental take authorizations, if needed, and implement the following measures to avoid and minimize impacts on riparian brush rabbit:</p> <ul style="list-style-type: none"> <li>▶ Levee construction and staging areas will be identified in construction drawings, and exclusion fencing will be installed to delineate their boundaries. Exclusion fencing will be maintained/repared through the length of construction.</li> <li>▶ Where suitable riparian brush rabbit habitat is adjacent to staging and construction areas, this habitat will be identified as an environmentally sensitive area in construction drawings and will be flagged with exclusion flagging in the field. Construction personnel, vehicles, and equipment must remain within the identified construction/staging area and outside of the environmentally sensitive area.</li> <li>▶ Where construction or staging activities would occur within suitable riparian brush rabbit habitat, vegetation within the habitat will be removed by hand (with hand tools or hand-operated power equipment) at least 2 weeks before</li> </ul>	<p>Confirm that the mitigation measure is included in the construction contract before the contract is executed.</p> <p>Confirm that the City consulted with USFWS and CDFW to obtain the required incidental take authorizations, if needed, and identified additional mitigation measures if necessary before construction begins.</p> <p>Verify that levee construction and staging areas are identified in construction drawings and that exclusion fencing is installed to delineate their boundaries before construction begins.</p> <p>Verify that suitable riparian brush rabbit habitat, where it is adjacent to staging and construction areas, is</p>	<p>City of Lathrop Public Works Department through consultation with USFWS and CDFW, if needed for second and third measures</p>	<p>All timing below will be confirmed through consultation with USFWS and CDFW, if needed.</p> <p>Conduct one-time check of the construction contract before the contract is executed.</p> <p>Conduct consultation with USFWS and CDFW and obtain incidental take authorization and/or confirm mitigation measures before construction begins.</p> <p>Conduct one-time check to confirm that levee construction and</p>	

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Completion of Implementation
	<p>construction-related ground disturbance would occur in the habitat area. Vegetation will be cut to ground level and maintained at ground level throughout the construction period to deter use of the area by riparian brush rabbits.</p> <ul style="list-style-type: none"> <li>▶ Before ground-disturbing activities begin, a silt fence or other suitable temporary barrier that will exclude brush rabbits from the construction area will be installed around the construction/staging area where it borders or is located within suitable habitat. Temporary signage will be placed along the rabbit exclusion fence at 150-foot intervals, warning contractors to stay within the construction area. The temporary rabbit exclusion fence and associated signage will be inspected by a qualified biologist each morning before beginning construction activities and repaired and maintained as necessary. The temporary rabbit exclusion fence and signage will be removed after construction activities are no longer required in the exclusion area.</li> <li>▶ While construction is underway, a biological monitor will conduct daily surveys of the construction area before the start of activities for the day to determine whether riparian brush rabbits are within the construction area. If riparian brush rabbits are located within the construction area, construction activities will not start until the animal has left the construction area on its own or is removed by an approved permitted biologist.</li> <li>▶ Trash, including food wrappings, will be removed from the levee construction/staging areas daily to avoid attracting potential predators, such as feral cats, dogs, coyote, or foxes to the area.</li> </ul> <p>Additional measures may be developed with USFWS and CDFW during the consultation process. These measures may include, but would not be limited to, compensation for disturbance to or loss of habitat, implementation of a trapping program to remove feral animals and rats from the Mossdale Oxbow Preserve, and coordination to assist with the USFWS captive breeding program. Compensation for disturbance to or loss of habitat could include enhancement of existing habitat and creation of additional habitat, including development and implementation of a riparian vegetation restoration plan after construction along the levee has</p>	<p>identified as an environmentally sensitive area in construction drawings and flagged with exclusion fencing before construction begins.</p> <p>Confirm that exclusion fencing is maintained/repared during construction.</p> <p>Where construction or staging activities would occur within suitable riparian brush rabbit habitat, confirm that vegetation in the habitat is removed by hand before construction or staging activities occur. Vegetation will be cut to ground level and maintained at ground level.</p> <p>Confirm that a silt fence or other suitable temporary barrier that will exclude brush rabbits from the construction area is installed around the construction/staging area where it borders or is located in suitable habitat before construction or staging activities occur.</p> <p>Confirm that temporary signage is placed before construction begins along the rabbit exclusion fence at 150-foot intervals, warning contractors to stay within the construction area.</p> <p>Confirm that the temporary rabbit exclusion fence and associated signage are inspected by a qualified biologist and that it is repaired and maintained as necessary during construction.</p> <p>Confirm that the temporary rabbit</p>		<p>staging areas are identified in construction drawings and that exclusion fencing was installed before construction begins.</p> <p>Conduct one-time check to confirm that suitable riparian brush rabbit habitat is identified as an environmentally sensitive area in construction drawings and flagged with exclusion fencing before construction begins.</p> <p>Field-check as needed throughout construction to confirm that exclusion fencing is being maintained.</p> <p>Remove vegetation in suitable riparian brush rabbit habitat at least 2 weeks before construction-related ground disturbance would occur in the habitat area. Cut vegetation to ground level and maintain at ground level throughout the construction period.</p> <p>Install the silt fence or other suitable temporary barrier before ground-</p>	

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Completion of Implementation
	been completed.	<p>exclusion fence and signage are removed after construction activities are no longer required in the exclusion area.</p> <p>Confirm that a qualified biologist monitors the construction area with daily surveys during construction to determine whether riparian brush rabbits are in the construction area, and if riparian brush rabbits are located in the construction area, that construction activities are halted until the animal has left the construction area on its own or is removed by an approved permitted biologist.</p> <p>Confirm that trash is removed from the levee construction/staging areas during and after construction.</p>		<p>disturbing activities begin.</p> <p>Field-check as needed during construction to confirm that temporary signage is in place along the rabbit exclusion fence at 150-foot intervals.</p> <p>The biological monitor will inspect the temporary rabbit exclusion fence and associated signage each morning before beginning construction activities and repair and maintain as necessary.</p> <p>Field-check to confirm that the temporary rabbit exclusion fence and signage are removed after construction activities are no longer required in the exclusion area.</p> <p>The biological monitor will conduct surveys of the construction area daily, before the start of activities for the day.</p> <p>Remove trash from the levee construction/staging areas daily.</p>	
<b>Impact 3.3-6: Cause Disturbance to and Loss of Waters of the United States and State</b>	<b>Mitigation Measure 3.3-6: Compensate for Loss of Waters of the United States and State</b> The City will implement the following measures to compensate	Confirm the exact acreage of waters of the United States and waters of the state that would be filled as a result of project implementation	City of Lathrop Public Works Department in consultation	Conduct one-time check to confirm that the correct acreage is	

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Completion of Implementation
	<p>for the loss of waters of the United States and state:</p> <p>a) The City submitted the aquatic resources delineation report to U.S. Army Corps of Engineers (USACE), and requested a jurisdictional determination. Based on the jurisdictional determination, the City will confirm the exact acreage of waters of the United States and waters of the state that would be filled as a result of project implementation.</p> <p>b) The City will replace on a “no net loss” basis (minimum 1:1 ratio) (in accordance with USACE and/or Central Valley Regional Water Quality Control Board [Central Valley RWQCB]) the acreage and function of all wetlands and other waters that would be removed, lost, or degraded as a result of project implementation. Wetland habitat will be replaced or enhanced at a location acceptable to or approved by USACE and the Central Valley RWQCB, either on-site, by participation in the National Fish and Wildlife Foundation in-lieu fee program, by the purchase of mitigation credits at an approved mitigation bank (e.g., Cosumnes Floodplain Mitigation Bank), or any combination thereof. The acreage and location of mitigation will be determined during the Section 401 and Section 404 permitting processes.</p> <p>c) The City will obtain a USACE Section 404 permit and RWQCB Section 401 water quality certification before any groundbreaking activity within 50 feet of any wetland or water of the United States or state. The City will implement all permit conditions.</p> <p>d) A dewatering and diversion plan for the San Joaquin River will be developed as necessary. No groundbreaking activities will occur until the dewatering and diversion plan has been approved by the resource agencies.</p>	<p>with USACE prior to permit issuance.</p> <p>Confirm that the City consulted with USACE and the Central Valley RWQCB prior to construction to ensure no net loss in the acreage and function of all wetlands and other waters that would be removed, lost, or degraded as a result of project implementation.</p> <p>Confirm that the City obtained a USACE Section 404 permit and RWQCB Section 401 water quality certification prior to construction.</p> <p>Verify that the City implements all permit conditions during construction.</p> <p>Confirm that a dewatering and diversion plan for the San Joaquin River is developed and approved as necessary prior to construction.</p> <p>Confirm that the dewatering and diversion plan for the San Joaquin River is implemented during construction</p>	<p>with the USACE and Central Valley RWQCB</p>	<p>identified in the permits.</p> <p>Consult with USACE and the Central Valley RWQCB prior to permit issuance to determine the acreage and location of mitigation.</p> <p>Obtain the 404 permit and Section 401 water quality certification before any groundbreaking activity within 50 feet of any wetland or water of the United States or state.</p> <p>Field-check as needed to confirm that all permit conditions are implemented.</p> <p>Confirm development and approval of the dewatering and diversion plan before groundbreaking activities begin.</p> <p>Field-check as needed to confirm implementation of the dewatering and diversion plan during construction</p>	
<p><b>Impact 3.3-7: Cause Disturbance to or Loss of Riparian Habitat</b></p>	<p><b>Mitigation Measure 3.3-7: Minimize and Compensate for the Loss of Riparian Habitat</b></p> <p>The City will implement the following measures, which in addition to others, include the incidental take and avoidance measures in the SJMCSP for riparian habitat:</p>	<p>Confirm the use of appropriate erosion control measures prior to and during construction.</p> <p>Confirm that emergent and submergent aquatic vegetation is</p>	<p>City of Lathrop Public Works Department and through coordination with SJCOG</p>	<p>Field-check as needed prior to and during construction to confirm that appropriate erosion control measures are</p>	

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Completion of Implementation
	<ul style="list-style-type: none"> <li>▶ Require appropriate erosion control measures (e.g., use hay bales, filter fences, vegetative buffer strips, or other accepted equivalents) to reduce the amount of siltation and contaminated runoff from the project site.</li> <li>▶ Retain emergent (rising out of water) and submergent (covered by water) vegetation.</li> <li>▶ Retain vegetation as practical within the constraints of the proposed development as determined by the SJMSCP Joint Powers Authority with the concurrence of the permitting agencies' representatives on the Technical Advisory Council. Rapidly sprouting plants, such as willows, should be cut off at the ground and root systems left intact, when removal is necessary.</li> <li>▶ The City will submit a notification of lake and streambed alteration to CDFW for work within the bed, bank or channel of the San Joaquin River.</li> <li>▶ The acreage of valley oak woodland and forest habitat removed will be replaced or restored/enhanced at a minimum 1:1 ratio with habitat comprising ecological conditions similar to those provided by the habitat removed from the project site, including similar species composition and diversity and functional organization. Habitat restoration, enhancement, and/or replacement will be at a location and by methods acceptable to SJMSCP staff and/or CDFW. This may include on-site restoration of riparian habitat, purchase of mitigation credits at a CDFW-approved mitigation bank (e.g., Cosumnes Floodplain Mitigation Bank), or a combination of these.</li> <li>▶ Compensatory mitigation requirements in compliance with the SJMSCP will be calculated from the edge of a 100-foot buffer zone to the edge of the riparian vegetation as it extends into the river.</li> </ul>	<p>retained prior to construction.</p> <p>Confirm that terrestrial vegetation is retained as practical within the constraints of the proposed development as determined by the SJMSCP Joint Powers Authority with the concurrence of the permitting agencies' representatives on the Technical Advisory Council prior to and during construction.</p> <p>Confirm that a notification of lake and streambed alteration is submitted to CDFW prior to construction.</p> <p>Confirm before the start of construction that the acreage of valley oak woodland and forest habitat removed will be replaced or restored/enhanced at a minimum 1:1 ratio at a location and by methods acceptable to SJMSCP staff and/or CDFW prior to project completion.</p> <p>Confirm that the compensatory mitigation requirements in compliance with the SJMSCP are calculated from the edge of a 100-foot buffer zone to the edge of the riparian vegetation as it extends into the river prior to implementing compensatory mitigation.</p>	<p>and CDFW, if needed</p>	<p>implemented.</p> <p>Field-check as needed prior to and during construction to confirm that emergent and submergent vegetation is retained.</p> <p>Field-check as needed prior to and during construction to confirm that vegetation was retained within the constraints of the proposed development as determined by the SJMSCP Joint Powers Authority with the concurrence of the permitting agencies' representatives on the Technical Advisory Council.</p> <p>Conduct one-time check to confirm that a notification of lake and streambed alteration to CDFW is submitted prior to construction.</p> <p>Confirm that the acreage of valley oak woodland and forest habitat removed is replaced or restored/enhanced prior to project completion.</p> <p>Confirm compensatory mitigation requirements</p>	

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Completion of Implementation
				in compliance with the SJMSCP are calculated from the edge of a 100-foot buffer zone to the edge of the riparian vegetation as it extends into the river prior to implementing compensatory mitigation.	
<b>3.4 Aquatic Biological Resources</b>					
<b>Impact 3.4-2: Cause Direct Fish Injury or Mortality during Construction Resulting in Impacts on Fish Populations</b>	<p><b>Mitigation Measure 3.4-2: Conduct Fish Rescue and Relocation Operation</b></p> <p>The City will implement the following measures to avoid, minimize, and mitigate this potentially significant impact on San Joaquin River special-status fishes:</p> <ul style="list-style-type: none"> <li>▶ A fish rescue operation will be completed as water elevations within the coffer dam reach low levels. Fish rescue will be completed by qualified biologists using dip and seine nets to remove any fish remaining within the coffer dam. All fish rescued from inside the coffer dam will be placed in the San Joaquin River away from construction activities.</li> <li>▶ Once the dewatered area has been deemed free of any entrained fishes, the area will be completely dewatered using the submersible pumps. Depending on the amount of leakage between the sheet piles, the submersible pumps may have to be operated at regular intervals to keep the work area dry.</li> </ul>	<p>Confirm that the mitigation measure is included in the construction contract before contract is executed.</p> <p>Confirm that qualified biologists complete a fish rescue to remove any fish remaining in the coffer dam during construction.</p> <p>Confirm, after the dewatered area has been deemed free of any entrained fishes, that the area was completely dewatered using the submersible pumps.</p>	City of Lathrop Public Works Department	<p>Conduct one-time check of the construction contract before contract is executed.</p> <p>Complete the fish rescue operation as water elevations in the coffer dam reach low levels.</p> <p>Completely dewater the coffer dammed area after it has been deemed free of any entrained fishes.</p>	
<b>3.5 Cultural, Tribal Cultural, and Paleontological Resources</b>					
<b>Impact 3.5-2: Cause a Substantial Adverse Change in the Significance of Archaeological Resources</b>	<p><b>Mitigation Measure 3.5-2: Implement Inadvertent Discovery Measures for the Protection of Archaeological Resources</b></p> <p>If any prehistoric or historic-era subsurface archaeological features or deposits, including locally darkened soil ("midden"), that could conceal cultural deposits are inadvertently discovered during project-related construction activities, all ground-</p>	<p>Confirm that the mitigation measure is included in the construction contract before contract is executed.</p> <p>If any prehistoric or historic-era subsurface archaeological features</p>	City of Lathrop Public Works Department in consultation with the appropriate	<p>Conduct one-time check of the construction contract before contract is executed.</p> <p>Field-check as needed to confirm temporary</p>	

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Completion of Implementation
	<p>disturbances within a minimum of 50 feet of the find shall be halted until a qualified professional archaeologist can evaluate the discovery. The archaeologist shall examine the resources, assess their significance, and recommend appropriate procedures to the lead agency to either further investigate or mitigate adverse impacts (e.g., adverse effect on a significant historical resource). If the qualified archaeologist determines the archaeological material to be Native American in nature, the City shall contact the appropriate California Native American tribe (i.e., Buena Vista Rancheria Me-Wuk Indians and North Valley Yokuts Tribe) for their input on the preferred treatment of the find. If the find is determined to be a unique archaeological resource and it cannot be avoided, then appropriate procedures to protect the integrity of the resource shall be applied (e.g., preservation in place, data recovery program pursuant to PRC Section 21083.2[j]). During evaluation or mitigative treatment, ground-disturbance and construction work may continue on other parts of the project site. The California State Lands Commission (CSLC) shall approve the final disposition of any archaeological, historical, and paleontological resources recovered on state lands under the CSLC jurisdiction.</p>	<p>or deposits are encountered during construction, confirm that all construction activities within a minimum of 50 feet of the find stop and that a qualified professional archaeologist is contacted. No ground disturbance or construction work in the vicinity of any inadvertent discoveries may occur until evaluation or mitigative treatment, as applicable, is completed.</p> <p>If the qualified archaeologist determines the archaeological material to be Native American in nature, confirm that the appropriate California Native American tribe (i.e., Buena Vista Rancheria Me-Wuk Indians and North Valley Yokuts Tribe) is contacted for their input on the preferred treatment of the find. If the find is determined to be a unique archaeological resource and it cannot be avoided, apply appropriate procedures to protect the integrity of the resource.</p>	<p>Native American Tribe and CSLC, if resources are found</p>	<p>construction stoppage within buffer zone.</p> <p>The archaeologist shall specify the timing/frequency of additional monitoring, as appropriate.</p> <p>Conduct one-time check to confirm that the appropriate California Native American tribe is contacted.</p> <p>Field-check as needed to confirm that the appropriate procedures to protect the integrity of the resource are applied.</p>	
<p><b>Impact 3.5-3: Cause a Substantial Adverse Change in the Significance of a Tribal Cultural Resource</b></p>	<p><b>Mitigation Measure 3.5-3: Implement Inadvertent Discovery Measures for the Protection of Tribal Cultural Resources</b> Implement Mitigation Measure 3.5-2.</p>	<p>Confirm that the mitigation measure is included in the construction contract before contract is executed.</p> <p>If any tribal cultural resources are encountered, confirm that all construction activities within a minimum of 50 feet of the find stop and that a qualified professional archaeologist is contacted. No ground disturbance or construction</p>	<p>City of Lathrop Public Works Department in consultation with the appropriate Native American Tribe, if resources are found</p>	<p>Conduct one-time check of the construction contract before contract is executed.</p> <p>Field-check as needed to confirm temporary construction stoppage within buffer zone.</p> <p>The archaeologist shall specify the timing/frequency of additional</p>	



Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Completion of Implementation
		<p>work in the vicinity of any inadvertent discoveries may occur until evaluation or mitigative treatment, as applicable, is completed.</p> <p>If the qualified archaeologist determines the archaeological material to be a tribal cultural resource, confirm that the appropriate California Native American tribe (i.e., Buena Vista Rancheria Me-Wuk Indians and North Valley Yokuts Tribe) is contacted for their input on the preferred treatment of the find. If the find is determined to be a tribal cultural resource and it cannot be avoided, confirm that appropriate procedures are applied to protect the integrity of the resource.</p>		<p>monitoring, as appropriate.</p> <p>Conduct one-time check to confirm that the appropriate California Native American tribe is contacted.</p> <p>Field-check as needed to confirm that the appropriate procedures to protect the integrity of the resource are applied.</p>	
<p><b>Impact 3.5-4: Disturb Human Remains</b></p>	<p><b>Mitigation Measure 3.5-4: Implement Inadvertent Discovery Measures for the Protection of Human Remains</b></p> <p>If human remains are discovered during project-related ground-disturbance, all work within a minimum of 50 feet of the discovery site shall halt immediately. The lead agency shall notify the County Coroner, as stipulated in Section 7050.5 of the California Health and Safety Code. The Coroner shall determine whether the remains are Native American and, if so, contact the NAHC by telephone within 24 hours. The NAHC shall follow the stipulations in Section 5097.98 of the California Public Resources Code, including determination of a most likely descendant. If the NAHC is unable to identify a descendant, the descendant is unable to make a recommendation, or the landowner rejects the recommendation, the NAHC shall mediate any dispute between the parties. Where such mediation fails to provide measures acceptable to the landowner, the landowner shall reinter the human remains and associated funerary items with appropriate dignity on the property, in a location not subject to further</p>	<p>Confirm that the mitigation measure is included in the construction contract before contract is executed.</p> <p>If any human remains are encountered, confirm that all construction activities within a minimum of 50 feet of the discovery site stop and that the county coroner is contacted. No ground disturbance or construction work in the vicinity of any inadvertent discoveries may occur until evaluation or mitigative treatment, as applicable, is completed.</p> <p>If the human remains are determined to be Native American,</p>	<p>City of Lathrop Public Works Department in consultation with the County Coroner and the Native American Heritage Commission, if human remains are found</p>	<p>Conduct one-time check of the construction contract before contract is executed.</p> <p>Field-check as needed to confirm temporary construction stoppage within buffer zone.</p> <p>Conduct one-time check to confirm that NAHC was contacted. NAHC shall specify the timing/frequency of additional monitoring, as appropriate.</p>	

Impact	Mitigation Measure	Action(s)	Implementing Party	Timing	Completion of Implementation
	subsurface disturbance.	contact NAHC by telephone within 24 hours. NAHC shall attempt to locate the most likely descendant. If one is not identified or there is any dispute about how the remains will be addressed, NAHC shall provide mediation.			
<b>3.8 Hazards and Hazardous Materials</b>					
<b>Impact 3.8-1: Create a Significant Health Hazard from the Routine Transport, Use, or Disposal of Hazardous Materials, Including Reasonably Foreseeable Upset or Accidents</b>	<b>Mitigation Measure 3.8-1: Implement Mitigation Measure 4.14.-1, "Existing Hazardous Materials/Waste Sites," Incorporated by Reference into the 2013 CTF IS/MND</b> Prior to the development of proposed pipelines/facilities, the City shall have performed a records search of government-recorded hazardous waste sites to identify any proposed pipelines/facilities that bisect recorded hazardous waste sites. In cases where proposed pipelines/facilities intersect recorded hazardous waste sites, or where any soil discoloration, vapors, or other signs of potential contamination exist at the construction sites for these facilities, a qualified consultant shall monitor excavations with an organic vapor analyzer. Soils that exhibit elevated readings, odor, or visual evidence of contamination shall be sampled for laboratory analysis. If the samples are found to be contaminated above Department of Toxic Substances Control (DTSC) acceptable levels, the subject soils at the construction sites for the proposed pipelines/facilities shall be excavated, segregated, treated (if required), and disposed of in accordance with DTSC requirements.	Confirm that a records search of government-recorded hazardous waste sites is conducted prior to construction. In cases where proposed pipelines/facilities intersect recorded hazardous waste sites, or where any soil discoloration, vapors, or other signs of potential contamination exist at the construction sites for these facilities, confirm that a qualified consultant monitors excavations with an organic vapor analyzer. Confirm that soils exhibiting elevated readings, odor, or visual evidence of contamination are sampled for laboratory analysis. If the samples are found to be contaminated above DTSC acceptable levels, confirm that the subject soils are excavated, segregated, treated (if required), and disposed of in accordance with DTSC requirements.	City of Lathrop Public Works Department in consultation with DTSC, if needed	Conduct the records search before the development of proposed pipelines/facilities. Field-check to confirm that a qualified consultant monitors excavations with an organic vapor analyzer where needed. Conduct one-time check to confirm that soils exhibiting elevated readings, odor, or visual evidence of contamination are sampled for laboratory analysis. Field-check as needed to confirm that subject soils are excavated, segregated, treated (if required), and disposed of in accordance with DTSC requirements.	

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**EXHIBIT D – LATHROP CONSOLIDATED TREATMENT FACILITY  
SURFACE WATER DISCHARGE PROJECT  
CALIFORNIA STATE LANDS COMMISSION  
STATEMENT OF FINDINGS**

**1.0 INTRODUCTION**

The California State Lands Commission (Commission or CSLC), acting as a responsible agency under the California Environmental Quality Act (CEQA), makes these findings to comply with CEQA as part of its discretionary approval to authorize issuance of a General Lease – Public Agency Use, to the City of Lathrop (City), for use of sovereign land associated with the proposed Lathrop Consolidated Treatment Facility (CTF) Surface Water Discharge Project (Project). (See generally Pub. Resources Code, § 21069; State CEQA Guidelines<sup>1</sup>, § 15381.) The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions. (Pub. Resources Code, §§ 6301, 6306, 6009, subd. (c).) All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust.

The Commission is a responsible agency under CEQA for the Project because the Commission must approve a lease for the Project to go forward and because the City, as the CEQA lead agency, has the principal responsibility for approving the Project and has completed its environmental review under CEQA. The City analyzed the environmental impacts associated with the Project in a Final Environmental Impact Report (EIR) (State Clearinghouse [SCH] No. 2019110339) and, in March 23, 2021, certified the EIR and adopted a Mitigation Monitoring and Reporting Program (MMRP) and Findings.

The Project involves establishing a direct discharge of highly treated wastewater from its CTF to the San Joaquin River.

The City determined that the Project could have significant environmental effects on the following environmental resources:

- Air Quality
- Terrestrial Biological Resources
- Aquatic Biological Resources
- Cultural, Tribal Cultural, and Paleontological Resources
- Hazards and Hazardous Materials

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<sup>1</sup> CEQA is codified in Public Resources Code section 21000 et seq. The State CEQA Guidelines are found in California Code of Regulations, title 14, section 15000 et seq.

Of the five resources areas noted above, Project components within the Commission's jurisdiction (i.e., installation and operation of the proposed outfall, installation of articulated concrete block under the outfall, and installation of riprap on the riverbank) could have significant environmental effects on all of the resource areas, as follows:

- Air Quality
- Terrestrial Biological Resources
- Aquatic Biological Resources
- Cultural, Tribal Cultural, and Paleontological Resources
- Hazards and Hazardous Materials

In certifying the Final EIR and approving the Project, the City imposed various mitigation measures for Project-related significant effects on the environment as conditions of Project approval and concluded that Project-related impacts would be substantially lessened with implementation of these mitigation measures such that the impacts would be less than significant.

As a responsible agency, the Commission complies with CEQA by considering the EIR and reaching its own conclusions on whether, how, and with what conditions to approve a project. In doing so, the Commission may require changes in a project to lessen or avoid the effects, either direct or indirect, of that part of the project which the Commission will be called on to carry out or approve. In order to ensure the identified mitigation measures and/or Project revisions are implemented, the Commission adopts the Mitigation Monitoring Program (MMP) as set forth in Exhibit C as part of its Project approval.

## **2.0 ADMINISTRATIVE RECORD OF PROCEEDINGS AND CUSTODIAN OF THE RECORD**

These Findings are supported by substantial evidence contained in the EIR and other relevant information provided to the Commission or existing in its files, all of which is contained in the administrative record. The administrative record is located at the California State Lands Commission, 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825. The custodian for the administrative record is the California State Lands Commission Division of Environmental Planning and Management.

## **3.0 FINDINGS**

The Commission's role as a responsible agency affects the scope of, but not the obligation to adopt, findings required by CEQA. Findings are required under CEQA by each "public agency" that approves a project for which an EIR has been certified that identifies one or more significant impacts on the environment (Pub. Resources Code, § 21081, subd. (a); State CEQA Guidelines, § 15091, subd. (a).) Because the EIR certified by the City for the Project identifies potentially significant impacts that fall within the scope of the Commission's approval, the Commission makes the Findings set forth

below as a responsible agency under CEQA. (State CEQA Guidelines, § 15096, subd. (h); *Riverwatch v. Olivenhain Mun. Water Dist.* (2009) 170 Cal.App.4th 1186, 1202, 1207.

While the Commission must consider the environmental impacts of the Project as set forth in the EIR, the Commission's obligation to mitigate or avoid the direct or indirect environmental impacts of the Project is limited to those parts which it decides to carry out, finance, or approve (Pub. Resources Code, § 21002.1, subd. (d); State CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).) Accordingly, because the Commission's exercise of discretion involves only issuing a General Lease – Public Agency Use for this Project, the Commission is responsible for considering only the environmental impacts related to lands or resources subject to the Commission's jurisdiction. With respect to all other impacts associated with implementation of the Project, the Commission is bound by the legal presumption that the EIR fully complies with CEQA.

The Commission has reviewed and considered the information contained in the Project EIR. All significant adverse impacts of the Project identified in the EIR relating to the Commission's approval of a General Lease – Public Agency Use, which would allow the installation and operation of the proposed outfall, installation of articulated concrete block under the outfall, and installation of riprap on the riverbank, are included herein and organized according to the resource affected.

These Findings, which reflect the independent judgment of the Commission, are intended to comply with CEQA's mandate that no public agency shall approve or carry out a project for which an EIR has been certified that identifies one or more significant environmental effects unless the agency makes written findings for each of those significant effects. Possible findings on each significant effect are:

- (1) Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the Final EIR.
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the Commission. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- (3) Specific economic, legal, social, technological or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.<sup>2</sup>

A discussion of supporting facts follows each Finding.

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<sup>2</sup> See Public Resources Code section 21081, subdivision (a) and State CEQA Guidelines section 15091, subdivision (a).

- Whenever Finding (1) occurs, the mitigation measures that lessen the significant environmental impact are identified in the facts supporting the Finding.
- Whenever Finding (2) occurs, the agencies with jurisdiction are specified. These agencies, within their respective spheres of influence, have the responsibility to adopt, implement, and enforce the mitigation discussed.

The mitigation measures are briefly described in these Findings; more detail on the mitigation measures is included in the Final EIR.

## **A. SUMMARY OF FINDINGS**

Based on public scoping, the proposed Project will have No Impact on the following environmental issue areas:

- Aesthetics
- Agriculture and Forestry Resources
- Geology and Soils
- Land Use
- Mineral Resources
- Population and Housing
- Public Services
- Recreation
- Transportation
- Utilities
- Wildfire

The EIR subsequently identified the following impacts as Less Than Significant:

- Energy
- Greenhouse Gas Emissions and Climate Change
- Hydrology and Water Quality
- Noise and Vibration
- Cumulative

For the remaining potentially significant effects, the Findings are organized by significant impacts within the EIR issue areas as presented below.

## **B. POTENTIALLY SIGNIFICANT IMPACTS**

The impacts within CSLC jurisdiction identified in Table 1 were determined in the Final EIR to be potentially significant absent mitigation. After application of mitigation, however, several impacts were determined to be less than significant (LTSM). For the full text of each mitigation measure (MM), please refer to Exhibit C, Attachment C-1.

**Table 1 – Significant Impacts by Issue Area**

<b>Environmental Issue Area</b>	<b>Impact Nos. (LTSM)</b>
Air Quality	3.2-1
Terrestrial Biological Resources	3.3-1, 3.3-2, 3.3-3, 3.3-4, 3.3-5, 3.3-6, 3.3-7
Aquatic Biological Resources	3.4-2
Cultural, Tribal Cultural, and Paleontological Resources	3.5-2, 3.5-3, 3.5-4
Hazards and Hazardous Materials	3.8-1

**C. IMPACTS REDUCED TO LESS THAN SIGNIFICANT LEVELS WITH MITIGATION**

The impacts identified below were determined in the Final EIR to be potentially significant absent mitigation; however, the impacts were determined to be less than significant with mitigation (LTSM).

**1. AIR QUALITY**

<b>CEQA FINDING NO. 3.2-1</b>	
Impact:	<b>Impact 3.2-1. Result in Short-Term Emissions of Criteria Air Pollutants and Precursors</b>
Finding(s):	(1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

The proposed Project would result in construction-related emissions of ROG, NO<sub>x</sub>, CO, SO<sub>x</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub> from use of off-road heavy-duty construction equipment. Project-generated construction emissions of criteria air pollutants would not exceed any San Joaquin Valley Air Pollution Control District (SJVAPCD) mass emissions thresholds. Consistent with SJVAPCD Regulation VIII (Fugitive PM<sub>10</sub> Prohibition), measures would be implemented to reduce construction-related PM<sub>10</sub> emissions (predominantly dust and dirt). Nonetheless, the proposed Project would generate emissions in excess of SJVAPCD’s daily mass emissions screening criteria, thus, this impact would be potentially significant.

Mitigation Measure 3.2-1 requires a 30-percent reduction in oxides of nitrogen (NO<sub>x</sub>) exhaust emissions through the use of U.S. Environmental Protection Agency-certified Tier 4 engines if future construction of the effluent discharge pipeline would be executed



by two discrete construction crews at the same time as the CTF modifications are implemented. This 30-percent reduction in NO<sub>x</sub> would be determined by the construction start year, fleet engine year mix, equipment type, horsepower, and hourly usage. A 30-percent reduction from anticipated unmitigated maximum daily emissions would lower emissions to 95 pounds/day, which would be below SJVAPCD's mass emissions screening criterion for NO<sub>x</sub> emissions. This 30-percent NO<sub>x</sub> reduction would be a performance standard to be achieved prior to the commencement of construction.

Implementation of MM 3.2-1 would be sufficient to reduce NO<sub>x</sub> emissions to a less than significant level, thus avoiding the potential for an exceedance of an ambient air quality standard and associated adverse health impacts.

**MM 3.2-1. Apply Tier-4 Emissions Standards to Achieve a 30-Percent Reduction in NO<sub>x</sub> Emissions from Diesel-Powered Off-Road Equipment**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**2. TERRESTRIAL BIOLOGICAL RESOURCES**

**CEQA FINDING NO. 3.3-1**

Impact: **Impact 3.3-1.** Cause Disturbance to or Loss of Valley Elderberry Longhorn Beetle

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Implementation of the proposed Project may result in the direct removal of, direct damage to, or indirect damage to elderberry shrubs, which could result in mortality of the federally listed valley elderberry longhorn beetle, if present. This impact would be potentially significant.

The Project is covered under the San Joaquin Valley Multi-Species Habitat Conservation and Open Space Plan (SJMSCP); therefore, indirect effects would be minimized by implementing protective measures for elderberry shrubs to be retained on-site, and shrubs that would be removed would be transplanted or compensated for in accordance with the SJMSCP.

Implementation of MMs 3.3-1a and 1b would reduce the potentially significant impact on valley elderberry longhorn beetle to a less than significant level.

**MM 3.3-1a. Seek Coverage under the SJMSCP**

**MM 3.3-1b. Conduct Survey for and Protect Valley Elderberry Longhorn Beetle**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. 3.3-2**

Impact: **Impact 3.3-2. Cause Disturbance to or Loss of Western Pond Turtle**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Implementation of the proposed Project would include construction within the San Joaquin River and its levee. These Project components may result in disturbance to or direct loss of western pond turtle if it is present within aquatic and upland habitat. This impact would be potentially significant.

Incorporation of MM 3.3-2 into the Project would ensure that western pond turtles are removed from the site and that nest sites are protected so that Project construction would not result in mortality of individuals.

MM 3.3-2 would reduce the potentially significant impact on western pond turtle to a less than significant level.

**MM 3.3-2. Conduct Western Pond Turtle Preconstruction Survey and Relocation**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. 3.3-3**

Impact: **Impact 3.3-3. Cause Disturbance to or Loss of Swainson's Hawk, White-Tailed Kite, Cooper's Hawk, Sharp-Shinned Hawk, and Other Nesting Raptors**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Implementation of the proposed Project could include the removal of trees and other vegetation and conducting work in proximity to known active nests. These activities may result in disturbance to nesting Swainson's hawk, white-tailed kite, and other nesting raptors, potentially resulting in nest abandonment, failure, or mortality of chicks and eggs. This impact would be potentially significant.

Incorporation of MM 3.3-3 into the Project would reduce the potentially significant impact on Swainson's hawk, white-tailed kite, Cooper's hawk, sharp-shinned hawk, and other nesting raptors because it would require that Project activities would not remove an active nest tree or disturb nest sites.

MM 3.3-3 would reduce the potentially significant impact on raptors to a less than significant level.

**MM 3.3-3. Protect Swainson's Hawk, White-Tailed Kite, Cooper's Hawk, Sharp-Shinned Hawk, and Other Nesting Raptors**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. 3.3-4**

Impact: **Impact 3.3-4. Cause Disturbance to or Loss of Loggerhead Shrike, California Horned Lark, and Other Nesting Birds**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Implementation of the proposed Project would result in vegetation clearing and construction activities in proximity to suitable nesting habitat for loggerhead shrike, California horned lark, and other nesting birds. These activities could result in disturbance to or loss of individual nests or disruption of nesting attempts by loggerhead shrike, horned lark, and possibly other nesting bird species if they nest in the Project site in the future. The disturbance to or loss of loggerhead shrike, California horned lark, and other special-status bird nests would be a potentially significant impact.

Incorporation of MM 3.3-4 into the Project would reduce the potentially significant impact on loggerhead shrike, California horned lark, and other nesting birds because it would require preconstruction surveys during the nesting season and no-disturbance buffers around active nests so that Project activities do not remove active nests or disturb nesting birds.

MM 3.3-4 would reduce the potentially significant impact on nesting birds to a less than significant level.

**MM 3.3-4. Protect Loggerhead Shrike, California Horned Lark, and Other Nesting Birds**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. 3.3-5**

Impact: **Impact 3.3-5. Cause Disturbance to or Loss of Riparian Brush Rabbit**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Implementation of the proposed Project would result in riparian vegetation clearing and construction activities in proximity to occupied riparian brush rabbit habitat, which could result in the disturbance to or loss of individuals or occupied habitat, disruption of foraging attempts, or take of individual riparian brush rabbits. The disturbance to or loss of riparian brush rabbit would be a potentially significant impact.

Incorporation of MM 3.3-5 into the Project would avoid or minimize the impact on riparian brush rabbit by conducting preconstruction surveys, conducting daily surveys of construction areas, using exclusion fencing, and minimizing vegetation removal. Additional measures may be developed through consultation with the U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Wildlife that may include supporting the existing USFWS captive breeding program to establish new populations in appropriate habitat and purchasing or creating compensatory habitat, resulting in no net loss of riparian habitat for riparian brush rabbit.

MM 3.3-5 would reduce the potentially significant impact to riparian brush rabbit to a less than significant level.

**MM 3.3-5. Protect Riparian Brush Rabbit**

**LEVEL OF SIGNIFICANCE AFTER MITIGATION.** With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. 3.3-6**

Impact: **Impact 3.3-6. Cause Disturbance to and Loss of Waters of the U.S. and State**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Construction of the proposed outfall in the San Joaquin River would result in permanent fill of approximately 0.10 acre of waters of the U.S. and State. Therefore, implementation of the proposed Project would result in a substantial adverse effect on

federally protected and State-protected waters. Loss of wetlands and other waters of the U.S. and State would be a significant impact.

Incorporation of MM 3.3-6 into the Project would reduce the significant impact on waters of the U.S. and waters of the State to a less than significant level because it would ensure no net loss of functions and acreage of wetlands, other waters of the U.S., and waters of the State.

MM 3.3-6 would reduce the potentially significant impact to federal and State waters to a less than significant level.

**MM 3.3-6. Compensate for Loss of Waters of the United States and State**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. 3.3-7**

Impact: **Impact 3.3-7. Cause Disturbance to or Loss of Riparian Habitat**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Implementation of the proposed Project, including construction of the proposed outfall and installation of the new effluent discharge pipe along the San Joaquin River levee, would result in disturbance to or direct removal of riparian vegetation. This impact would be significant.

Incorporation of MM 3.3-7 into the Project would minimize the loss of riparian habitat and sensitive natural communities by restoring habitat, implementing measures to reduce erosion and runoff, and compensating for loss of habitat to ensure no net loss through the permitting process.

MM 3.3-7 would reduce the potentially significant impact to riparian habitat to a less than significant level.

**MM 3.3-7. Minimize and Compensate for the Loss of Riparian Habitat**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

### 3. AQUATIC BIOLOGICAL RESOURCES

#### CEQA FINDING NO. 3.4-2

Impact: **Impact 3.4-2. Cause Direct Fish Injury or Mortality during Construction Resulting in Impacts on Fish Populations**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

#### FACTS SUPPORTING THE FINDING(S)

Construction of the coffer dam, subsequent dewatering of the area to provide a dry work area, and restoration of natural contours of the river post-construction have the potential to cause direct mortality or injury to special-status fishes or other fish of the lower San Joaquin River. The potential for direct mortality or injury to special-status fishes would be minimized by limiting in-river construction activities to the July 1 to October 31 period and installing a coffer dam to hydraulically isolate the outfall installation from the river. The very limited injury or mortality that could potentially occur to non-special-status fish species would not occur at a level that would cause a substantial reduction in their population. Nevertheless, it is possible that individual special-status fish could become stranded in the coffer dam footprint. The potential for direct mortality or injury to special-status fishes stranded within the coffer dam would constitute a substantial adverse effect to the special-status species and thus would be a potentially significant impact.

Incorporation of MM 3.4-2 into the Project requires that Project construction occur during the National Marine Fisheries Service (NMFS)-approved July 1 through October 31 window when no federal Endangered Species Act- (ESA-) listed salmonid juveniles, or delta smelt, are expected to be in the Project river reach, and thus juvenile salmonids and delta smelt would not be expected to get entrained within the coffer dammed area. The only ESA-listed species that would be expected to be present as a juvenile life stage, and thus prone to potential entrainment, would be juvenile green sturgeon. There is a very low probability that a juvenile green sturgeon would be entrained in the enclosed coffer dammed area due to the noise and disturbance of coffer damming which is expected to move fish away from the area. Nevertheless, if one or more individuals would be entrained, juvenile green sturgeon are hardy and would handle being rescue seined and placed back in the river. This MM would ensure that most, if not all, fishes that become entrained within the coffer dammed area are safely removed and safely returned to the San Joaquin River prior to the start of construction work within the coffer dammed area.

MM 3.4-2 would reduce the potentially significant impact to fish to a less than significant level.

#### **MM 3.4-2. Conduct Fish Rescue and Relocation Operation**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**4. CULTURAL, TRIBAL CULTURAL, AND PALEONTOLOGICAL RESOURCES**

**CEQA FINDING NO. 3.5-2**

Impact: **Impact 3.5-2. Cause a Substantial Adverse Change in the Significance of Archaeological Resources**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Although no archaeological resources have been identified on the Project site, Project-related ground-disturbing activities could result in the discovery or damage of previously undiscovered archaeological resources as defined in State CEQA Guidelines Section 15064.5. This would be a potentially significant impact.

Incorporation of MM 3.5-2 into the Project would ensure that any previously unrecorded archaeological resources inadvertently discovered during Project-related ground-disturbance would be properly handled and treated because it would require the performance of professionally accepted and legally compliant procedures for the discovery and protection of previously undocumented significant archaeological resources.

MM 3.5-2 would reduce the potentially significant impact to cultural resources to a less than significant level.

**MM 3.5-2. Implement Inadvertent Discovery Measures for the Protection of Archaeological Resources**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. 3.5-3**

Impact: **Impact 3.5-3. Cause a Substantial Adverse Change in the Significance of a Tribal Cultural Resource**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

No tribal cultural resources (TCRs) have been documented in the Project site, however, Project-related ground-disturbing activities could result in the discovery or damage of previously undiscovered TCRs. Newly discovered prehistoric, ethnohistoric, or historic-era archaeological sites could be recognized as TCRs and could be adversely affected during Project construction. This impact would be potentially significant.

Incorporation of MM 3.5-3 into the Project would ensure that any previously unrecorded TCRs inadvertently discovered during Project-related ground-disturbance would be properly treated by notifying the appropriate California Native American tribe and requiring preservation options and proper care of significant artifacts if they are recovered.

MM 3.5-3 would reduce the potentially significant impact to TCRs to a less than significant level.

**MM 3.5-3. Implement Inadvertent Discovery Measures for the Protection of Tribal Cultural Resources**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**CEQA FINDING NO. 3.5-4**

Impact: **Impact 3.5-4. Disturb Human Remains**

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Although there is a low potential for human remains to be discovered during ground-disturbance for the proposed Project, construction activities could inadvertently uncover or disturb human remains, including those interred outside of formal cemeteries. This would be a potentially significant impact.

Incorporation of MM 3.5-4 into the Project would ensure that any unrecorded or inadvertent discoveries of human remains during ground-disturbing activities would be properly mitigated in accordance with the laws of the State.

MM 3.5-4 would reduce the potentially significant impact to human remains to a less than significant level.

**MM 3.5-4. Implement Inadvertent Discovery Measures for the Protection of Human Remains**



LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

**5. HAZARDS AND HAZARDOUS MATERIALS**

<b>CEQA FINDING NO. 3.8-1</b>	
Impact:	<b>Impact 3.8-1. Create a Significant Health Hazard from the Routine Transport, Use, or Disposal of Hazardous Materials, Including Reasonably Foreseeable Upset or Accidents</b>
Finding(s):	(1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

**FACTS SUPPORTING THE FINDING(S)**

Construction activities could potentially result in small fuel or oil spills during equipment refueling or routine maintenance, as well as exposure to previously unknown subsurface contaminants during trenching. Routine transport to , and use of chemicals, including sodium bisulfite, at the CTF to support proposed Project operations also could potentially result in exposure to or release of hazardous chemicals. However, to comply with General Plan policies and statewide regulations and minimize the potential to create health hazards, the required spill prevention, containment, and treatment plans would be implemented during construction and site specific plans for Hazardous Substance Spill Prevention and Response, Emergency Action, Fire Prevention, Chemical Management, Hazardous Material Management, and Hazardous Communication would be implemented to support ongoing operations and maintenance. Therefore, construction and operation of the proposed Project would not create a significant health hazard from the routine, transport, use, or disposal of hazardous materials or accidental release into the environment. However, because construction activities could encounter undocumented hazardous wastes during trenching activities that could result in a hazard to construction workers, adjacent land uses, and the environment, this impact would be potentially significant.

Incorporation of MM 3.8-1 into the Project would require that if any soil discoloration, vapors, or other signs of potential hazardous waste contamination is encountered during construction then the soils would be tested and removed if found to be contaminated above Department of Toxic Substance Control-acceptable levels.

**MM 3.8-1. Implement Mitigation Measure 4.14.-1, Existing Hazardous Materials/Waste Sites, Incorporated by Reference into the 2013 CTF IS/MN**

LEVEL OF SIGNIFICANCE AFTER MITIGATION. With the mitigation described above, this impact is reduced to a less than significant level.

## D. FINDINGS ON ALTERNATIVES

As explained in *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1000:

*When it comes time to decide on project approval, the public agency's decisionmaking body evaluates whether the alternatives [analyzed in the EIR] are actually feasible.... At this final stage of project approval, the agency considers whether [s]pecific economic, legal, social, technological, or other considerations...make infeasible the mitigation measures or alternatives identified in the environmental impact report.' Broader considerations of policy thus come into play when the decisionmaking body is considering actual feasibility than when the EIR preparer is assessing potential feasibility of the alternatives [citations omitted].*

The three alternatives analyzed in the EIR represent a reasonable range of potentially feasible alternatives that could reduce one or more significant impacts of the Project. These alternatives include:

- 1) Alternative 1: No Project Alternative
- 2) Alternative 2: Outfall Configuration Alternative
- 3) Alternative 3: Manteca WQCF Outfall Location Alternative

As presented in the EIR, the alternatives were described and compared with each other and with the proposed Project.

Under State CEQA Guidelines section 15126.6, subdivision (e)(2), if the No Project Alternative is identified as the environmentally superior alternative, the EIR must also identify an environmentally superior alternative among the other alternatives. Based on the analysis contained in the EIR, the proposed Project is the environmentally superior alternative. Additionally, the proposed Project best meets the Project objectives while also avoiding potentially significant impacts of the alternatives.

The City independently reviewed and considered the information on alternatives provided in the EIR and in the record. The EIR reflects the City's independent judgment as to alternatives. The City found that the Project provides the best balance between the Project goals and objectives and the Project's benefits. The three CEQA alternatives proposed and evaluated in the EIR were rejected as being infeasible for the following reasons provided in the City's Findings Regarding Alternatives (incorporated herein by reference).

1) Alternative 1: No Project Alternative

The environmental benefits of this alternative over the proposed Project are related to aquatic biological resources and hydrology and water quality, but would not result in substantial impact differences. It would result in similar impacts on terrestrial biological resources, cultural, tribal, and paleontological

resources, energy, and hazards and hazardous materials compared to the proposed Project. However, impacts related to air quality, greenhouse gas emissions and climate change, and noise and vibration would be greater under the No Project Alternative than under the proposed Project. Because this alternative would not provide for planned City buildout and development in accordance with the Lathrop General Plan, it would not meet all of the objectives of the proposed Project. While the City recognized that the No Project Alternative would have some environmental benefits, it would also have numerous environmental impacts that are greater than the proposed Project and it does not meet the Project's objective to provide for planned City buildout and development based on the City's General Plan. The proposed Project is environmentally superior to this alternative. For the reasons provided above, this alternative was rejected.

2) Alternative 2: Outfall Configuration Alternative

Alternative 2 would result in similar impacts to those of the proposed Project related to terrestrial biological resources, cultural, tribal cultural, and paleontological resources, energy, greenhouse gas emissions and climate change, hazards and hazardous materials, hydrology and water quality, and noise and vibration. Impacts from Alternative 2 related to air quality and aquatic biological resources would be greater, but not substantially different, than under the proposed Project. The City acknowledged that this alternative would meet the Project objectives, but this alternative would not avoid or substantially lessen any potentially significant impacts of the proposed Project and would result in some additional impacts that would not occur with the proposed Project. The proposed Project is environmentally superior to this alternative. For the reasons provided above, this alternative was rejected.

3) Alternative 3: Manteca WQCF Outfall Location Alternative

Alternative 3 would result in less potential construction noise and vibration effects and similar impacts related to air quality, terrestrial biological resources, cultural, tribal cultural, and paleontological resources, energy, greenhouse gas emissions and climate change, and hazards and hazardous materials compared to the proposed Project. However, this alternative would result in greater impacts related to aquatic biological resources and water quality, but not substantially different, compared to the proposed Project. The City acknowledged this alternative would meet the Project objectives, but this alternative would not avoid or substantially lessen any potentially significant impacts of the proposed Project and would result in some additional impacts that would not occur with the proposed Project. Additionally, implementation of Alternative 3 would require close coordination with the City of Manteca that may raise operational challenges, including uncertainty about how potential violations of the National Pollutant Discharge Elimination System permit receiving water limitations would be apportioned and resolved between the two jurisdictions. Because of this uncertainty, this alternative is considered infeasible. For the reasons provided above, this alternative was rejected.

Based upon the objectives identified in the Final EIR and the detailed mitigation measures imposed upon the Project, the Commission has determined that the Project should be approved, subject to such mitigation measures (Exhibit C, Mitigation Monitoring Program).