

**CALENDAR ITEM  
C83**

A     26  
S     12

09/20/13  
PRC 8514.9  
B. Terry

**TERMINATION AND ISSUANCE OF A  
GENERAL LEASE – PUBLIC AGENCY USE**

**LESSEE/APPLICANT:**

City of Modesto  
P.O. Box 642  
Modesto, CA 95353

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

One acre, more or less, of sovereign land in the Tuolumne River, adjacent to Assessor's Parcel Numbers 037-036-003, 038-022-013, and 038-022-014, city of Modesto, Stanislaus County.

**AUTHORIZED USE:**

Installation, use, maintenance, and operation of two 18-inch inside diameter (ID) sewer pipelines installed using horizontal directional drilling (HDD); continued use and maintenance of one existing trenched 18-inch ID sewer pipeline; and continued maintenance of three abandoned (6-inch, 10-inch, and 18-inch ID) sewer pipelines.

**LEASE TERM:**

25 years, beginning August 23, 2013.

**CONSIDERATION:**

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

**SPECIAL LEASE PROVISIONS:**

This lease contains special provisions related to pre-construction and post-construction project engineering review and verification.

**OTHER PERTINENT INFORMATION:**

1. Lessee/Applicant owns Assessor's Parcel Number (APN) 037-036-003, located upland on the west side of the Tuolumne River. APN's 038-022-

CALENDAR ITEM NO. **C83** (CONT'D)

013 and 038-022-014 are located upland on the east side of the Tuolumne River and are owned by the Southwest Hide Company and the Modesto Holding Company. The Lessee/Applicant has the right to use the uplands adjacent to the Lease Premises.

2. On December 20, 1973, the Commission authorized a 49-year Public Agency Permit No. PRC 4838.9 with the City of Modesto (City) for the construction, operation, and maintenance of one 18-inch ID trenched sewer pipeline, located in the Tuolumne River, near Shackelford, known as the Shackelford Sewer Crossing. The 18-inch pipeline was constructed to replace three existing sewer pipelines (6-inch, 10-inch, and 18-inch ID) that had failed mid-stream and were abandoned in place.

On April 5, 2004, the Commission authorized the termination of Permit No. PRC 4838.9 and issuance of a 25-year General Lease – Public Agency Use, Lease No. PRC 8514.9, for the construction, use and maintenance of two new trenched 18-inch ID sewer pipelines; the continued maintenance of the existing 18-inch ID sewer pipeline to be abandoned; and three (6-inch, 10-inch, and 18-inch ID) previously abandoned sewer pipelines. However, the installation of the two new 18-inch sewer pipelines and abandonment of the existing 18-inch sewer pipeline never took place.

3. The City is now proposing a project known as the Shackelford Sewer Crossing Project (Project). The Project was developed to rehabilitate and improve the existing Shackelford sewer crossing, which is reaching the end of its design life. The proposed Project is to provide a modern crossing that will endure against the potential for breaks/spills from the existing structure. The new sewer crossing has been sized for future development and provides redundancy during facility maintenance. The City is now applying to terminate its existing lease and request issuance of a new General Lease – Public Agency Use.
4. The proposed Project consists of installing two 18-inch ID sewer pipelines using HDD technology beneath the Tuolumne River. The facilities crossing the lease premises will be approximately 155 feet in length and at a depth of approximately 40 feet beneath the river bed. It is anticipated a guide wire will be installed along the surface from the entry and exit points to the water's edge. The sewer lines will operate by gravity flow and no permanent pumping is anticipated. Construction is anticipated to begin in October 2013 and be completed by April 2014.

CALENDAR ITEM NO. **C83** (CONT'D)

5. Upon completion of the Project, only one of the two newly installed pipelines will be in operation. The other, along with the existing 18-inch pipeline will be used as backup. Approximately 12 to 18 months after completion of the Project, the City will have a complete analysis of the prior existing 18-inch pipeline. After the results, the City can determine if the pipeline has held its integrity or will need rehabilitation. If there are minor issues, an engineering firm will be hired to design a retrofit plan. If it requires extensive rehabilitation, the City will apply to the Commission for consideration of abandonment or removal of the pipeline.
6. The Project includes implementation of Best Management Practices to minimize potential environmental impacts during construction activities within the lease premises. The City has also developed a Spill Prevention Control and Countermeasures Program to minimize the potential for, and effects from, spill of hazardous, toxic, or petroleum substances. The contractor will prepare a frac-out contingency plan which will include specific procedures to implement in the event of an inadvertent spill or frac-out into the waterway during construction, and will require on-site monitoring of the river during all boring activities.
7. **Lease Termination:** The staff recommends that the Commission find that the subject lease termination does not have a potential for resulting in either a direct or a reasonable foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

8. **Existing Sewer Pipelines:** The staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The Project is exempt under Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

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

CALENDAR ITEM NO. **C83** (CONT'D)

9. **Installation of Two 18-inch Diameter Sewer Pipelines:** A Master Environmental Impact Report (MEIR), State Clearinghouse No. 2006052076, was prepared for the project by the City and certified on March 14, 2007. In addition, the City prepared an Initial Study Environmental Checklist (EA/PW No. 2009-16) and a Finding of Conformance (FOC) to the MEIR in June 2012, in compliance with section 21157 of the State CEQA Guidelines. The California State Lands Commission staff has reviewed such documents and the Mitigation Monitoring Program (MMP) prepared in conformance with the provisions of the CEQA (Pub. Resources Code, § 21081.6) and adopted by the lead agency.

Findings made in conformance with the State CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15091, 15096) are contained in Exhibit D, attached hereto.

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

**APPROVALS OBTAINED:**

U.S. Army Corps of Engineers  
Central Valley Flood Protection Board  
California Department of Fish and Wildlife

**FURTHER APPROVALS REQUIRED:**

Central Valley Regional Water Quality Control Board

**EXHIBITS:**

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

CALENDAR ITEM NO. **C83** (CONT'D)

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

**Lease Termination:** Find that the subject lease termination is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

**Existing Sewer Pipelines:** 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).

**Installation of Two 18-inch Diameter Sewer Pipelines:** Find that a MEIR, State Clearinghouse No. 2006052076, was prepared for this Project by the City and certified on March 14, 2007. In addition, the City prepared an Initial Study Environmental Checklist (EA/PW No. 2009-16) and a FOC to the MEIR in June 2012, in compliance with section 21157 of the State CEQA Guidelines. The Commission has reviewed and considered the information contained therein.

Adopt the MMP, as contained in Exhibit C, attached hereto.

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

Determine that the Project, as approved, will not have a significant effect on the environment.

**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.

CALENDAR ITEM NO. **C83** (CONT'D)

**AUTHORIZATION:**

1. Authorize termination of General Lease – Public Agency Use, Lease No. PRC 8514.9, effective August 22, 2013.
2. Authorize issuance of a General Lease – Public Agency Use to the City of Modesto, beginning August 23, 2013, for a term of 25 years, for the installation, use, maintenance, and operation of two 18-inch ID sewer pipelines, installed using HDD; continued use and maintenance of one existing trenched 18-inch ID sewer pipeline; and continued maintenance of three abandoned (6-inch, 10-inch, and 18-inch ID) sewer pipelines under the bed of the Tuolumne River as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration to be the public use and benefit, with the State reserving the right, at any time, to set a monetary rent as specified in the lease if the Commission finds such action to be in the State's best interest.

## EXHIBIT A

PRC 8514.9

### LAND DESCRIPTION

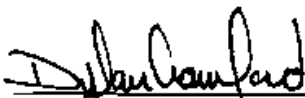
A parcel of submerged land situate in the bed of the Tuolumne River, lying adjacent to Section 5, Township 4 South, Range 9 East, Mount Diablo Base and Meridian as shown on Official U.S. Government Plat approved December 30, 1854, situate in City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

Commencing at the northeast corner of said Section 5, marked with a 2" iron pipe with a brass cap as shown on the map filed in Volume 32 of Surveys, at Page 74, Stanislaus County Records; thence along the east line of said Section 5, South 00°25'10" West, a distance of 2985.35 feet to the easterly prolongation of the south line of Parcel 5 of the property conveyed to Southwest Hide Co. and Modesto Holding Company by Grant Deed recorded September 4, 2009 as Document Number 2009-0087193-00, Stanislaus County Records; thence along said prolongation and the said south line of Parcel 5, North 89°46'50" West, a distance of 1156.86 feet to the southwest corner of said Parcel 5 and the **POINT OF BEGINNING**; thence along the westerly line of said Parcel 5, North 03°55'10" East, a distance of 125.02 feet; thence North 84°49'48" West, a distance of 290.54 feet to the easterly line of Lot B of the Durand Tract recorded in Volume 16 of Maps, at Page 19, Stanislaus County Records; thence along said easterly line, South 14°08'12" East, a distance of 119.62 feet; thence continuing along the easterly line of said Lot B, South 23°11'48" West, a distance of 81.52 feet; thence North 83°59'26" East, a distance of 284.57 feet to the westerly line of Parcel 1 of said Grant Deed; thence along said easterly line of Parcel 1, North 03°55'10" East, a distance of 10.25 feet to the point of beginning.

**EXCEPTING THEREFROM** any portion lying landward of the low water mark of the Tuolumne River.

### END DESCRIPTION

This land description has been prepared at O'Dell Engineering, by me, or under my direction.



Dylan Crawford  
Professional Land Surveyor  
California No. 7788



5/14/13  
Date

32 33  
5 4

SCALE: 1"=120'

EXISTING WATER SURFACE  
ON 2/19/2009

PARCEL 5  
2009-O.R.-0087193

RIVER  
TUOLUMNE

ABANDONED  
6", 10" & 18" SS LINES

PROPOSED LEASE AREA

PARCEL 1  
2009-O.R.-0087193

N 89°46'50" W 1156.86'

S 00°25'10" W 2985.35'

CROWS LANDING ROAD



LINE TABLE		
LINE	BEARING	LENGTH
L1	N 03°55'10" E	125.02'
L2	N 84°49'48" W	290.54'
L3	S 14°08'12" E	119.62'
L4	S 23°11'48" W	81.52'
L5	N 83°59'26" E	284.57'
L6	N 03°55'10" E	10.25'

### LEGEND

- SS —— PROPOSED SANITARY SEWER LINE
- 18"SS —— EXISTING SANITARY SEWER LINE

### NOTE

THIS EXHIBIT IS FOR GENERAL REFERENCE PURPOSES ONLY; SEE ACCOMPANYING LAND DESCRIPTION FOR CONTROLLING PARCEL BOUNDARY INFORMATION.

5/14/2013 1:48 PM

**O'DELL**  
ENGINEERING  
1185 Soenic Drive, Suite B Modesto, CA 95350  
Ph 209.671.1765 Fax 209.671.2498

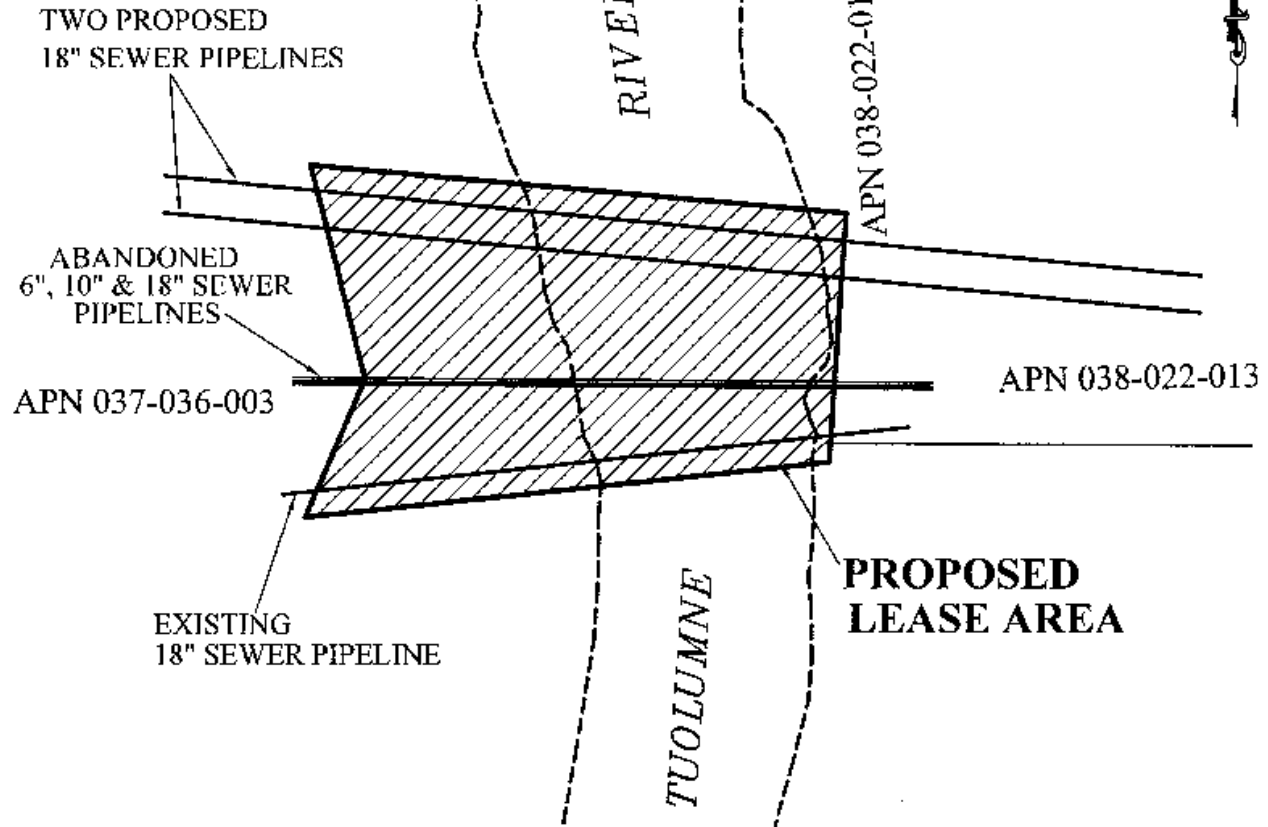
**EXHIBIT "A"**  
PROPOSED LEASE AREA  
TUOLUMNE RIVER, NEAR SHACKELFORD AREA  
MODESTO, CA  
Page 2 of 2

SCALE: 1"=120'  
DRAWN BY: S.H.  
FILE: 20110--PLAT LEASE AREA.DWG  
DATE: 05/14/2013



NO SCALE

## SITE



TUOLUMNE RIVER, NEAR SHACKLEFORD AREA

NO SCALE

## LOCATION



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any state interest in the subject or any other property.

MAP SOURCE: USGS QJAD

## Exhibit B

PRC 8514.9

CITY OF MODESTO

APNs 037-036-003 &

038-022-013, -014

GENERAL LEASE -  
PUBLIC AGENCY USE  
STANISLAUS COUNTY



TS 05/23/13

## Exhibit C. Mitigation and Monitoring Program (MMP) — California State Lands Commission

<b>WATER QUALITY AND HYDROLOGY: Mitigation Measures</b>	<b>Responsibility</b>	<b>Action(s)</b>	<b>Timing</b>
<p><b>D.1.</b> The City shall prepare a SWPPP designed to reduce potential impacts to surface water quality through the construction period of all of the project components (whether or not the particular portion of the project disturbs more than one acre). The SWPPP shall emphasize measures designed to minimize erosion and off-site sedimentation during improvements to the collection system and installation of the new outfall.</p> <p>It is not required that the SWPPP be submitted to the RWQCB, but must be maintained on-site and made available to RWQCB staff upon request. The SWPPP shall include:</p> <ul style="list-style-type: none"> <li>• Specific and detailed BMPs designed to mitigate construction-related pollutants. At a minimum, BMPs shall include practices to minimize the contact of construction materials, equipment, and maintenance supplies (e.g., fuels, lubricants, paints, solvents, adhesives) with stormwater. The SWPPP shall specify properly designed, centralized storage areas that keep these materials out of the rain.</li> <li>• To educate on-site personnel and maintain awareness of the importance of stormwater quality protection, site supervisors shall conduct regular tailgate meetings to discuss pollution prevention. The frequency of the meetings and required personnel attendance list shall be specified in the SWPPP.</li> <li>• A monitoring program that would be implemented by the construction site supervisor which will include both dry and wet weather inspections. In addition, in accordance with State Water Resources Control Board Resolution No. 2001-046, monitoring would be required during the construction period for pollutants that may be present in the runoff that are “not visually detectable in runoff.”</li> </ul>	<p>Public Works Department and Construction Contractor</p>    <p>Construction Contractor Representative</p>	<p>Prepare SWPPP or require construction contractor to prepare SWPPP; implement SWPPP</p>    <p>Maintain copy of SWPPP on construction site and implement SWPPP</p>	<p>SWPPP shall be prepared prior to excavation or grading of any Wastewater Master Plan project and shall be implemented during grading and construction throughout all phases of construction for each project</p>

WATER QUALITY AND HYDROLOGY: Mitigation Measures	Responsibility	Action(s)	Timing
<ul style="list-style-type: none"> <li>BMPs designed to reduce erosion of exposed soil may include, but are not limited to soil stabilization controls, watering for dust control, perimeter silt fences, placement of hay bales, and sediment basins. Efforts should be made to keep the length of open trench and stockpile volumes to a minimum. The potential for erosion is generally increased if grading is performed during the rainy season as disturbed soil can be exposed to rainfall and storm runoff. If grading must be conducted during the rainy season, the primary BMPs selected shall focus on erosion control, that is, keeping sediment on the site. End-of-pipe sediment control measures (e.g., basins and traps) shall be used only as secondary measures. Entry and egress from the excavation area shall be carefully controlled to minimize off-site tracking of sediment. Vehicle and equipment wash-down facilities shall be designed to be accessible and functional during both dry and wet conditions.</li> <li>A monitoring and contingency plan for microtunneling that specifies how the likelihood of frac-out [tunnel collapse or the rupture of drilling mud to the surface, EIR p. IV.D.27] would be reduced and response actions should frac-out occur. The risk of frac-outs can be reduced through proper design, careful monitoring, and having appropriate equipment and response plans ready in the event of a frac-out. The monitoring and contingency plan shall specify that:</li> </ul>	Public Works Department and Construction Contractor Representative	Implement plan Prepare monitoring and contingency plan for microtunneling or require construction contractor to prepare plan;	Plan shall be prepared prior to commencement of micro-tunneling under a riparian area or other identified wetland, and shall be implemented during micro-tunneling



**EXHIBIT D – SHACKELFORD CROSSING PROJECT**  
**CALIFORNIA STATE LANDS COMMISSION**  
**STATEMENT OF FINDINGS**

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**INTRODUCTION**

The California State Lands Commission (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 Modesto (City) for use of sovereign lands associated with the proposed Shackelford Crossing Project (Project). (See generally Pub. Resources Code, § 21069; State CEQA Guidelines, § 15381.)<sup>1</sup> The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The CSLC also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6301, 6306). 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 CSLC is a responsible agency under CEQA for the Project because the CSLC 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 Wastewater Master Plan Master Environmental Impact Report (MEIR) (State Clearinghouse [SCH] No. 2006052076). On March 14, 2007, the City certified the MEIR and adopted the Project Mitigation Monitoring and Reporting Program (MMRP), Findings, and Statement of Overriding Considerations (SOC). The City prepared an Initial Study Environmental Checklist (EA/PW No. 2009-16) and a Finding of Conformance (FOC) to the MEIR in June 2012, in compliance with Public Resources Code section 21157.1 and the State CEQA Guidelines section 15177.

The Project consists of the installation of dual 30" sewer lines connecting from the east side of the Tuolumne River to the west side of the River and replacing the existing Shackelford Crossing connection. The project will be accomplished using Horizontal Directional Drilling (HDD) technology, which provides for an installation that is non-invasive of the riverbed and riparian area. The dual lines will be approximately 675 feet in length when complete, with the drilling exit and entry points about 760 feet apart. All above ground work is to be located well back from the top of bluff. The lines will maintain a minimum 39' vertical separation below the streambed within the river channel.

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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 Title 14 of the California Code of Regulations section 15000 et seq.

The HDD alignment is located under lands within the jurisdiction of the CSLC; however, the HDD entry and exit areas are outside of CSLC jurisdiction.

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

- Water Quality and Hydrology
- Biological Resources
- Air Quality
- Noise
- Cultural Resources

Of those five resources areas, however, the components of the Project within the jurisdiction of the CSLC (i.e., a portion of the HDD) could have significant environmental effects only on water quality and hydrology.

In certifying the MEIR, making its FOC, 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 mitigation measures. Even with the integration of feasible mitigation, the MEIR concluded that some of the identified impacts would remain significant. As a result, the City adopted an SOC, which justified the City's approval of the Project despite these significant and unavoidable impacts (See Attachment A). The MEIR determined that, after mitigation, the Project may still have significant impacts on the following resource areas:

- Agricultural Resources
- Water Quality and Hydrology
- Transportation
- Air Quality
- Noise

However, the significant and unavoidable impacts to Water Quality and Hydrology identified in the MEIR (Impacts D.3, D.4, and D.5 – refer to Attachment A), refer to the wastewater collections system of the overall Wastewater Master Plan, and not to this specific Project, and so are outside the jurisdiction and approval authority of the CSLC.

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

## FINDINGS

The CSLC'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 MEIR certified by the City for the Project identifies potentially significant impacts that fall within the scope of the CSLC's approval, the CSLC makes the Findings set forth below as a responsible agency under CEQA. (CEQA Guidelines, § 15096, subd. (h); *Resource Defense Fund. v. Local Agency Formation Comm. of Santa Cruz County* (1987) 191 Cal.App.3d 886, 896-898.)

While the CSLC must consider the environmental impacts of the Project as set forth in the City's MEIR, the CSLC'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); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g)). Accordingly, because the CSLC's exercise of discretion involves issuance of a lease for only a portion of the Horizontal Directional Drilling (HDD), the CSLC is responsible for considering only the environmental impacts related to lands or resources subject to the CSLC's jurisdiction. With respect to all other impacts associated with implementation of the Project, the CSLC is bound by the legal presumption that the MEIR, Initial Study Environmental Checklist, EA/PW No. 2009-16, and Finding of Conformance (FOC) fully comply with CEQA.

The CSLC has reviewed and considered the information contained in the Project MEIR, the Initial Study Environmental Checklist, EA/PW No. 2009-16, and FOC to the MEIR. All significant adverse impacts of the Project identified in the MEIR relating to the CSLC's approval of a General Lease – Public Agency Use, resulting from HDD under State lands are included herein. These Findings, which reflect the independent judgment of the CSLC, 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. The possible findings on each significant effect are:

- (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment;
- (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency;
- (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR.<sup>2</sup>

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

These Findings are based on the information contained in the MEIR, the City's Initial Study Environmental Checklist, EA/PW No. 2009-16, and FOC to the MEIR, as well as information provided by to CSLC staff by the City, all of which is contained in the administrative record. The mitigation measures are briefly described in these Findings; more detail on the mitigation measures is included in the City's MEIR and Initial Study Environmental Checklist, EA/PW No. 2009-16, and FOC to the MEIR.

The CSLC is the custodian of the record of proceedings upon which its decision is based. The location of the CSLC's record of proceedings is in the Sacramento office of the CSLC, 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825.

## **I. IMPACTS REDUCED TO LESS THAN SIGNIFICANT LEVELS WITH MITIGATION**

The following impacts were determined in the MEIR, and the subsequent FOC, to be potentially significant absent mitigation. After application of mitigation, however, the impacts were determined to be less than significant.

### **A. WATER QUALITY AND HYDROLOGY**

#### **CEQA FINDING NO. D-1**

Impact: **D-1. Potential for Frac-outs or Spills Associated with Project Construction.** Excavation and construction activities could cause erosion and/or result in chemical releases causing degradation of water quality in nearby surface water and/or groundwater bodies.

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 MEIR.

#### **FACTS SUPPORTING THE FINDING(S)**

Project specifications provide specific provisions to address and minimize the potential for frac-outs or spills, and contingency plans in the event that such an event occurs.

To mitigate this potential impact to less than significant, **Mitigation Measure D.1** shall be implemented.

**Mitigation Measure D.1:** The City shall prepare a SWPPP designed to reduce potential impacts to surface water quality through the construction period of all of the project components (whether or not the particular portion of the project disturbs more than one acre). The SWPPP shall emphasize measures designed to minimize erosion and off-site sedimentation during improvements to the collection system and installation of the new outfall.



- It is not required that the SWPPP be submitted to the RWQCB, but must be maintained on-site and made available to RWQCB staff upon request. The SWPPP shall include:
- Specific and detailed BMPs designed to mitigate construction-related pollutants. At a minimum, BMPs shall include practices to minimize the contact of construction materials, equipment, and maintenance supplies (e.g., fuels, lubricants, paints, solvents, adhesives) with stormwater. The SWPPP shall specify properly designed, centralized storage areas that keep these materials out of the rain.
- To educate on-site personnel and maintain awareness of the importance of stormwater quality protection, site supervisors shall conduct regular tailgate meetings to discuss pollution prevention. The frequency of the meetings and required personnel attendance list shall be specified in the SWPPP.
- A monitoring program that would be implemented by the construction site supervisor which will include both dry and wet weather inspections. In addition, in accordance with State Water Resources Control Board Resolution No. 2001-046, monitoring would be required during the construction period for pollutants that may be present in the runoff that are “not visually detectable in runoff.”
- BMPs designed to reduce erosion of exposed soil may include, but are not limited to soil stabilization controls, watering for dust control, perimeter silt fences, placement of hay bales, and sediment basins. Efforts should be made to keep the length of open trench and stockpile volumes to a minimum. The potential for erosion is generally increased if grading is performed during the rainy season as disturbed soil can be exposed to rainfall and storm runoff. If grading must be conducted during the rainy season, the primary BMPs selected shall focus on erosion control, that is, keeping sediment on the site. End-of-pipe sediment control measures (e.g., basins and traps) shall be used only as secondary measures. Entry and egress from the excavation area shall be carefully controlled to minimize off-site tracking of sediment. Vehicle and equipment wash-down facilities shall be designed to be accessible and functional during both dry and wet conditions.
- A monitoring and contingency plan for microtunneling that specifies how the likelihood of frac-out [tunnel collapse or the rupture of drilling mud to the surface, EIR p. IV.D.27] would be reduced and response actions should frac-out occur. The risk of frac-outs can be reduced through proper design, careful monitoring, and having appropriate equipment and response plans ready in the event of a frac-out. The monitoring and contingency plan shall specify that:
  - On-site briefings be conducted for the workers to identify and locate sensitive resources at the site.
  - All field personnel be fully briefed and understand their responsibility for timely reporting of frac-outs.
  - When excavating around existing rock wells, the inlet to the rock well will be sealed during the excavation activity so that sediment and pollutants cannot be discharged into the rock well in runoff or wash water.
  - Response equipment be maintained on-site or at a readily accessible location and in good working order.

Should a frac-out occur, the plan should specify that:

- A qualified biologist would be retained to evaluate the potential for impacts to biotic resources and specify response actions, as appropriate.
- All work stops, including the recycling of drilling mud/lubricant.
- The location and extent of the frac-out is quickly determined.
- If the frac-out occurs on land that the drilling mud is removed, the area reseeded and/or replanted using species similar to those in the adjacent area.
- If the frac-out occurs underwater, the frac-out should be monitored for 4 hours to determine if the drilling mud congeals. (the bentonite clay typically used as a drilling mud will usually harden, effectively sealing the frac-out location).
- If drilling mud does not congeal, erect isolation/containment environment (underwater boom and curtain).
- If the fracture becomes excessively large, a spill response team be called in to contain and clean up excess drilling mud in the water. Phone numbers of spill response teams in the area should be maintained on site.
- In any case, if a frac-out occurs, consultation with the appropriate regulatory agencies should occur promptly.

The drilling and response plan shall be reviewed and approved by the City of Modesto Department of Public Works prior to implementation of the drilling activities.

## **LEVEL OF SIGNIFICANCE AFTER MITIGATION**

With the mitigation described above, this impact is reduced to a less-than-significant level.

ATTACHMENT A  
CITY OF MODESTO  
STATEMENT OF OVERRIDING CONSIDERATIONS

## **V. Statement of Overriding Considerations.**

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Section 15093, this City Council adopts and makes the following Statement of Overriding Considerations regarding the remaining significant unavoidable impacts of the Project, as discussed above, and the anticipated economic, legal, social and other benefits of the Project.

The City finds and determines that: (i) the majority of the significant impacts of the Project will be substantially lessened or avoided by the mitigation measures required by these Findings; (ii) the City's approval of the Project as proposed will result in certain significant adverse environmental effects that cannot be avoided even with the incorporation of all feasible mitigation measures into the Project; and (iii) there are no other feasible mitigation measures or other feasible Project alternatives that would further mitigate or avoid the remaining significant environmental effects. The significant effects that have not been mitigated to a less-than-significant level and are therefore considered significant and unavoidable are:

- B.3 – Agricultural Resources – Construction of the proposed project components within the Planned Urbanizing Area would result in the cumulative loss of Prime Farmland.
- D.3 – Water Quality and Hydrology – Implementation of the proposed project at a rate that does not match projected growth may result in an incremental increase in operation-period surface water quality degradation due to the deficient effluent disposal system.
- D.4 – Water Quality and Hydrology – Implementation of the proposed project may result in operation-period surface water quality degradation due to pollutant loading associated with treated water discharges.
- D.5 – Water Quality and Hydrology – Implementation of the proposed project may result in operation-period surface water quality degradation during daily operations and/or during flooding of the Primary Plant and sludge drying area.
- F.5 – Transportation – The Wastewater Master Plan Update would accommodate growth that would cause direct and cumulatively considerable traffic impacts identified in the Urban Area General Plan.
- G.1 – Air Quality – Emissions of criteria pollutants during construction of wastewater system improvements would contribute to existing violations of the ambient air quality standards in the region.
- G.2 – Air Quality – Emissions of criteria pollutants during operation of the proposed wastewater system improvements would contribute to existing violations of the ambient air quality standards in the region.
- G.5 – Air Quality – The Wastewater Master Plan Update would accommodate growth that would cause direct and cumulatively considerable air quality impacts identified in the Urban Area General Plan.
- G.6 – Air Quality – The wastewater treatment facilities would cause a cumulatively considerable net increase of pollutants for which the San Joaquin Valley is designated as nonattainment.
- H.4 – Noise – The proposed project would support cumulative development that could increase noise levels in areas where noise levels exceed, or would exceed, the noise and land use compatibility guidelines adopted by the City of Modesto and Stanislaus County, or the noise performance standards set by the City and County.

The following statement identifies the reasons why, in the City's judgment, the benefits of the Project outweigh the significant and unavoidable effects. The substantial evidence supporting the enumerated benefits of the Project can be found in the record of proceedings as described in Section II.A. Each of the overriding considerations set forth below constitutes a separate and independent ground for finding that the benefits of the Project outweigh its significant adverse environmental effects and is an overriding consideration warranting approval. The City finds that the Project would have the following economic, legal, social, technological, and environmental benefits:

1. Wastewater Collection and Treatment Needs. The City has grown rapidly and faces a number of challenges regarding its current wastewater collection and treatment facilities. Its 1980 population of 106,600 grew to 206,200 in 2004, putting pressure on an aging sewer system. The City currently lacks sufficient hydraulic capacity at the Primary Plant and has limited disposal options for the Secondary Plant's effluent. Portions of the system do not have capacity to convey peak wet weather flows, potentially causing wastewater surcharges or overflows. Portions of the City's collection system are very old and in significant need of repair and rehabilitation. In addition, portions of the collection system are undersized even for infill development. The Project will allow the City to more efficiently meet its wastewater collection and treatment needs, assuring water quality and addressing flooding and public health and safety concerns.
2. Environmental Benefits of Tertiary Treatment. The Project will significantly improve the quality of the City's treated wastewater effluent by upgrading to tertiary treatment and ensuring the City's ability to meet changing regulatory requirements. This upgrade will improve water quality.
3. Growth Consistent With General Plan. The City's General Plan provides a framework for the City's growth but has identified the City's wastewater treatment facilities as a potential constraint on desired growth. By removing this constraint, the Project will allow development consistent with the City's General Plan.
4. Liability. Without improvements to its wastewater infrastructure, the City runs the risk of violating existing State and Federal discharge requirements. Furthermore, the City anticipates that its discharge permitting conditions may become more stringent in the future, as they have become more stringent for other cities in the San Joaquin Valley. The Project will allow the City to meet its current and future discharge obligations and avoid liability for illegal discharges.