



SAN BENITO COUNTY PLANNING COMMISSION

Eduardo
Navarro
District No. 1

Valerie Eglund
District No. 2

Robert Eggers
District No. 3

Robert
Gibson
District No. 4

Robert Rodriguez
District No. 5

*County Administration Building - Board of Supervisors Chambers, 481 Fourth Street, Hollister,
California*

REGULAR MEETING AGENDA February 20, 2019 6:00 PM

6:00 PM ~ CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

BOARD ANNOUNCEMENTS

DEPARTMENT ANNOUNCEMENTS

1. Appoint Vice Chair.

PUBLIC COMMENT

The San Benito County Planning Commission welcomes you to this meeting and encourages your participation.

- If you wish to speak on a matter which does **NOT** appear on the agenda, you may do so during the Public Comment period at the beginning of the meeting. Please complete a Speaker Card and provide to the Clerk prior to the meeting. Except as otherwise provided by law; no action shall be taken on any item NOT appearing on the Agenda or items that have been continued to a future public hearing date. When addressing the Commission, **please state your name for the record**. Please address the Commission as a whole through the Chair. This open forum period is provided to allow members of the public an opportunity to address the Planning Commission on general issues of land use planning and community development. It is not intended for comments on items on the current agenda, any pending items.
- If you wish to speak on an item contained in the Agenda, please complete a Speaker Card identifying the Item(s) and provide it to the Clerk prior to consideration of the item.
- **Each individual speaker will be limited to a three (3) minute presentation.**

CONSENT AGENDA

ACKNOWLEDGEMENT OF PUBLIC HEARING

ACKNOWLEDGEMENT OF CERTIFICATE OF POSTING

- These items will be considered as a whole without discussion unless a particular item is requested by a member of the Commission, Staff or the public to be removed from the Consent Agenda. Approval of a consent item means approval of the recommended action as specified in the Staff Report.
- If any member of the public wishes to comment on a Consent Agenda Item please fill out a speaker card present it to the Clerk prior to consideration of the Consent Agenda and request the item be removed and considered separately.

2. Draft Meeting Minutes from January 16, 2019

REGULAR AGENDA

3. OWNER/APPLICANT: Tanimura & Antle/Avila Construction. APN: 016-090-018. LOCATION: 1298 Orchard Road. REQUEST: To construct a mechanized vegetable transplant nursery on 96.47 acres, in six separate phases over six years, consisting of greenhouses and related facilities with about 100,000sf of office, storage & maintenance areas, 700,000sf of greenhouses, and 500,000sf of outdoor growing and work areas. GENERAL PLAN: Agriculture. ZONING: Agricultural Productive (AP). ENVIRONMENTAL EVALUATION: Initial Study/Mitigated Negative Declaration. PLANNER: Richard Felsing (rfelsing@cosb.us)

PUBLIC HEARING

DISCUSSION

4. A. Updated Procedures for the Transaction of Business. Signed Resolution 2011-07
 B. Planning Land Use 101 - Overview of Planning Regulations and Processes.
 C. Interactions with staff - Appointments are useful. Please contact Taven M. Kinison Brown @ 831-902-2294.

ADJOURN

NOTE: A copy of this Agenda is published on the County's Web site by the Friday preceding each Commission meeting and may be viewed at www.cosb.us. All proposed agenda items with supportive documents are available for viewing at the San Benito County Administration Building, 481 Fourth Street, Hollister, CA between the hours of 8:00 a.m. & 5:00 p.m., Monday through Friday (except holidays.) This is the same packet that the Planning Commission reviews and discusses at the Commission meeting. The project planner's name and email address has been added at the end of each project description. As required by Government Code Section 54957.5 any public record distributed to the Planning Commission less than 72 hours prior to this meeting in connection with any agenda item shall be made available for public inspection at the Planning Department, 2301 Technology Parkway, Hollister, CA 95023. Public records distributed during the meeting will be available for public inspection at the meeting if prepared by the County. If the public record is prepared by some other person and distributed at the meeting it will be made available for public inspection following the meeting at the Planning Department.

APPEAL NOTICE: Any person aggrieved by the decision of the Planning Commission may appeal the decision within ten (10) calendar days to the Board of Supervisors. The notice of appeal must be in writing and shall set forth specifically wherein the Planning Commission's decision was inappropriate or unjustified. Appeal forms are available from the Clerk of the Board at the San Benito County Administration Office, 481 Fourth Street, Hollister and the San Benito County Planning Department, 2301 Technology Parkway, Hollister.

NOTE: In compliance with the Americans with Disabilities Act (ADA) the Board of Supervisors meeting facility is accessible to persons with disabilities. If you need special assistance to participate in this meeting, please contact the Clerk of the Board's office at (831) 636-4000 at least 48 hours before the meeting to enable the County to make reasonable arrangements to ensure accessibility.



**SAN BENITO COUNTY
AGENDA ITEM
TRANSMITTAL FORM**

Mark Tognazzini
District No. 1
Chair

Valerie Eglund
District No. 2

Pat Loe
District No. 3

Ray Pierce
District No. 4

Robert Rodriguez
District No. 5
Vice-Chair

Item Number: 1.

MEETING DATE: 2/20/2019

DEPARTMENT: RESOURCE MANAGEMENT AGENCY

DEPT HEAD/DIRECTOR: John P. Guertin

AGENDA ITEM PREPARER: Taven M. Kinison Brown

SBC DEPT FILE NUMBER:

SUBJECT:

Appoint Vice Chair.

AGENDA SECTION:

DEPARTMENT ANNOUNCEMENTS

BACKGROUND/SUMMARY:

BUDGETED:

SBC BUDGET LINE ITEM NUMBER:

CURRENT FY COST:

STAFF RECOMMENDATION:

ADDITIONAL PERSONNEL:



**SAN BENITO COUNTY
AGENDA ITEM
TRANSMITTAL FORM**

Mark Tognazzini
District No. 1
Chair

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District No. 5
Vice-Chair

Item Number: 2.

MEETING DATE: 2/20/2019

DEPARTMENT: RESOURCE MANAGEMENT AGENCY

DEPT HEAD/DIRECTOR: John P. Guertin

AGENDA ITEM PREPARER: Rosie Habing

SBC DEPT FILE NUMBER:

SUBJECT:

Draft Meeting Minutes from January 16, 2019

AGENDA SECTION:

CONSENT AGENDA

BACKGROUND/SUMMARY:

BUDGETED:

SBC BUDGET LINE ITEM NUMBER:

CURRENT FY COST:

STAFF RECOMMENDATION:

ADDITIONAL PERSONNEL:

ATTACHMENTS:

Description	Upload Date	Type
Draft Planning Commission Minutes for 1-16-2019	2/14/2019	Minutes



SAN BENITO COUNTY PLANNING COMMISSION

Eduardo Navarro District No. 1	Valerie Eglan District No. 2	Robert Eggers District No. 3	Rob Gibson District No. 4	Robert Rodriguez District No. 5 Vice-Chair
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County Administration Building - Board of Supervisors Chambers, 481 Fourth Street, Hollister, California

REGULAR MEETING MINUTES January 16, 2019 6:00 PM

6:07 PM ~ CALL TO ORDER

PLEDGE OF ALLEGIANCE -

ROLL CALL:

Robert Gibson – Absent
Robert Eggers – Present
Eduardo Navarro – Present
Robert Rodriguez - Present
Valerie Eglan – Present

BOARD ANNOUNCEMENTS - None

DEPARTMENT ANNOUNCEMENTS -

Taven welcomed our new class of commissioner's and they spoke briefly of themselves, including Valerie Eglan and Robert Rodriguez.

Item 3: The board of supervisors has a retreat Wednesday February 13th – 15th and they have invited the planning commission for a refresher and update on ethic training, brown act for meeting procedures and how to report income and conflicts of interest. On February 20th we will be having a Land Use101 meeting and discuss the tools and the rules we use daily with possible projects to go over.

Item 2: Setting the calendar with the 3rd Wednesday of the month except for December which will be the first Wednesday of the Month. December 4th will be our only change. Nominations of the chair will be in February not January and please consider a vice chair before our next meeting. Planning to go hi-tech and arranging county assigned emails, electronic tablets, business cards have been ordered along with name placards.

PUBLIC COMMENT

None- Public Comments Closed by Robert Rodriguez

ACKNOWLEDGEMENT OF MINUTES

Valerie motion for minutes to be approved

2nd Robert Gibson

All in favor

ACKNOWLEDGEMENT OF CERTIFICATE OF POSTING

PUBLIC HEARING

1. **Minor Subdivision 1243-17:** OWNER/APPLICANT: Darin Del Curto. APN: 025-090-061. LOCATION: 2200 Santa Ana Valley Road. REQUEST: To subdivide a 59-acre property into four parcels of 5 to 14 acres plus one 26½-acre remainder lot, with Parcel 4 already developed with a residence, in addition to building access drives and infrastructure to serve the lots. GENERAL PLAN: Agriculture (A). ZONING: Agricultural Productive (AP). ENVIRONMENTAL EVALUATION: Addendum to GPA 08-38 and ZC 08-166 Mitigated Negative Declaration to find no significant impacts to result from the project. PLANNER: Taven M. Kinison Brown (Tkinisonbrown@cosb.us) / Michael Kelly (mkelly@cosb.us).

Item #9

Planner Michael Kelly gave a presentation of the staff report.

Open to public – no comments

The new resolution is 2019-01

Commissioner Egland proposed the parcel 1243-17 be approved subject to conditions of approval with amendments of new resolution.

Commissioner Gibson seconds the motion

All in favor

Motion passes

2. **Minor Subdivision PLN180028:** OWNER/APPLICANT: Christina Bourdet / John Bourdet. APN: 016-050-048-0. LOCATION: 1271 Los Viboras, Hollister. REQUEST: The applicant proposes to subdivide one (1) forty-one (41.0) acre parcel into two (2) parcels of twenty-eight (28.0) and thirteen (13.0) acres. ZONING: Agricultural Productive (AP). ENVIRONMENTAL EVALUATION: Categorically Exempt, per CEQA Guidelines Section 15061(b)(3). PLANNER: Richard Felsing (rfelsing@cosb.us)

Item #10

Planner Richard Felsing Kelly gave a presentation of the staff report.

Open to the public:

Speaker #1 Anne Hall – no issue with the conditions proposed but there to answer any questions.

Commissioner Eglund: the exceptions are for the road easements are deferred

Public comments closed

Commissioner Eggers to motion to approve PLN180028

Robert Gibson 2nd the motion

All in favor

Motion passes

3. **Use Permit PLN180013**: OWNER/APPLICANT: Tanimura & Antle / Avila Construction. APN: 016-090-018. LOCATION: 1298 Orchard Road. REQUEST: To construct a mechanized vegetable transplant nursery on 96.47 acres, in six separate phases over six years, consisting of greenhouses and related facilities with about 100,000sf of office, storage & maintenance areas, 700,000sf of greenhouses, and 500,000sf of outdoor growing and work areas. GENERAL PLAN: Agriculture. ZONING: Agricultural Productive (AP). ENVIRONMENTAL EVALUATION: Initial Study/Mitigated Negative Declaration. PLANNER: **Richard Felsing** (rfelsing@cosb.us)

Planner Richard Felsing stated that the applicant has requested to come back after they meet to discuss their needs with phasing and other concerns. They want to come back in February. They are requesting a continuance to February 20th.

Commissioner Navarro motion to grant continuance

Commissioner Valerie Eglund 2nd

All in Favor

Motion Passes

DISCUSSION

4. **2035 General Plan Implementation** – Project update on the preparation of the new C-3 Regional Commercial Zoning District and its application to four (4) sites located along U.S. Highway 101, generally located at Betabel Road, U.S. 101/Hwy 129/Searle Road, Livestock 101/Cole Road and Rocks Ranch/Red Barn.

Item #12

County Consultant Richard James introduced a presentation on the project and project area.

Open to public (3 minutes per speaker)

Speaker: Andy Hsia-Coron – Referred to the nodes as tumor and wants to protect the area and will do what is necessary to stop this project. He is quite angry that you would develop in this area.

Speaker: Robert Robe – Lives by potential project and not against

development but not the proposed area. He suggested another area that would be better. Many people are concerned with water issue and tapping into Aromas water district. Please be cautious about this issue.

Speaker: Mary Hsia-Coron – Concerned with water issue and loss of wells. Concerned with a hotel that would use a lot of water being used and asked “Are you going to help us out?” The water is not sustainable as is. She is also concerned about entrance to possible dude ranch. Also wanted to please letter from Marla/Katherine Anderson wanted to say she is organizing to stop this project.

Speaker: Wolf James Starkwolf lives in Prunedale. He has been a student of indigenous spiritual ways his adult life. There are a lot of religious sites and personally say his son was instructed to attend ceremony by the rocks. Concerned about religious sites and ancient sites.

Speaker: Glen Skogen – Property owner main concern is when was the last traffic study performed? Also, what kind of traffic impact is this going to cause. How is it going to effect the roads and questions the quality of life.

Speaker: Dan Devries – General Plan was a done deal and livestock 101 was a mistake and absolutely a node that should have been done. Livestock 101 had designation and should have been a node. Also need to preserve area but need to capture develop a great aesthetic if developed.

Speaker: Gina Paoline – Sent letter already and wanted to discuss when public notices went out to discuss the nodes. Another issue is economics, where is the analysis. Where are they going to come from? There is issues with filling retail space, is San Benito going to be able to fill spaces? Oakridge water is going to be drawn and used if a hotel comes in and they use a lot of water.

Speaker: Todd Cushman – lives in Aromas from San Jose area and speaking of Rocks Rd and doesn't want to see anything there. Todd does not want to see a hotel there; he can hear music from the Red Barn every weekend. Time was up.

No rebuttals at this time –

Darryl stated we are not there yet and just collecting information from the public and appreciate all comments and concern.

Taven Kinison-Brown stated that letters and comments are still going to be welcomed and the dialogue will continue.

Commissioner Robert Gibson stated this is just starting in getting the

Commissioner Valerie Egland likes the Livestock 101 and stated the boundaries need to be looked at very closely. The development

limitations need to have cultural concerns reviewed as well. Design is everything and water issues are another concern and reality based aspects of water in the country. I consider those in my own property and consider those who have skin in the game and need to be considered. We cannot be total selfish if it's not happening in our backyard. Look forward to seeing the progress move forward.

Commissioner Eduardo Navarro: Likes the proposed nodes like the 3rd proposal. Firm believer of cultural aspect and agrees with the stance in keeping it thematic and keep areas that are sacred and meeting with tribal leaders, much in favor of that. Has follow up questions regarding water. Need to get public clarification regarding C3 nodes and getting that information to them.

Commissioner Valerie Eglund motion to adjourn

All in favor

ADJOURN: Meeting adjourn at 8:43pm



SAN BENITO COUNTY AGENDA ITEM TRANSMITTAL FORM

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Robert Rodriguez
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Vice-Chair

Item Number: 3.

MEETING DATE: 2/20/2019

DEPARTMENT: RESOURCE MANAGEMENT AGENCY

DEPT HEAD/DIRECTOR: John Guertin

AGENDA ITEM PREPARER: Richard Felsing

SBC DEPT FILE NUMBER: PLN180013

SUBJECT:

OWNER/APPLICANT: Tanimura & Antle/Avila Construction. APN: 016-090-018. LOCATION: 1298 Orchard Road. REQUEST: To construct a mechanized vegetable transplant nursery on 96.47 acres, in six separate phases over six years, consisting of greenhouses and related facilities with about 100,000sf of office, storage & maintenance areas, 700,000sf of greenhouses, and 500,000sf of outdoor growing and work areas. GENERAL PLAN: Agriculture. ZONING: Agricultural Productive (AP). ENVIRONMENTAL EVALUTION: Initial Study/Mitigated Negative Declaration. PLANNER: Richard Felsing (rfelsing@cosb.us)

AGENDA SECTION:

REGULAR AGENDA

BACKGROUND/SUMMARY:

The proposed facility would speed the transplant process from germination to seedling to transplantation to regional farm fields through a mechanized 'planttape' technology that reduces labor and time costs. The 96.47-acre site lies west of Orchard Road, hosted greenhouses for several decades in the 1970s and 1980s, and has been intensively cultivated as early as the 1930s. A 50' riparian corridor would buffer Pacheco Creek, and site design incorporates natural

flow and vegetated bioswales to treat nonpoint runoff and direct effluent flows into detention basins.

BUDGETED:

SBC BUDGET LINE ITEM NUMBER:

CURRENT FY COST:

STAFF RECOMMENDATION:

Staff recommends the Planning Commission approve Use Permit PLN 180013 and adopt the draft Resolution findings, standard and special conditions of approval, and mitigation measures, consistent with the County of San Benito General Plan and Zoning Ordinances.

ADDITIONAL PERSONNEL:

ATTACHMENTS:

Description	Upload Date	Type
Staff Report PLN180013 Tanim & Antle	2/14/2019	Staff Report
Resolution PLN180013 Tanim & Antle w/ Attachment 1	2/14/2019	Resolution
Attach2 Project Description & Environmental Setting	2/8/2019	Backup Material
Attachment 3: CEQA Initial Study/Mitigated Negative Declaration (Pt 1 of 2) Draft 11/18	2/8/2019	Backup Material
Attachment 3: CEQA Initial Study/Mitigated Negative Declaration (Pt 2of2) Draft 11/18	2/8/2019	Backup Material
Attachment 4a: NOD PLN180013 Tanim & Antle	2/14/2019	Backup Material
Attachment 4b: FINAL CEQA IS/MND–incl. responses to Draft IS/MND; technical appendices available on request–Jan 2019	2/8/2019	Backup Material
Attachment 4c: MBARD CommentLetter & County Response	2/8/2019	Backup Material
Attachment 5: Phasing Plan PLN180013 Tanim&Antle	2/14/2019	Backup Material

STAFF REPORT

PROJECT INFORMATION:

Application:	Tanimura & Antle Use Permit
Date of Hearing:	February 20, 2019
Applicant/Owner:	Tanimura & Antle / Avila Construction
File Number:	PLN 180013
Location:	1298 Orchard Road, Hollister
APN:	016-090-018-0
General Plan:	A Agriculture
Zoning:	AP Agricultural Productive
Project Planner:	Richard Felsing

PROJECT DESCRIPTION: The applicant proposes to construct a vegetable transplant nursery, in six separate phases over six years, consisting of greenhouses and related facilities with about 100,000 square feet of office, storage & maintenance areas, 700,000 square feet of greenhouses, and 500,000 square feet of outdoor growing and work areas. The proposed project site is a 96.52-acre parcel that hosted greenhouses for several decades during the 1970s and 1980s, and was intensively cultivated as early as the 1930s. The facility will use a mechanized transplanting method known as ‘planttape’ technology to reduce time, labor, and costs from germination to field.

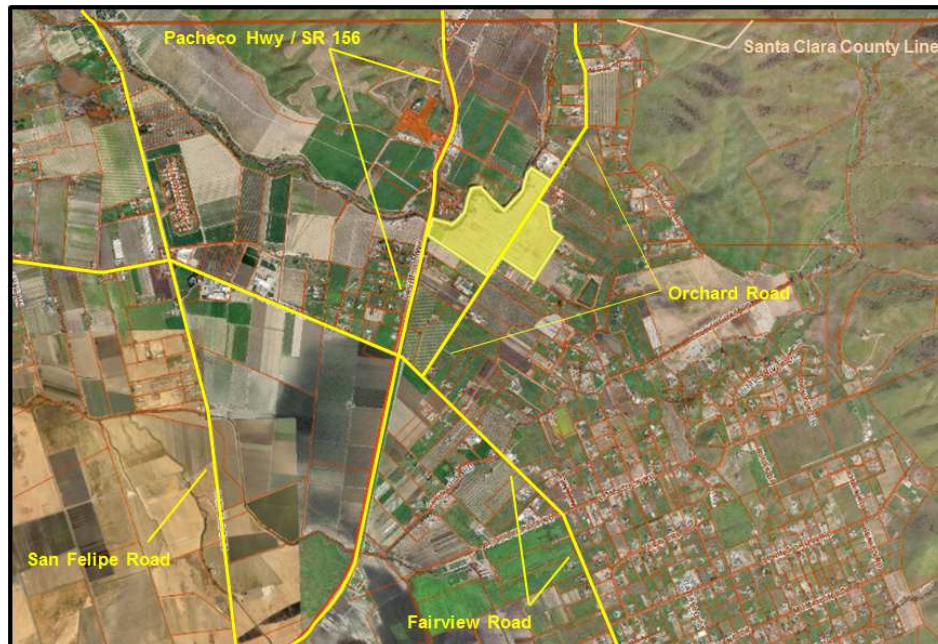


Figure 1. Project Site and Vicinity, with Road Network

SITE CONTEXT: The 96.52-acre Tanimura & Antle property is bounded by Pacheco Creek to the north and west, and by Orchard Road to the southeast. South of the parcel are orchards and cultivated fields, while a light industrial facility is adjacent to the north. Pacheco Highway/SR 156 runs along a small segment on the west side of the property.

The proposed project is situated in an area of mixed agricultural and residential land uses characteristic of the Agriculture (A) land use designation outlined in the General Plan (*See*

Table 3-1, page 3-4), consistent with Agricultural Productive (AP) zoning. This balance has favored agriculture on large lots to the northwest and across SR156, tending toward rangeland in the northeast foothills. To the southeast, in general, a higher density of single-family residences on smaller lots includes less-intensive agricultural activity, especially on the south end of Los Viboras Road, south to Comstock Road, and beyond. This distinction is becoming less pronounced as new homes and subdivisions are completed near SR156 and across Pacheco Creek from the proposed greenhouses (See Figure 1, previous page).

<u>Scenic Highway:</u>	No
<u>Seismic Hazards:</u>	No. The Quien Sabe Fault is about 2,410 feet from Orchard Road and the proposed project.
<u>Fire Hazard:</u>	Non-Wildland/Non-Urban.
<u>Floodplain:</u>	Not in a Floodplain. Zone X: Areas determined to be outside the 0.2% annual chance floodplain, according to FEMA FIRM Panel: 06069C0075I, effective April 15, 2009.
<u>Archaeological Areas:</u>	High Sensitivity confined to one location.
<u>Habitat:</u>	Within impact fee area
<u>Soils:</u>	Grade 1 Soils
<u>Williamson Act:</u>	Not under a Williamson Act contract.

The project is not in a seismic fault zone; the parcel and Orchard Road are approximately 2,410 feet from the Quien Sabe Fault. The Non-Wildland/Non-Urban designation indicates a low severity fire risk. The parcel is not in a floodplain. Although it does consist almost entirely of Grade 1 soils, the entire parcel will remain in agriculture and agricultural support uses.

THE PROJECT

The transplant nursery proposes to use ‘planttape’ technology, an automated transplant system involving a tape or belt with evenly-spaced ‘belt loops’ for seedling plugs. The tape with seedlings is rapidly folded and packed for transport and unspooled in the planting process, thereby controlling the distance between plants, standardizing the process, and reducing time and labor costs. The central building would be constructed first, and is to consist of 100,000sf of administration, storage, receiving and shipping, and germination space, as well as the planttape transplant system. Seedlings are transferred from the main building to greenhouses on belts and workbenches, and then to outdoor growing areas, at each successive stage of growth.



Figure 2. The planttape transplant system

Development of the site will be paced in response to favorable market conditions. While development is envisioned as occurring in six phases over six years, with an eventual build-out of 700,000sf of greenhouses, and 500,000sf of outdoor growing areas, these stages will be undertaken when the owner-operators determine that the next step is warranted by operational need and favorable outlook.

An updated Phase 1 Environmental Site Assessment was requested, in conformance to ASTM Practice E 1527-13 requirements; the initial Phase 1 Environmental Assessment. The updated Phase I Environmental Site Assessment Report (CapRock Geology) recommends that a limited Phase II Environmental Site Assessment be conducted and reviewed prior to any project approvals. The Phase II Assessment will consist of sampling of shallow soil in the vicinity of the ASTs for hydrocarbons and shallow soil sampling near the discharge pipe to Pacheco Creek for pesticides, herbicides and heavy metals.

Prior to commencing with any Phase 1 construction activity, the entire site will be graded; involving roughly 82,000cy/82,000cy cut and fill. The owners/applicants shall (are conditioned to) submit a Final Site Grading Plan to Public Works for review and approval. The Final Site Plans will include Landscape Plans, and architectural plans inclusive of Lighting Design Plans. Twenty-two trees will be removed, in conformance to the County tree protection ordinance, and adhering to the recommendations of the Tree Report prepared by Certified Arborist Jeff Ono. Site design uses natural nonpoint drainage patterns to direct runoff southwest into the proposed bioswale running along the south property boundary, where it would move westward into the proposed detentions basins. The required 50' riparian buffer is incorporated into the site design, running along the west and north property boundaries.

Water and Septic Service. The parcel contains two existing water wells (one potable), and has access to blue valve water service ('San Felipe water'). The blue valve water and existing wells would be used for irrigation and for operations, as both qualify as agricultural purposes. To supply drinking water, a second well would be drilled in close proximity to the existing well, near Pacheco Creek and within the riparian buffer.

On-site septic would provide treatment for the 54-person occupant load, plus visitors. Applicants have worked with County Department of Environmental Health to configure the site so that truck traffic and employee parking will not impact, travel over, or park on the leach field.

PLANNING AND ZONING

The property is designated as Agriculture (A) by the General Plan and Agricultural Productive (AP) under the Zoning Ordinance. The Agriculture land use category is designed "to maintain productive agricultural lands" across a wide range of agricultural activities and land uses. Agricultural support uses such as processing facilities and greenhouses are allowed under this designation, subject to issuance of a use permit.

The proposed transplant nursery would maintain productive agricultural lands in the County of San Benito by increasing farm operation efficiency from-germination-to-seedling-to-field by utilizing an automated 'planttape' technology. This would also keep outlying fields in

continuous cultivation, maximizing output and maintaining the farm operator's ability to thrive in an increasingly competitive marketplace.

The proposed facility is an agricultural use that enables the farm operator to "manage their land and operations in an efficient, economically viable manner," fulfilling General Plan policy objectives in several ways (Goal LU-3, long term preservation of the agricultural industry; LU-3.2, Agricultural Integrity and Flexibility). It also qualifies as an "agriculture support use" that enables the farm operator to make more effective use of other agricultural lands, and maintaining the economic viability of the farm operation in the process.

Under Agricultural Productive (AP) zoning commercial greenhouses are allowed but require a conditional use permit (§25.07.005(B) Commercial greenhouses and mushroom growing facilities). Agriculture is a permitted use; approval of commercial-scale operations require approval by the Planning Commission (§25.07.004, §25.07.005).

The proposed facility is consistent with the applicable Agricultural Productive (AP) zoning provisions, subject to conditional approval by the Planning Commission.

STAFF ANALYSIS

Intensifying and automating the nursery transplant process enhances the reliability and efficiency of a core agricultural process and provides a critical competitive edge to the applicant/farm operator.

Returning the 96.52 vacant, underutilized acres to active use by reestablishing a greenhouse complex on the site would reverse the condition of the property, taking it all the way from a degraded, neglected, and dis-used parcel to a property developed to the highest and best use.

Hosting the intensive, mechanized transplant process on this parcel would be a highly efficient land use. By siting the proposed greenhouse complex on a parcel that had already been heavily impacted by an extensive greenhouse operation, the owner is able to confine major environmental impacts to the already degraded property, while developing a facility that would contribute to the competitiveness and continued viability of the local agricultural economy.

Siting the facility on the vacant, unused parcel provides ready access to Fairview Road and SR156, and from there to the region's transportation backbone, allowing effective, easy access to row-cropped agricultural fields, county-wide. The project is suitably located in relation to public infrastructure, and within emergency service areas with adequate response times.

While the facility's function fits the mixed agricultural-residential landscape context, the project is not likely to adversely affect other properties. Standard and special conditions of approval and mitigation measures developed during the review process would reduce the potential for the project to cause damage, hazards, or nuisance conditions to persons or property.

ENVIRONMENTAL EVALUATION: An Initial Study was prepared by Denise Duffy & Associates and managed and reviewed by County staff. The document was circulated from November 21, 2018 to December 20, 2018. Comments were received from the Native American Heritage Commission (NAHC) to ensure government-to-government consultation

occurred under AB-52, and from the Monterey Bay Air Resources District (MBARD) to verify greenhouse gas emissions (GHG) calculations. Documentation of the work conducted was provided to the inquiring agencies, resolving the inquiries. *See Attachment 3 of Exhibit B: Initial Study/Mitigated Negative Declaration (IS/MND)*. All concerns have been addressed and no outstanding issues remain. The document represents the independent determinations of staff. Mitigation measures have been prepared for potential impacts on aesthetic, biological, cultural, land use, and transportation resources. Implementation of mitigation measures and standard and custom conditions of approval will assure a less than significant impact on the environment. Therefore staff recommends that the Planning Commission consider the study with the draft mitigation measures and that a determination be made to prepare and adopt a Mitigated Negative Declaration.

STAFF RECOMMENDATION: Staff recommends that the Planning Commission adopt the attached Mitigated Negative Declaration (MND) and act on the draft resolution that includes findings and standard and special conditions of approval, consistent with the County of San Benito General Plan and Zoning Ordinances, to approve Use Permit PLN 180013

EXHIBITS

- A. Project Data Sheet
- B. Draft Resolution approving PLN 180013; with:
 - Attachment 1: Site Plan Set; 11x17, hard copy
 - Attachment 2: Project Description and Environmental Setting
 - Attachment 3: Initial Study/Mitigated Negative Declaration (IS/MND)
 - Attachment 4a: CEQA NOD (Notice of Decision)
 - Attachment 4b: Final CEQA IS/MND; technical appendices available
 - Attachment 4c: MBARD Comment Letter & County Response
 - Attachment 5: Phasing Plan, File # 3441-PHASING PLAN-24x36, May 22, 2018





Exhibit A: Project Data Sheet PLN 180013
Tanimura & Antle / Avila Construction / 1298 Orchard Road, Hollister

Project proposal: To construct a vegetable transplant nursery on the 96.52-acre parcel west of Orchard Road, to consist at full build-out of 100,000sf main building for operations, 700,00sf of greenhouses, and 500,000sf of outdoor growing areas

Assessor Parcel Number: 016-090-018-000

Legal Lot of Record: The 129.34 acre parcel appears as Parcel 2 on Book 3 of Parcel Maps at Page 15, County of San Benito, or 3 PM 15, with a recordation date of June 4, 1976. The property was conveyed from Peter N. Groot, Trustee of the P & E Groot Family Trust to the Tanimura & Antle Land Company, LLC, by grant deed recorded on June 11, 2015 as Rec File No. 2015-0005577. The grant deed was re-recorded

Permit Requirement: Use Permit

Zoning: AP Agricultural Productive

General Plan: A Agriculture

Land Use: Not currently in use; dormant.

Minimum Building Site Allowed: 5 Acres

Lot Sizes:	Parcel	141.86 acres total
	West of Orchard	96.52 acres
	East of Orchard	45.34

Sewage Disposal: On-site Septic

Water: An existing well is situated on the bank of Pacheco Creek. A second well will be sited nearby to supply drinking water to employees and visitors.

CEQA Determination: An Initial Study and Mitigated Negative Declaration (IS/MND) were prepared, and mitigation measures were developed that would reduce potential project impacts to a level that would have a less than significant effect on the environment.

FEMA Flood Zone: Not in Floodplain. Zone X, areas determined to be outside the 0.2% annual chance floodplain, according to FEMA FIRM 06069C0090D, effective April 15, 2009.

Fire Severity: Non-Wildland/Non-Urban

Within earthquake fault zone: No. Orchard Road is approximately 2,410 feet from the Quien Sabe Fault. The project site is west of Orchard Road. The entire parcel, on both sides of Orchard, is well outside the seismic study zone.

Williamson Act Contract Area: No

Is the proposal consistent with the General Plan Designation and Zoning? Yes. The proposed vegetable transplant nursery is an agricultural activity as defined by Agricultural Productive (AP) zoning, requiring a conditional use permit (§25.07.005(B) Commercial greenhouses and mushroom growing facilities). The Agriculture (A) land use designation allows agricultural support uses in order to maintain the productivity of agricultural land. The proposed transplant nursery intensifies the process in a way that will increase agricultural productivity in the fields receiving the seedlings, and increase operational efficiency on the subject parcel.

BEFORE THE PLANNING COMMISSION OF THE COUNTY OF SAN BENITO

**A RESOLUTION OF THE SAN)
BENITO COUNTY PLANNING)
COMMISSION APPROVING)
PLN180013, A USE PERMIT FOR A)
VEGETABLE TRANSPLANT)
NURSERY AT 1298 ORCHARD)
ROAD, APN 016-090-018.)**

Resolution No. 2019-03

WHEREAS, Tanimura & Antle, Inc. and their representative Avila Construction filed an application on April 12, 2018, to construct a vegetable transplant nursery on property under their ownership at 1298 Orchard Road; and

WHEREAS, County staff received the proposal as Use Permit PLN180013 and distributed this plan to responsible County and peer agencies for review and comment; and

WHEREAS, the subject parcel straddles Orchard Road and the proposed facility is to be sited on the 96.52-acre portion of the property (APN: 016-090-018) west of Orchard and approximately 3,500 feet north-by-northeast of Fairview Road; and

WHEREAS, the applicants propose to construct the facility in phases with a central building, greenhouses, and outdoor growing beds; consisting of approximately 100,000 square feet of office, storage & maintenance areas, 700,000 square feet of greenhouses, and 500,000 square feet of outdoor growing and work areas; and

WHEREAS, the subject parcel has a General Plan designation of A Agriculture and a zoning designation of AP Agricultural Productive; and

WHEREAS, the County assessed the potential for any substantial effect on the environment for the project consistent with the requirements of the California Environmental Quality Act (CEQA) by preparing an Initial Study and Mitigated Negative Declaration (IS/MND), developing mitigation measures that would reduce any impact to below-substantial levels, and circulating the IS/MND for agency and public review from November 19, 2018 to December 20, 2018; and

WHEREAS, comments were received from the Native American Heritage Commission (NAHC) to verify that government-to-government consultation with relevant Native American nations had occurred as required under AB-52, and from the Monterey Bay Air Resources District (MBARD) to check calculations estimating greenhouse gas (GHG) emissions; and

WHEREAS, both inquiries were resolved to the satisfaction of each agency (*See CEQA IS/MND for letters from and responses to the Native American Heritage Commission (NAHC) and the Monterey Bay Air Resources District*); and

WHEREAS, no unusual circumstances, features of the land, or unexpected issues have arisen with the newly proposed location; and

WHEREAS, on January 16, 2019, the Planning Commission continued the matter to a date certain, at the request of the applicant, to discuss and affirm the timing of conditions of approval related to road improvements; and

WHEREAS, on February 20, 2019, the Planning Commission in considering Use Permit PLN180013 heard and received all oral and written testimony and evidence that was made, presented, or filed, and all persons present were given an opportunity to hear and be heard with respect to any matter related to the petition; and

WHEREAS, at the conclusion of the public testimony, the Planning Commission closed the public hearing, deliberated, and considered the merits of the proposal.

NOW THEREFORE BE IT RESOLVED that based on the evidence in the record, the Planning Commission of the County of San Benito hereby finds as follows:

California Environmental Quality Act (CEQA) Finding

Finding: In accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15074, the Planning Commission considered the proposed Initial Study / Mitigated Negative Declaration together with the comments received during the public review process prior to approving the project, and finds, on the basis of the whole record before it, including the initial study and any comments received, that any potential for the project to have a significant effect on the environment has been mitigated to a less than significant level, and that the Mitigated Negative Declaration reflects the Planning Commission's independent judgment and analysis, and adopts the Mitigation Monitoring Reporting Program (MMRP) and Notice of Determination (NOD); and

***Evidence:** The proposed use would re-establish a former use on the property, which had been heavily impacted by greenhouse-based cut-flower production during the 1970s and 1980s, and by intensive cultivation as far back as the 1930s. The proposed project was circulated to responsible agencies and any review comments were incorporated into the IS/MND; and standard and special conditions of approval and mitigation measures were developed to minimize impact on the public generally, on neighboring residents, and on the environment.*

BE IT FURTHER RESOLVED by the Planning Commission of the County of San Benito that it hereby finds as follows:

Use Permit Findings

Finding 1: That the proposed use is properly located in relation to the General Plan, and the community as a whole and to other land uses, transportation, and service facilities in the vicinity.

***Evidence:** The General Plan land use designation for the parcel is Agriculture (A), which is designed "to maintain the productivity of agricultural land" and allows agricultural support uses and facilities.*

Site location provides access to the entire row-cropped agricultural region, and is properly located in relation to the community as a whole, emergency services, and transportation infrastructure.

Traffic generated by the proposed facility would travel about 3,500 feet to Fairview Road (an arterial) and another 937 feet to SR156 (a state highway linking US101 and State Route 152). The arterial and state highway provide quick access to intensively cultivated agricultural regions around the County, and are constructed to a capacity and level of service that would not be burdened by the proposed project. The facility is reasonably sited within the service areas of the relevant emergency services agencies, and well within adequate response times.

Finding 2: That the proposed use, if it complies with the conditions upon which approval is made contingent, will not adversely affect other properties in the vicinity or cause any damage, hazard, or nuisance to persons or property.

Evidence: *The proposed facility is located within a land use context consisting of residential and agricultural uses, impacts to which are mitigated by standard and special conditions of approval and by a mitigation monitoring and reporting program developed during the environmental review process.*

Evidence: *Visual and aesthetic impacts would be minimized by earth-toned non-reflective paint, shielded glare-reducing lighting, hours of operation, and landscape plantings strategically located to obscure and soften views of the facility's structural components. While a reasonable fit with existing uses and nearby surroundings, the intensive nature of the facility prompts these measures to reduce impacts on neighboring residences and farming operations. A Hazardous Materials Business Plan is required as a condition of approval, and no adverse impacts nor any damage, hazards, or nuisances are expected given that operational aspects—noise, light, pesticides, and herbicides—would be contained on-site and minimized by ordinance.*

Evidence: *County departments and responsible agencies have reviewed the application and recommended conditions of project approval to address possible effects on the vicinity and the overall County general public and to prevent hazard or nuisance to persons and property.*

Conditions of Approval

- 1. Indemnification:** APPLICANT shall defend, indemnify, and hold San Benito County, its agents, officers, and/or employees (hereinafter "COUNTY") free and harmless from any and all suits, fees, claims, demands, causes of action, proceedings (hereinafter collectively referred to as "Legal Action"), costs, losses, damages, liabilities and expenses (including, but not limited to, an award of attorneys' fees, expert witness fees, and court costs) incurred by COUNTY arising (directly or indirectly) or resulting from the review, processing, consideration, or approval of APPLICANT'S Project or action taken by COUNTY thereon, including Legal Actions based on the negligence of COUNTY. APPLICANT will reimburse COUNTY for any damages, costs, or fees awarded pursuant to any settlement, default judgment, or other judgment taken against the County, whether the result of Applicant's decision not to defend Legal Action or otherwise. COUNTY retains its discretion to direct counsel regarding whether to defend, settle, appeal, or take other action regarding any Legal Action. APPLICANT shall defend COUNTY'S actions with competent legal counsel of APPLICANT's choice without charge to COUNTY, subject to COUNTY approval, which shall not be unreasonably withheld. Nothing contained in the foregoing, however, shall be construed to limit the discretion of COUNTY, in the interest of the public welfare, to settle, defend, or appeal,

or to decline settlement or to terminate or forego defense or appeal of a Legal Action. Furthermore, in no event shall COUNTY have any obligation or liability to APPLICANT in connection with COUNTY'S defense or prosecution of litigation related to the Project (including, but not limited to, the outcome thereof) or in the event COUNTY elects not to prosecute a case or defend litigation brought against it. If either COUNTY or APPLICANT determines in good faith that common counsel presents a bona fide conflict of interest, then COUNTY may employ separate counsel to represent or defend the COUNTY, and APPLICANT shall pay the reasonable attorneys' fees and costs of such counsel within thirty (30) days of receiving an itemized billing statement or statements. [Planning]

2. **Successors in Interest:** The conditions of approval are binding on all successors in interest of Applicant, whether succession is by agreement, operation of law, or other means, including but not limited to all future owners utilizing this use permit. [Planning]
3. **Agreement with All Conditions of Approval:** Prior to or upon approval by the Planning Commission, Applicant shall sign the statement below certifying that Applicant is in agreement with all conditions of approval. [Planning]
 - a. I certify that I understand and agree to comply with all Conditions of Approval imposed by the Planning Commission, or Board of Supervisors as applicable, on this Permit.
 - b. Applicant Signature: _____
 - c. Date: _____
4. **Conformity with Plan:** The development and use of the site shall conform substantially to the proposed project description, site plan, and conditions of approval as approved by the Planning Commission. Any increase in the nature or intensity of land use on the site beyond that already analyzed shall be subject to further Planning review and approval. Approved plans and specifications shall not be substantially changed, modified or altered without written authorization from the Planning Department. All work shall be in accordance with the approved plans and with San Benito County Code. [Planning]
5. **Compliance Documentation:** Prior to issuance of building permits, the applicant shall submit a summary response in writing to these conditions of approval documenting compliance with each condition, including dates of compliance and referencing documents or other evidence of compliance. [Planning]
6. **Notice of Determination (Fish & Game Fees):** The applicant/owner shall be required to file a Notice of Determination for the project and pay Fish & Game fees of \$2,354.75. The notice shall be provided by the County Planning Department and filed with the County Clerk within five (5) days of approval of the project. An administrative fee of \$50.00 shall be submitted to the Planning Department for the filing of the notice. [Planning/CDFW]
7. **Aesthetics:** Standard conditions that address adverse impacts to neighboring persons and property apply to this project, in conformance with County ordinance, and are incorporated into the Mitigation Measures (MMs). *See* MMs AES 4.1-1 for **Landscape Plan requirements**. *See* AES 4.5-2 for **Architectural Plan and Lighting Plan requirements**. All mitigation measures are found in the Mitigation Measures Monitoring Program (MMRP). [Planning]
8. **Cultural Resources:** Standard conditions protecting cultural and archaeological resources apply to this project, and are incorporated into the Mitigation Measures (MMs).

See MMs CUL 4.5-1, CUL 4.5-2, CUL 4.5-3, and CUL 4.5-4 in the attached Mitigation Measures Monitoring Program (MMRP). [Planning]

9. **Tree Removal:** The owners/applicants shall adhere to the County tree protection ordinance (§25.29.210) by following and fulfilling the recommendations of the Tree Assessment dated June 14, 2018 and conducted/produced by ISA Certified Arborist #536 Frank Ono, and shall meet the mitigation measures incorporated into the Mitigation Measures Monitoring and Reporting Program (MMRP) and as specified in MMs BIO 4.4-3, BIO 4.4-4.

Division of Environmental Health:

10. **Hazardous Materials:** Prior to issuance of building permits, the owner/applicant is required to complete a Hazardous Materials Business Plan (HMBP) and shall submit the HMBP to the County Division of Environmental Health (DEH). [Environmental Health]
11. **Sewage Disposal:** A licensed engineer or (equivalent) knowledgeable in designing onsite waste water treatment systems shall be required to design the septic system for all commercial structures with plumbing. Additionally:
 - a. No part of the septic system shall be located in an area subject to vehicular traffic or parking.
 - b. The owner shall provide a detailed plot plan to DEH showing the location of the septic system and all distances from all structures and water wells (existing and proposed).
 - c. The owner shall provide to DEH, stamped and signed by the engineer, a detailed drawing of the septic system.
 - d. Prior to operation of the proposed facility, the owner/applicant shall secure permits and construct facilities to the satisfaction of the County Department of Environmental Health.
12. **Water:** The owner/applicant has indicated a new drinking water well will be installed, and that there will be 54 employees plus visitors at this site. Prior to issuance of any building permits, and prior to beginning any construction activities:
 - a. The owner shall contact the State Office of Drinking Water if/when more than 25 employees and guests are present on-site during any time of business operations.
 - b. The owner/applicant shall obtain a permit to drill a new well from the County Water District.
 - c. The owner/applicant shall submit documentation to DEH that the water **quality** meets Title 22 requirements.
 - d. The owner/applicant shall provide documentation of sufficient water quantity to DEH. The required flow rate depends on the number of service connections. Two or more connections shall require a 24-hour pump test.
 - e. Prior to operation of the proposed facility, the owner/applicant shall secure permits and construct facilities to the satisfaction of the County Department of Environmental Health.
 - f. In the event that more than one structure is connected to and served by the water system, the owners shall contact DEH and provide the total number of structures served. More than two (2) connections to this water system require the owners to obtain a Small Water System permit (LSWS) permit from DEH.

Public Works:

13. **Improvement Plan:** The owner shall submit a detailed Improvement Plan for approval by the County Engineer; submittal shall include an estimate of construction costs performed by the project engineer. Payment of the relevant plan checking fee, which shall be based on the engineer's estimate, will be required with the Improvement Plan submittal. An inspection fee will also be required prior to issuance of permit. [§23.31.001; § 23.31.02(E)&(G); §5.01.048]

The following elements of the Improvement Plan are required as conditions of approval:

- a. **Grading Plan:** the owner/applicant shall submit a **Final Site Grading Plan** for the initial site grading of the entire 96-acre parcel before any Phase 1 activity begins. The Grading Plan shall be reviewed and approved by the County Engineer before any earthmoving begins, and include required notes relating to standard requirements, conditions and mitigations measures.
- b. **Drainage & Erosion Control:** The applicant shall comply with County Drainage Standards by providing drainage and erosion control details for the project, including drainage calculations and construction details for the proposed bioswale, and the two new storm water basins. Drainage plans must show how the runoff will be contained within the site. Note that the existing ditch running along the length of the south property line carries runoff from off-site east of Orchard Road: the ditch runs south along Orchard, until it meets the project site's southern border, where it turns and runs west until it flows into the ditch along SR156. Hydraulic calculations shall determine whether capacities of the proposed bioswale and the property line drainage ditch are such that neither one compromises the other during storm events.
- c. The applicant shall obtain a Construction Activities Storm Water General Permit (General Permit), file a complete Notice of Intent (NOI) package, and develop a Storm Water Pollution Prevention Plan (SWPPP) per State Water Resources Control Board requirement. A Waste Discharger Identification (WDID) number or Erosivity Waiver shall be provided to Public Works prior to the beginning of any construction activities..
- d. The applicant shall provide confirmation that Central Coast Regional Water Quality Control Board (CCRWQCB) drinking water and septic requirements have been satisfied, and will be satisfied throughout the course of all six phases of the project.
- e. **Roadway Dedication:** Prior to issuance of occupancy permit, the applicant shall dedicate land, along both east and west portions of the entire property frontage on Orchard Road, to complete the full 60 feet of right-of-way (ROW). Any permanent structures not part of the Orchard Road ROW improvements shall be constructed outside of the dedicated ROW.
- f. **Improvements to Driveways and Entrances/Aprons:** The applicant shall construct enhanced driveways, entrances, and/or aprons to meet CALTRANS standards, or MUTCD standards, to the satisfaction of the County Engineer, providing for truck turning radii, geometric design, and general safety. These improvements shall be constructed prior to or as each driveway comes into use, and are to be tied to project phasing. Building permits shall not be issued for the current or subsequent project phase until relevant driveway(s) and entrance(s) are constructed. [§ 25.43.005(D)(5) and § 25.43.005(D)(6)]
- g. **Traffic/Improvements (TRA 4.14-2):** The applicant shall enter into a deferred improvement agreement with the County to fulfill Mitigation Measure TRA 4.14-2 to the satisfaction of the County Engineer and at the discretion of the Planning Director, in accordance with the TIA for this project, prior to issuance of a Phase 5* building permit. *See* MM TRA 4.14-2 on page 84 of the IS/MND and in the Mitigation Monitoring & Reporting Plan (MMRP). (*As shown on Attachment 5: Project Phasing Plan, File # 3441-PHASING PLAN-24x36, Whitson Engineers/Avila Construction, dated May 22, 2018.)
- h. **Traffic/Improvements (TRA 4.14-3):** Prior to issuance of a building permit for Phase 5*, a traffic study shall be conducted to County standard to determine daily

traffic volumes (ADT). If the traffic study determines that the ADT has reached/exceeds 1,500 vehicles per day, the applicant shall enter into an improvement agreement with the County to the satisfaction of the County Engineer and at the discretion of the Planning Director, to fulfill the requirements Mitigation Measure (MM) TRA 4.14-3. *See* MM TRA 4.14-3 on pages 86-87 of the IS/MND and in the Mitigation Monitoring & Reporting Plan (MMRP). (*As shown on Attachment 5: Project Phasing Plan, File # 3441-PHASING PLAN-24x36, Whitson Engineers/Avila Construction, dated May 22, 2018.)

- i. **Parking:** As part of improvement plan submittal, the applicant shall show and delineate parking spaces and confirm that the site can accommodate the anticipated employees, visitors and company vehicles, as well as truck loading and parking areas, per County Parking regulations.
- j. **Encroachment Permit:** The applicant shall obtain a Public Works Encroachment Permit for any work performed within the County Right-of-Way (ROW) prior to commencement of any improvements associated with this project.

Soils/Geologic

- 14. Design and implementation of any site improvements for this project shall be based on the recommendations of the Geotechnical Engineer per the Geotechnical Report (File No. 6944-18.04; Grice Engineering; June 15, 2018). A complete compilation of test reports along with a letter from the Geotechnical Engineer attesting to compliance with requirements and recommendations of said shall be submitted to Public Works and Planning upon completion of site improvements.

Phase I Site Assessment, Updated

- 15. In conformance with ASTM Practice E 1527-13 requirements, an updated Phase I Environmental Site Assessment was required, conducted by CapRock Geology, and submitted to the County of San Benito (Ref. No. 5050-01, dated December 22, 2018). Prior to any construction activity or project approvals, all recommendations of the updated Phase I Environmental Site Assessment shall be fulfilled. The applicant shall conduct a limited Phase II Environmental Site Assessment and, **and prior to any project approvals**, shall submit the report to the County and obtain review and approval of the Phase II ESA report from Public Works and Planning. The Phase II Assessment will consist of sampling of shallow soil in the vicinity of the (Aboveground Storage Tanks) ASTs for hydrocarbons and shallow soil sampling near the discharge pipe to Pacheco Creek for pesticides, herbicides and heavy metals.

Fire

- 16. **Sprinklers:** The applicant shall provide sprinklers in the central (non-greenhouse) building. The applicant shall provide 4 to 6 fire hydrants on the property.

The project, including driveway details, shall meet the standards set forth in the latest adopted editions of the California Fire Code, California Building Code, San Benito County Ordinances 822 and 823, Public Resources Codes 4290 and 4291 and all other related codes as they apply to a project of this type and size. [Fire, Public Works]

- 17. **Water Softeners:** Use of on-site regenerating water softeners shall be prohibited; off-site regeneration softening systems may be used subject to the approval of the San Benito County Water District. Use of water softener loops shall be prohibited; no water softener loops may be installed.

Monterey Bay Air Resources District—Air Quality

- 18. Trenching Activities:** When old underground piping or other asbestos-containing materials are encountered during trenching activities, **Rule 424** could apply. <https://www.arb.ca.gov/drdb/mbu/cur.htm>. Please contact Shawn Boyle in the Compliance Division at (831) 647-9411.
- 19. Irrigation Pumps:** For any irrigation pump installation, now or future, the Air District (MBARD) recommends the use of electric pumps, due to benefits to air quality, lower long-term maintenance costs, and improved efficiency. (pg. 35)
- 20. Permits Required:** Air District permits or registration with the California Air Resources Board (CARB) may be required for portable construction equipment with engines 50 Hp or greater. Please contact the Air District's Engineering Division at (831) 647-9411
- 21. Sensitive Receptors:** Due to nearby proximity of sensitive receptors (nearest ~250 feet from project site), the Air District recommends using cleaner than required construction and tree removal equipment conforming to ARB's Tier 4 emission standards, and whenever feasible, recommends that construction equipment use alternative fuels such as compressed natural gas (CNG), propane, electricity or biodiesel. This would have the added benefit of reducing diesel exhaust emissions.
- 22. Dust Control:** A Note shall be placed on the Final Grading, Landscape, and Engineering Plans listing the following dust control measures. To ensure proper implementation of the fugitive dust control measures *the owner/applicant shall:*
- a. Water all active construction areas at least twice daily. Frequency should be based on the type of operation, soil, and wind exposure.
 - b. Apply chemical soil stabilizers on inactive construction areas (disturbed lands within construction projects that are unused for at least four consecutive days).
 - c. Apply non-toxic binders (e.g., latex acrylic copolymer) to exposed areas after cut and fill operations and hydro-seed the area.
 - d. Haul trucks shall maintain at least 2'0" of freeboard.
 - e. Cover all trucks hauling dirt, sand, or loose materials.
 - f. Plant tree windbreaks on the windward perimeter of construction projects if adjacent to open land.
 - g. Plant vegetative ground cover in disturbed areas as soon as possible.
 - h. Install wheel washers at the entrance to construction sites for all exiting trucks.
 - i. Pave all roads on construction sites.
 - j. Sweep streets if visible soil material is carried out from the construction site.
 - k. Post a publicly visible sign displaying the telephone number and person to contact regarding dust complaints. This person shall respond to complaints by taking corrective action within 48 hours. The phone number shall be visible to under Rule 402 (Nuisance).

THE MITIGATION MONITORING AND REPORTING PROGRAM

- 23.** The Mitigation Monitoring and Reporting Program for the Tanimura & Antle Project/ PLN180013, and Initial Study/Mitigated Negative Declaration, is hereby incorporated into these conditions of approval and made a part. See the attached pages that follow.

Mitigation Monitoring & Reporting Plan

MM	Mitigation Measure	Responsible Agency or Party	Timing of Verification	Method of Verification	Verification of Completion	
					date	reviewer initials
AES 4.1-1	<p>The project proponent shall submit a landscaping plan for review and approval by the RMA Planning Division prior to the issuance of a building permit. The landscaping plan shall incorporate landscape plantings every 10 to 15 feet along the 300- to 400-foot frontage of Highway 156, from Pacheco Creek to the project boundary to partially screen potential views of the project from Highway 156. Landscaping shall consist of drought-tolerant native species along with other acceptable species identified by the County. Final landscaping plan shall identify the location, number, and types of plantings that would soften the visual impacts from Highway 156 and shall identify success metrics, such as survival and growth rate for the plantings. Plant material shall be selected to grow to be at least fence height (6 to 8 feet tall) and be strategically placed to minimize impacts to scenic views from those traveling on Highway 156.</p> <p>The above referenced standards, components and materials shall be denoted on building plans. A copy of said standards, components, and materials shall be submitted with grading and building plans prior to issuance of building permit(s) for project development.</p> <p>Note: The purpose of this mitigation is to reduce impacts from short-range views of the project from Highway 156 through the strategic placement of landscape planting; complete visual screening of the project site is not proposed.</p>	Owner/ Agent Tanimura & Antle / Avila Construction	Prior to issuance of building permits	Review & Approval of Landscaping Plan by Planning Division		
AES 4.1-2	<p>The scenic character and quality of the area surrounding the project site would be protected by taking the following (or equivalent) actions:</p> <p>Prior to issuance of the first building permit for the project, the project proponent shall submit architectural plans for review and approval by County Planning staff.</p> <p>Lighting Plan/Lighting Design shall be included in the architectural plans, and shall follow all necessary design requirements as outlined in County Code § 19.31.</p> <p>The architectural plans shall include all proposed building elevations, materials, colors, textures, light fixtures, and perimeter fencing, and shall satisfy the following:</p> <ul style="list-style-type: none"> ▪ Building colors compatible with surrounding terrain (earth tones and non-reflective paints) shall be used on exterior surfaces of all structures, including greenhouses, fences and walls. 	Owner/ Agent Tanimura & Antle / Avila Construction	Prior to issuance of building permits	Review & Approval of Architectural Plans by Planning Division		

	<ul style="list-style-type: none"> ▪ High contrast color combinations, such as very dark brown adjacent to white, shall be avoided on the exterior of buildings or individual structures' roofs, walls, and fascia. ▪ Roof vents shall be the same earth tone shade as the surrounding roof surface. ▪ Use minimally reflective glass and paint colors to minimize reflective glare. <p>The above referenced standards, components, and materials shall be denoted on building plans and apply to all phases of the project. A copy of said standards, components, and materials shall be submitted with grading and building plans prior to issuance of building permit(s) for project development.</p>					
<p>BIO 4.4-1</p>	<p>A note shall be placed on Final Grading and Building Plans that the Project shall adhere to the following requirements:</p> <p>Activities that may directly affect (e.g. vegetation removal) or indirectly affect (e.g. noise/ground disturbance) nesting raptors and/or nesting bird species occurring within or immediately adjacent to the project site will be timed to avoid the breeding and nesting seasons. Specifically, the project applicant will schedule grading with heavy machinery and vegetation &/or tree removal after September 16 and before January 31.</p> <p>If activities must occur during the breeding and nesting season (February 1 through September 15), a qualified biologist shall conduct pre-construction surveys for nesting raptors and other protected nesting bird species within 300 feet of the proposed construction activities. Pre-construction surveys should be conducted no more than 7 days prior to the start of the construction activities during the early part of the breeding season (February through April) and no more than 14 days prior to the initiation of these activities during the late part of the breeding season (May through August).</p> <p>If raptor or other bird nests are identified within or immediately adjacent to the project site during the pre-construction surveys, the qualified biologist shall notify the proponent and an appropriate no-disturbance buffer shall be imposed within which no construction activities or disturbance shall take place (generally 300 feet in all directions for raptors; other avian species may have species-specific requirements) until the young of the year have fledged and are no longer reliant upon the nest or parental care for survival, as determined by a qualified biologist.</p>	<p>Owner/ Agent</p> <p>Tanimura & Antle / Avila Construction</p>	<p>Upon submittal of Grading and Landscaping Plans (Note) / Prior to any construction activities.</p>	<p>Review & Approval of Grading Plans by Public Works and Planning</p> <p>Review & Approval of Building Plans by Building and Planning</p>		

<p>BIO 4.4-2</p>	<p>A note shall be placed on Final Grading and Landscaping Plans that the Project shall adhere to the following requirements: Prior to site work involving any tree removal (22 trees to be removed, as shown in project plans) a tree removal contractor shall verify absence of active animal or bird nesting sites at the project site. If any active animal or bird nesting sites are found prior to tree removal, work shall be stopped until a qualified biologist is contracted to ensure that no nests of species protected by the Migratory Bird Treaty Act or the California Fish and Game Code will be disturbed during construction activities.</p>	<p>Owner/ Agent Tanimura & Antle / Avila Construction</p>	<p>Upon submittal of Grading and Landscaping Plans (Note) / Prior to any site work</p>	<p>Review & Approval by Public Works AND Planning Division</p>		
<p>BIO 4.4-3</p>	<p>A note shall be placed on Final Grading and Landscaping Plans that the project shall adhere to the following requirements. The project applicant and construction manager shall be responsible for implementing the best management practices presented below prior to tree removal or site grading.</p> <p>A) Do not deposit any fill around trees, which may compact soils and alter water and air relationships. Avoid depositing fill, parking equipment, or staging construction materials near existing trees. Covering and compacting soil around trees can alter water and air relationships with the roots. Fill placed within the drip-line may encourage the development of oak root fungus (<i>Armillaria mellea</i>). As necessary, trees may be protected by boards, fencing or other materials to delineate protection zones.</p> <p>B) Pruning shall be conducted so as not to unnecessarily injure the tree. General principals of pruning include placing cuts immediately beyond the branch collar, making clean cuts by scoring the underside of the branch first, and for live oak, avoiding the period from February through May.</p> <p>C) Native live oaks are not adapted to summer watering and may develop crown or root rot as a result. Do not regularly irrigate within the drip line of oaks. Native, locally adapted, drought resistant species are the most compatible with this goal.</p> <p>D) Root cutting should occur outside of the springtime. Late June and July would likely be the best. Pruning of the live crown should not occur February through May.</p> <p>E) Oak material greater than 3 inches in diameter remaining onsite more than one month that is not cut and split into firewood should be covered with clear plastic that is dug in securely around the pile. This will discourage infestation and dispersion of barkbeetles.</p> <p>F) The Monterrey Bay Air Resources District advises not to burn the wood from the 22 trees slated for removal. In case the trees are disposed of via wood chipping, please make sure to contact the Air District's Engineering Division at (931) 647-9411 to discuss if a Portable Registry is necessary for the wood chipper being utilized for this project. [MBARD]</p> <p>G) If trees along near the development are visibly declining in vigor, a Professional Forester or Certified Arborist should be contacted to inspect the site to recommend a course of action.</p>	<p>Owner/ Agent Tanimura & Antle / Avila Construction</p>	<p>Upon submittal of Grading and Landscaping Plans (Note) / Prior to tree removal or any site grading; during all construction activities</p>	<p>Review & Approval by Public Works AND Planning Division</p>		

<p>BIO 4.4-4</p>	<p>A note shall be placed on Final Grading and Landscaping Plans that the Project shall adhere to the following requirements. Prior to the commencement of any construction activities on the project site, the following tree protection measures shall be implemented and approved by a qualified arborist or forester retained by the project applicant:</p> <ul style="list-style-type: none"> ▪ Trees located adjacent to the construction area shall be protected from damage by construction equipment by the use of temporary fencing and when necessary through wrapping of trunks with protective materials. ▪ Fencing shall consist of chain link, snowdrift, plastic mesh, hay bales, or field fence. Existing fencing can also be used. ▪ Fencing is not to be attached to the tree but free standing or self-supporting so as not to damage trees. Fencing shall be rigidly supported and shall stand a minimum of height of four feet above grade and should be placed to the farthest extent possible from the trees base to protect the area within the trees drip line (typically 10-12 feet away from the base of a tree). ▪ In cases where access or space is limited for tree protection it is permissible to protect the tree within the 10-12 feet distance after determination and approval by a qualified forester or arborist. ▪ Soil compaction, parking of vehicles or heavy equipment, stockpiling of construction materials, and/or dumping of materials should not be allowed adjacent to trees on the property especially within fenced areas. ▪ Fenced areas and the trunk protection materials should remain in place during the entire construction period. <p>During grading and excavation activities:</p> <ul style="list-style-type: none"> ▪ All trenching, grading or any other digging or soil removal that is expected to encounter tree roots should be monitored by a qualified arborist or forester to ensure against drilling or cutting into or through major roots. ▪ The project architect and qualified arborist should be onsite during excavation activities to direct any minor field adjustments that may be needed. ▪ Trenching for retaining walls or footings located adjacent to any tree should be done by hand where practical and any roots greater than 3-inches diameter should be bridged or pruned appropriately. ▪ Any roots that must be cut should be cut by manually digging a trench and cutting exposed roots with a saw, vibrating knife, rock saw, narrow trencher with sharp blades, or other proper root pruning equipment. ▪ Any roots damaged during grading or excavation should be exposed to sound tissue and cut cleanly with a saw. 	<p>Owner/ Agent Tanimura & Antle / Avila Construction</p>	<p>Upon submittal of Grading and Landscaping Plans (Note) / Prior to commencing any construction activities; and during all construction activities</p>	<p>Review & Approval by Public Works AND Planning Division</p>		
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	<p>If at any time potentially significant roots are discovered:</p> <ul style="list-style-type: none"> ▪ The arborist/forester will be authorized to halt excavation until appropriate mitigation measures are formulated and implemented. <p>If significant roots are identified that must be removed that will destabilize or negatively affect the target trees, the property owner will be notified immediately and an assessment and determination for removal will be made as required by law for treatment of the area that will not risk death, decline, or instability of the tree consistent with the implementation of appropriate construction design approaches to minimize affects, such as hand digging, bridging or tunneling under roots, etc.</p>					
CUL 4.5-1	<p>A note shall be placed on Final Grading and Landscaping Plans that the Project shall adhere to the following requirements contained in Mitigations CUL 4.5-1 through CUL 4.5-4: The project applicant shall retain a qualified archaeologist (project archaeologist) to be present on the project site from the start of ground disturbing work for the planned construction. If potentially significant archaeological resources are discovered, the project archaeologist is authorized to halt excavation until any finds are property evaluated. If a find is determined to be significant, work may remain halted near the find to permit development and implementation of the appropriate mitigations (including selective data recovery) with the concurrence of the CEQA Lead Agency (San Benito County). At the discretion of a qualified archaeologist, monitoring could be discontinued if there is enough information collected from direct observation of the subsurface conditions to conclude that cultural resources do not exist.</p>	<p>Owner/ Agent Tanimura & Antle / Avila Construction</p>	<p>Upon submittal of Final Grading & Landscaping Plans / During construction activities</p>	<p>Review & Approval by Public Works and Planning Division</p>		
CUL 4.5-2	<p>Prior to construction, the project applicant's project archeologist shall conduct a sensitivity training for cultural resources for all onsite personnel involved in ground disturbing activities.</p>	<p>Owner/ Agent Tanimura & Antle / Avila Construction</p>	<p>Prior to any construction activities</p>	<p>Review & Approval by Public Works and Planning</p>		
CUL 4.5-3	<p>If archaeological resources or human remains are accidentally discovered on the project site during construction, work shall be halted by the construction manager within 50 meters (150 feet) of the find until it can be evaluated by a qualified professional archaeologist. If the find is determined to be significant, appropriate mitigation measures shall be formulated and implemented. Materials of particular concern would be concentrations of marine shell, burned animal bones, charcoal, and flaked or ground stone fragments. (Ref: Health and Safety Code 7050.5)</p>	<p>Owner/ Agent Tanimura & Antle / Avila Construction</p>	<p>During all grading and construction activities</p>	<p>Review & Approval by Planning Director</p>		

<p>CUL 4.5-4</p>	<p>If human remains are found at any time on the project site, work must be stopped by the construction manager, and the County Coroner must be notified immediately. If the Coroner determines that the remains are Native American, the Native American Heritage Commission will be notified as required by law. The Commission will designate a Most Likely Descendant who will be authorized to provide recommendations for management of the Native American human remains. (Ref: California Public Resources Code Section 5097.98; and Health and Safety Code Section 7050.5).</p> <p>Specific County of San Benito provisions and further measures shall be required as follows if human remains are found:</p> <p>If, at any time in the preparation for or process of excavation or otherwise disturbing the ground, discovery occurs of any human remains of any age, or any significant artifact or other evidence of an archeological site, the applicant or builder shall:</p> <ol style="list-style-type: none"> a. Cease and desist from further excavation and disturbances within two hundred feet of the discovery or in any nearby area reasonably suspected to overlie adjacent remains. b. Arrange for staking completely around the area of discovery by visible stakes no more than ten feet apart, forming a circle having a radius of not less than one hundred feet from the point of discovery; provided, however, that such staking need not take place on adjoining property unless the owner of the adjoining property authorizes such staking. Said staking shall not include flags or other devices which may attract vandals. c. Notify the Resource Management Agency Director. The RMA Director shall also be notified within 24 hours if human and/or questionable remains have been discovered. The Sheriff and Coroner shall be notified immediately of the discovery as noted above. d. Subject to the legal process, grant all duly authorized representatives of the Coroner and the Resource Management Agency Director permission to enter onto the property and to take all actions consistent with Chapter 19.05 of the San Benito County Code and consistent with §7050.5 of the Health and Human Safety Code and Chapter 10 (commencing with §27460) of Part 3 of Division 2 of Title 3 of the Government Code. [Planning] 	<p>Owner/ Agent Tanimura & Antle / Avila Construction</p>	<p>During all grading and construction activities</p>	<p>Review & Approval by RMA Director; Planning Division</p>		
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GEO 4.6-1	<p>A note shall be placed on Final Grading and Building Plans that the project applicant shall be required to implement all of the recommendations from the Geotechnical Report and all recommendations from the <u>updated</u> Phase I Site Assessment Report.</p> <p>As a Condition of Approval for this project, a Phase II Assessment shall be conducted and will consist of sampling shallow soil in the vicinity of the ASTs (Aboveground Storage Tanks) for hydrocarbons, and shallow soil sampling near the discharge pipe to Pacheco Creek for pesticides, herbicides and heavy metals (<i>see</i> updated Phase 1 Site Assessment, CapRock Geology, Ref. No. 50501, December 22, 2018).</p>	Owner/ Agent Tanimura & Antle / Avila Construction	Upon submittal of Grading Plans (Note)/ Prior to any project approvals or construction activity	Review & Approval by Planning Division		
LU 4.10-1	Per the County, prior to issuance of building permit, in accordance with County Ordinance 541, the project applicant shall contribute a habitat conservation plan mitigation fee in the amount required by the County Planning Department.	Owner/ Agent Tanimura & Antle / Avila Construction	Prior to issuance of building permits	Review & Approval by Planning Division		
TRA 4.14-1	Prior to construction, the project applicant shall be responsible for payment of the San Benito County Regional Transportation Impact Mitigation Fee (TIMF), which would represent the project's contribution towards countywide roadway improvements funded by the fee program. San Benito County will determine the exact fee amount attributable to this project.	Owner/ Agent Tanimura & Antle / Avila Construction	Prior to any construction activities	Review & Approval by Planning Division		
TRA 4.14-2	<p>Prior to construction, the project applicant shall complete all testing and analysis required to determine the pavement thickness of Orchard Road needed to comply with applicable County requirements for pavement loading, subject to review and approval by the County Public Works Department.</p> <p>If after review by Public Works, the County Engineer determines that pavement thickness would be adequate to meet County requirements, no further action is required.</p> <p>If testing and analysis indicate additional improvements would be necessary for full project buildout, the County shall inform the applicant of requirements for funding and improvements for the full buildout of the project and enter into an agreement for future timing and completion of construction improvements.</p>	Owner/ Agent Tanimura & Antle / Avila Construction	Prior to any construction activities	Review & Approval by Planning Division		
TRA 4.14-3	Prior to the issuance of final building permit, the project will perform a traffic study to determine the then-current daily traffic volume on Orchard Road between Fairview Road and the project site. If said volumes are shown at levels at or over 1,500 vehicles per day, the project applicant shall be responsible for improving road structure and width <i>the full length of Orchard Road between Fairview Road and the project site</i> prior to the issuance of the final building permit for the project, unless already constructed by others. This roadway widening shall conform to the standards and requirements of the County of San Benito.	Owner/ Agent Tanimura & Antle / Avila Construction	Prior to issuance of final building permit	Review & Approval by Public Works and Planning Divisions		

PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE COUNTY OF SAN BENITO THIS 20TH DAY OF FEBRUARY 2019 BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSENT:

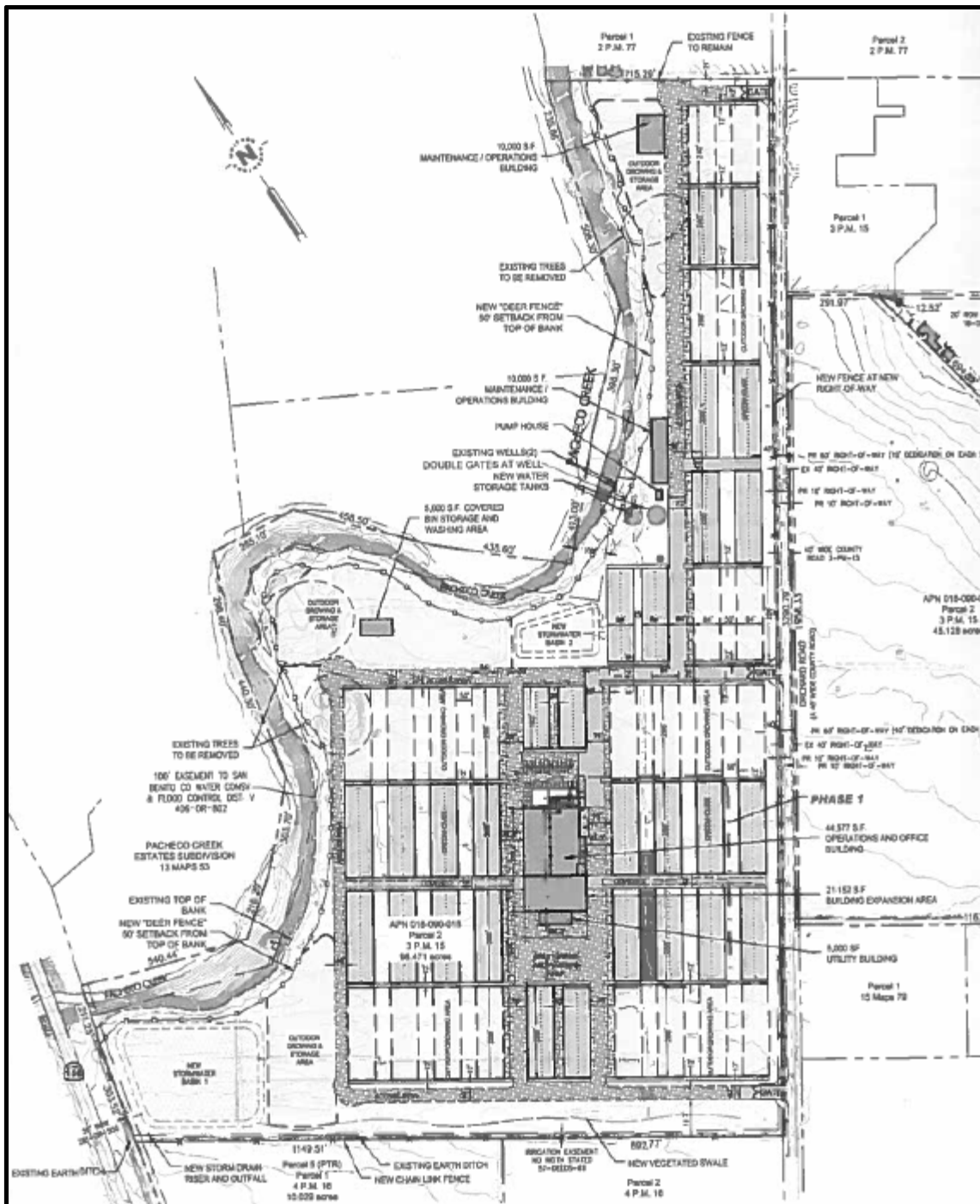
ABSTAIN:

Chair
San Benito County Planning Commission

ATTEST:

Taven M. Kinison Brown, Principal Planner
Resource Management Agency San Benito County

Attachment 1. Tanimura & Antle Proposed Site Plan County File PLN180013



Tanimura & Antle Transplant Nursery
PROJECT DESCRIPTION AND
ENVIRONMENTAL SETTING

Overview. The Proposed Project is located at 1298 Orchard Road, Hollister in an unincorporated area of San Benito County, California. The Proposed Project is located on the west side of Orchard Road and just east of Pacheco Creek and Highway 156, about 0.93 miles northeast of Fairview Road. The Project is located on parcel 016-090-018 which is comprised of 141.6 Acres. This parcel is bisected by Orchard Road running North East through the parcel creating a 96.5-acre site on the west side of Orchard Rd and a 45.1 acre site on the East Side of Orchard Rd. The project is proposed to be built on 96.5-acre site. The property is bordered by Orchard Road on the east, Highway 156 and Pacheco Creek on the west, agricultural and residential land uses on the south, and light industrial land uses on the north.

Land Use Designations: The San Benito County 2035 General Plan designates the Project area as Agriculture ("A") and the Project site is zoned Agriculture Productive ("AP").

Project Description: Tanimura & Antle (www.t&aproduce.com) is proposing a vegetable transplant nursery designed to utilize the recently developed planting technology known as Plant Tape (www.planttape.com) to allow for mechanized planting of vegetable transplant crops. This project will bring the property back to its previous use as a greenhouse facility. Construction of a vegetable transplant nursery consisting of greenhouses and related facilities with approximately 100,000 square feet of building area, 700,000 square feet of greenhouse, and 550,000 square feet of outdoor growing and work area. The project will be constructed in 6 separate phases over a 6 year period.

Traffic. The project site is located on Orchard Road, approximately 4,500 feet (0.86 miles) north of Fairview Road, in northern San Benito County. The site would be accessed via Orchard Road. Regional access to the project site is provided by State Route 156 and Fairview Road. At full buildout, the project site would employ up to 54 people. Operations would be from 6:00 AM – 6:00 PM, with truck pickup and delivery extending to 10:00 PM. The project site would have three gated driveways onto Orchard Lane. Most of the project traffic is anticipated to use the central driveway, as it provides the most direct access to the on-site parking area at the center of the project site. Each of the driveways would be paved at Orchard Lane and would become gravel roads as one progresses into the project site. The driveways connect to various gravel roadways located between the greenhouses, all of which are 40 feet in width; this width is more than adequate to allow to vehicles to pass one another while still a comfortable distance from the greenhouse structures. The project is estimated to generate a net 133 daily trips, with 20 trips (15 in, 5 out) during the AM peak hour and 18 trips (7 in, 11 out) during the PM peak hour. All of the study intersections under Existing Plus Project conditions continue to operate at or better than their respective level of service standards.

Water. There are currently two (2) existing wells on site. Wells were installed along the bank of the Pacheco creek. Historical use was for irrigation and domestic water use to the site. The existing wells will be used for irrigation and fire suppression water. A new Domestic water well will be constructed to serve the 54-person occupant load, restrooms and break room facilities.

Wastewater. A new Septic Tank and leach field sewer system will be designed to support the office space at the Center Building. Sizing requirements will be based on the 54 per occupant load full build out and support restrooms, break rooms and domestic needs.

Drainage. Given the large site area, gentle slopes, and existing drainage ditches there are opportunities to effectively manage storm water runoff. Although the site is constrained with low percolation rates and Pacheco Creek to the west, the area and slope of the site allows for opportunities to overcome these challenges. The site will be developed with a minimum 50-foot setback to Pacheco Creek and will not direct runoff into the creek. Two new vegetated basins totaling 15.2 acre-feet and a 1,500-foot long vegetated swale to retain and clean storm water will be strategically located to intercept runoff before there is any discharge from the site. Although site percolation was measured to be very small, the two basins proposed for the project are able to be sized to collect and mitigate the runoff from their respective tributary areas to the north and east. Basin 2, at the center of the project, will temporarily detain runoff and release it at pre-project rates to a vegetated swale along the south edge of the property, which gently flows towards Basin 1. Basin 1, at the southwest corner of the property will be adequately sized to retain the 85th and 95th percentile storm events, detain the 2-year and 10-year storm events to pre-project levels, and detain the 100-year storm event to the pre-project 10-year flow rate (satisfying the San Benito County Code of Ordinances) before discharging towards an offsite ditch along Highway 156.

Grading. Existing terrain generally slopes from the northeast to the southwest at about 0.5%. New site improvements are anticipated to conform to existing site terrain with minimal grading required. The Proposed Project includes rough grading and general site preparation to a maximum of (3) three feet below the existing surface. Utility trenching is planned to an average depth of three (3) feet and a maximum depth of five (5) feet where utility lines cross and greater depth is required to meet minimum separation requirements. The Proposed Project involves approximately 82,300 cubic yards of cut and 82,300 cubic yards of fill and will not require any import or export of cut and fill materials.

A tree assessment/arborist report has been prepared that identifies those trees identified for removal which are nearest or within development areas. There are 22 trees proposed for removal during different phases of the development.

Construction Activities. The duration of construction is expected to be approximately six months from issuance of permits. Construction hours are 7 a.m. to 5 p.m. The number of workers will vary throughout construction and will range from 10 to 100 workers at any given time.

Police and Fire Protection. The project is served by the San Benito County Sheriff's Department and Hollister Fire Department.

**Draft
INITIAL STUDY/
MITIGATED NEGATIVE DECLARATION**

for the

**TANIMURA & ANTLE
1298 ORCHARD ROAD
VEGETABLE TRANSPLANT NURSERY PROJECT**

Prepared for the County of San Benito, California
Resource Management Agency

November 2018

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- Appendix B. Biological Resources Report
- Appendix C. Tree Assessment/Forest Management Plan
- Appendix D. Geotechnical Report
- Appendix E. Phase 1 Environmental Site Assessment
- Appendix F. Storm Water Control Plan
- Appendix G. 2035 San Benito County Relevant General Plan Policies
- Appendix H. Traffic Impact Analysis

Project Data

1. **Project Title:** Tanimura & Antle 1298 Orchard Road Vegetable Transplant Nursery Project
2. **Lead Agency Name and Address:** San Benito County Resource Management Agency, 2301 Technology Parkway, Hollister CA 95023
3. **Contact Person and Phone Number:** Richard Felsing, Assistant Planner, (831) 902-2289, rfelsing@cosb.us
4. **Project Location:** The proposed project is located at 1298 Orchard Road, Hollister in an unincorporated area of San Benito County, California. The proposed project is located on the west side of Orchard Road and just east of Pacheco Creek and Highway 156, about 0.93 miles northeast of Fairview Road. The proposed project is located on assessor's parcel number (APN) 016-090-018. The property is bordered by Orchard Road on the east, Highway 156 and Pacheco Creek on the west, light industrial land uses on the north, and agricultural and residential land uses on the south.
5. **Project Description:** Construction of a vegetable transplant nursery consisting of greenhouses and related facilities with about 100,000 square feet (sq. ft.) of office area and maintenance buildings and 700,000 sq. ft. of greenhouses, and 500,000 sq. ft. of outdoor growing and work area (rolling, raised tables/benches holding plantings but with no overhead shades, lighting or covering). Development is proposed in six (6) separate phases over a six-year period.
6. **Acres of Project Site:** The Project parcel is comprised of 141.6 acres and is physically divided by Orchard Road. The proposed project development area is completely contained within the parcel to the west of Orchard Road and comprises 75.6 acres of the 96.47-acre portion of the property. The remainder of the subject parcel is located to the southeast of the road, encompassing another 45.128 acres, for a total property area of 141.6 acres.
7. **Land Use Designations:** The San Benito County 2035 General Plan designates the project area as Agriculture (A) and the project site is zoned Agriculture Productive (AP).
8. **Date Prepared:** November 10, 2018
9. **Prepared By:** Denise Duffy & Associates, Inc.

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Chapter 1. Introduction and Project Description

1.1 INTRODUCTION

This Initial Study has been prepared to evaluate the potential environmental effects associated with the Tanimura & Antle 1298 Orchard Road Transplant Nursery Project (project or proposed project), located in San Benito County, California (County). This document has been prepared in accordance with the California Environmental Quality Act (CEQA), Public Resources Code §21000 et. seq., and the State CEQA Guidelines, California Code of Regulations (CCR) §15000 et. seq.

An Initial Study is an informational document prepared by a lead agency to determine if a project may have a significant effect on the environment (CEQA Guidelines §15063, subd. (a)). If there is substantial evidence that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) must be prepared, in accordance with CEQA Guidelines §15064(a). However, if the lead agency determines that revisions in the project plans or proposals made by or agreed to by the applicant mitigate the potentially significant effects to a less than significant level, a Mitigated Negative Declaration (IS/MND) may be prepared instead of an EIR (CEQA Guidelines §15070, subd. (b)). The lead agency prepares a written statement describing the reasons a proposed project would not have a significant effect on the environment and why an EIR need not be prepared. This Initial Study conforms to the content requirements under CEQA Guidelines §15071.

The San Benito County – Resource Management Agency (County - RMA) is acting as the Lead Agency pursuant to CEQA Guidelines §15050(a). The County - RMA brings together a range of services to ensure reasonable and safe development, plan for the future needs of the County, manage infrastructure and County facilities, and protect natural resources. As the Lead Agency, the County - RMA oversaw preparation of this Initial Study pursuant to CEQA Guidelines §15063, §15070, and §15152. This Initial Study will be circulated for agency and public review during a 30-day public review period pursuant to CEQA Guidelines §15073. Comments received by the County – RMA on this Initial Study will be reviewed and considered as part of the deliberative process in accordance with CEQA Guidelines §15074.

The following section is consistent with the requirements of CEQA Guidelines §15124 to the extent that it is applicable to the project. This section contains a detailed description of the project location, historical background and context, project components and relevant project characteristics, project goals and objectives, and applicable regulatory requirements.

1.2 PROJECT LOCATION

The proposed project, described below, is located at 1298 Orchard Road, Hollister in an un-incorporated area of San Benito County, California (see **Figure 1.1** Regional Project Map). The proposed project site is located to the west of Orchard Road approximately 0.93 miles northeast of its intersection with Fairview Road (see **Figure 1.2** Project Location). The proposed project is located on APN 016-090-018 which is physically divided by Orchard Road. The proposed project development area comprises 75.6 acres of the 96.47-acre portion of the property located to the west of Orchard Road. The remainder of the subject parcel is located to the southeast of the road, encompassing another 45.128 acres, for a total property area of 141.6 acres.

The site is sparsely vegetated with non-native invasive and ruderal plant species associated with a previously developed agricultural nursery landscape. Pacheco Creek borders the site to the west and supports riparian habitat. Remnants of previous land use remain including water wells, utility structures, and fences (see **Figure 1.3** Site Photos).

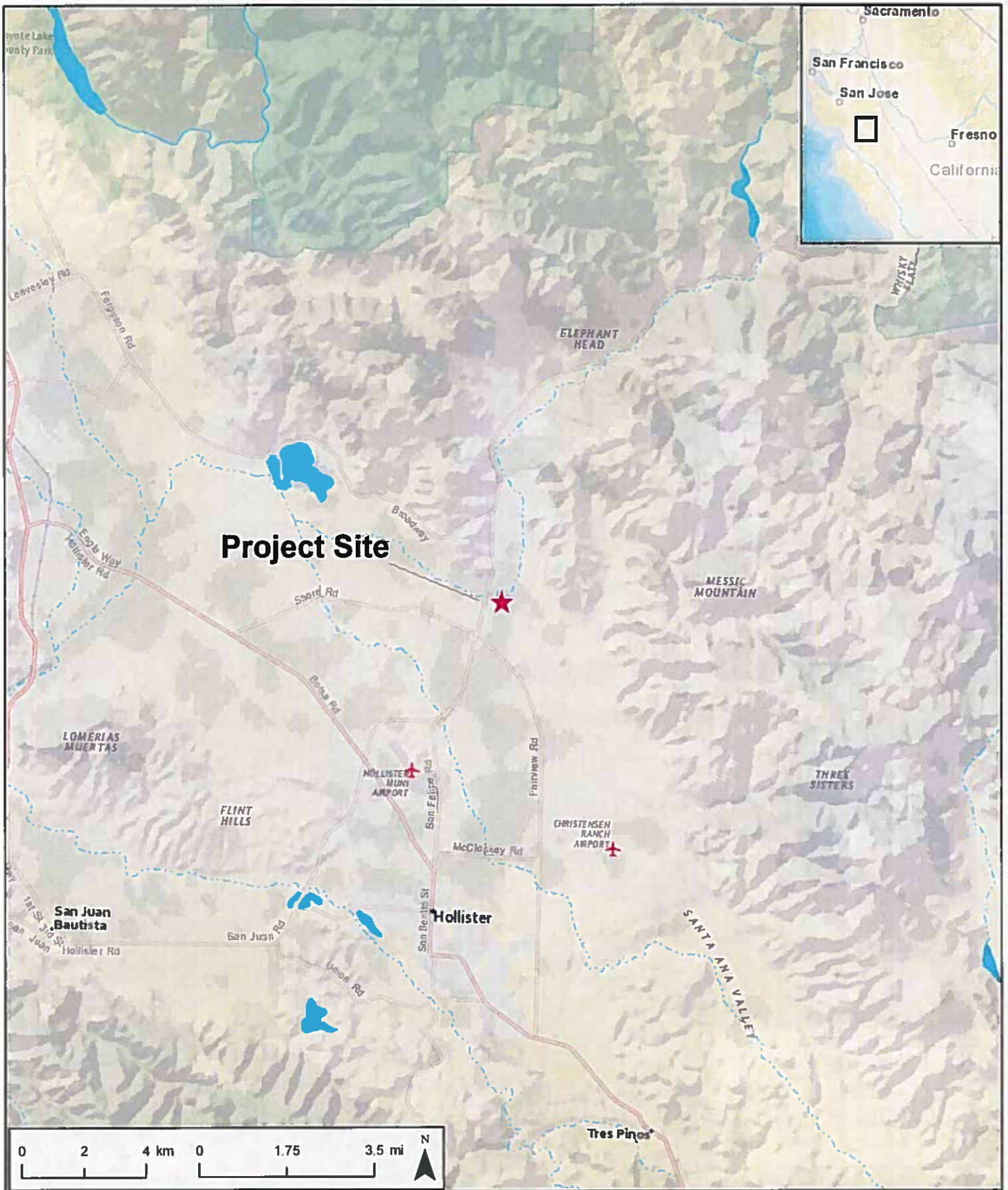
Regional access to the project site is provided from Highway 156 and Fairview Road. Access to the project site would be via Orchard Road. The property is bordered by Orchard Road on the east, Highway 156 and Pacheco Creek on the west, light industrial land uses on the north, and agricultural and residential land uses surround the site on the southern boundary. The proposed project site is zoned Agriculture Productive (AP), surrounding land uses include primarily agricultural uses with some residential development and industrial uses in the vicinity.

1.3 PROJECT BACKGROUND

Tanimura & Antle Fresh Foods, Inc. (T&A) (www.taproduce.com), the project applicant, is proposing a vegetable transplant nursery at this location to bring the property back to its previous use as a greenhouse facility while utilizing recently developed planting technology known as PlantTape. (See below for a more detailed description of PlantTape).

The property has been used for agricultural purposes since at least 1939. Until the 1970s the property consisted of agricultural fields with a small group of buildings on the southern parcel (possibly a house or barn with outbuildings). In the 1970s, a wholesale nursery operation was constructed on the northern portion of the property with a number of greenhouses and an outbuilding. The structures on the southern portion of the property were removed and the area was used as a growing field for plants. The nursery operation continued until the property was sold to T&A with limited operations since the purchase (see **Figure 1.4** Previous Operations). Buildings and greenhouses that once stood on the site have long been demolished, with almost all the remaining sheds, accessory structures, and equipment removed in 2015. The limited improvements remaining on the predominantly vacant site include existing water wells, utility structures and fencing.

T&A was founded 1982 and is based in Salinas, California. T&A focuses on salad produce, primarily lettuce, celery, broccoli, cauliflower, and green onions. T&A's primary farming operations are located in Salinas, California and Yuma, Arizona with approximately 27,000 acres farmed by T&A and 40,000 acres farmed with growing partners (T&A, 2018). PlantTape was acquired by T&A in 2014 and is an automated transplanting system. PlantTape increases efficiency and productivity in planting operations through automated technology for the sowing, germination, nursery care and planting of vegetable fields. PlantTape allows for improved crop quality, sustainability, and flexibility for operation-wide efficiencies. The PlantTape system is in use commercially to plant a range of vegetables, including leafy greens, cauliflower, celery, onions, tomatoes and cabbage. (PlantTape, 2018).



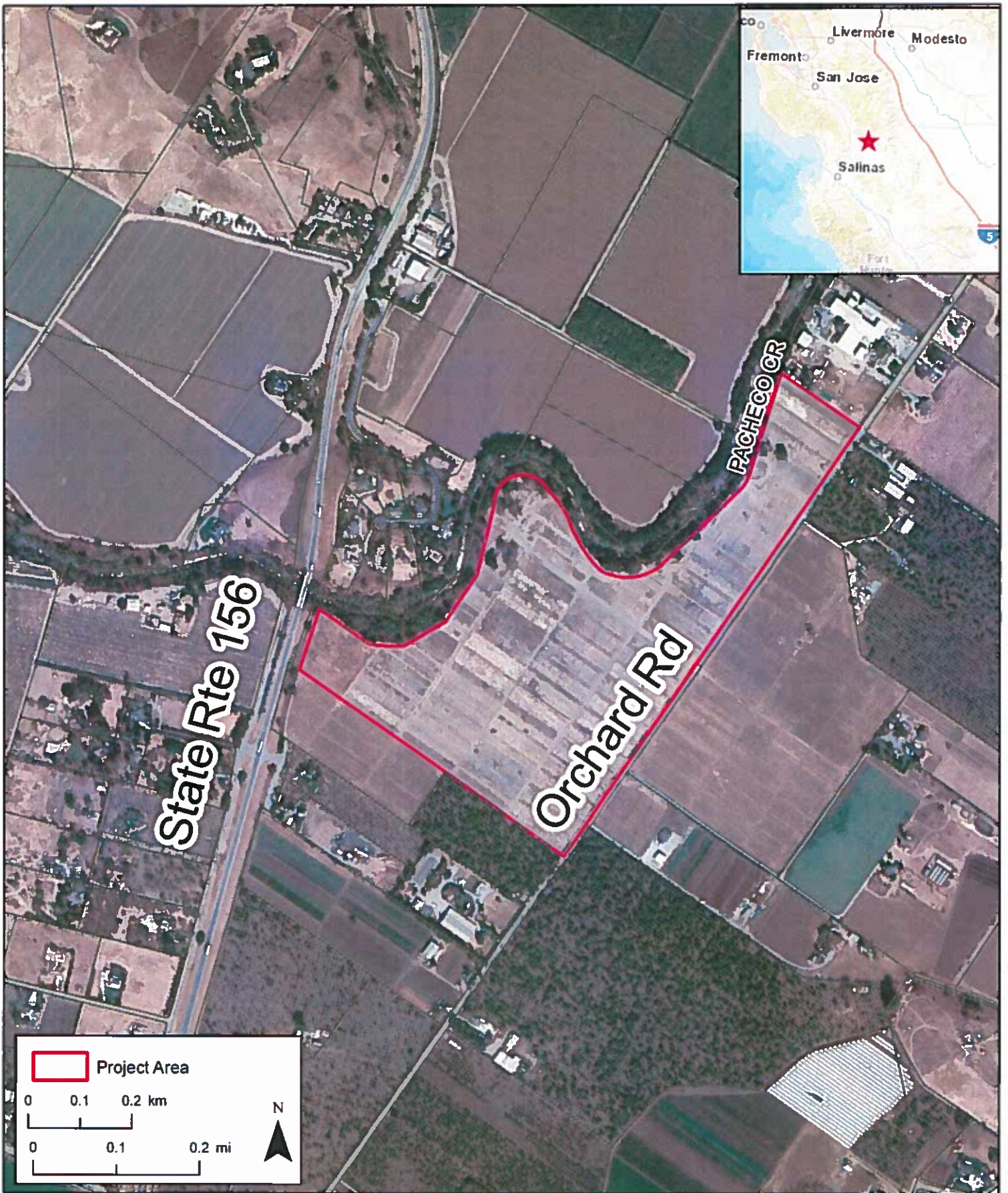
Title:
Regional Project Map

Date: 06/25/2018
 Scale: 1 inch = 2 miles
 Project: 2018-32



Monterey | San Jose
Denise Duffy and Associates, Inc.
 Environmental Consultants Resource Planners
 947 Case Street, Suite 5
 Monterey, CA 93940
 (831) 373-4341

Figure
1.1



Title:
Project Location

Date: 06/25/2018
 Scale: 1 inch = 0.15 miles
 Project: 2018-32



Monterey | San Jose
Denise Duffy and Associates, Inc.
 Environmental Consultants Resource Planners
 947 Cass Street, Suite 5
 Monterey, CA 93940
 (831) 373-4341

Figure
1.2



Photo 1. View of Orchard Road facing east.

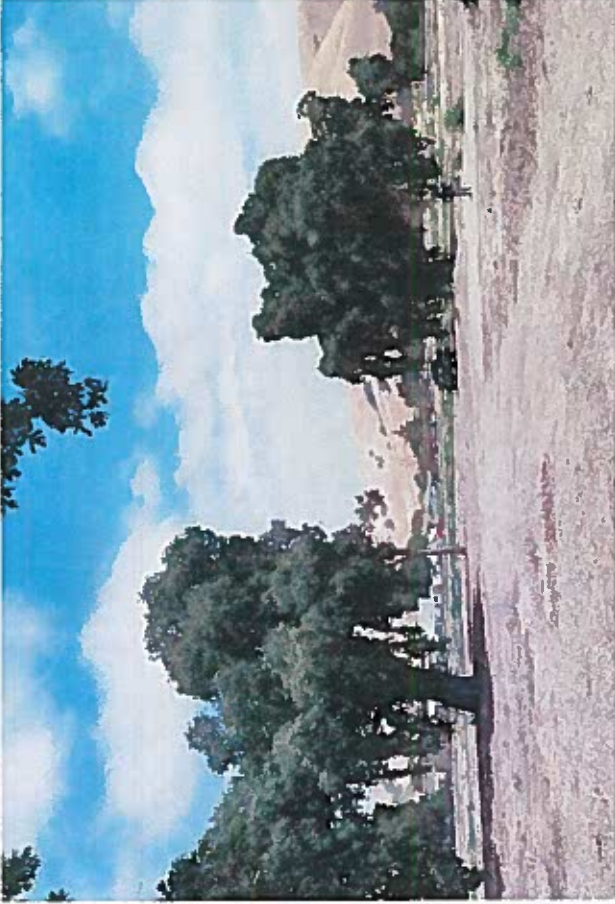


Photo 2. View of Project Boundary facing north.



Photo 3. View of Project Site facing northeast.



Photo 4. View of Pacheco Creek facing west.

Source: DD&A, 2018

Title

Site Photos



Denise Duffy and Associates, Inc.
 Environmental Consultants Resource Planners
 947 Cass Street, Suite 5
 Monterey, CA 93946
 (831) 373-4341

Monterey | San Jose

Date 8/1/2018

Scale N/A

Project 2018-32

Figure

1.3



Source: <http://www.loopnet.com/Listing/19165641/1298-Orchard-Road-Hollister-CA/>, downloaded 7/24/2018



Source: Google Maps, May 2011. Accessed: 8/2/2018

file

Previous Operations

Date	7/24/2018
Scale	N/A
Project	2018-32



Denise Duffy and Associates, Inc.
 Environmental Consultants Resource Planners
 947 Case Street, Suite 5
 Monterey, CA 93940
 (831) 374-4341

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Figure
1.4

1.4 PROJECT DESCRIPTION

The proposed project consists of the construction of vegetable transplant nursery greenhouses and related facilities. T&A is proposing a vegetable transplant nursery designed to utilize the recently developed planting technology known as PlantTape to allow for mechanized planting of vegetable transplant crops. Implementation of the proposed project would bring the property back to its previous operational use as a greenhouse facility.

Full buildout of the project consists of construction of a vegetable transplant nursery including development of approximately 700,000 sq. ft. of greenhouses, in 28 structures, and 100,000 sq. ft. of other new buildings, namely an agricultural processing building, storage, and office, and 500,000 sq. ft. of outdoor growing area and work area ("grow area"), comprised of rolling, raised planting tables or benches on ground covered by a weed-barrier cloth, with no structures, overhead shades or other covering. A main driveway is proposed to enter the parcel at the mid-point and connect to a parking area located in the center of the property near the Office Building. Two new water tanks will be installed northeast of the driveway near the existing wells located adjacent to Pacheco Creek. A plan view of the proposed project is shown in **Figure 1.5 Master Plan**. As shown on the Master Plan, the project development area proposed for greenhouses and related uses encompasses 75.6 acres of the 96.47-acre portion of the property located to the west of Orchard Road. The remainder of the property (45.128 acres) south east of Orchard Road is not proposed for development.

Development is proposed in phases, with the current phase (Phase 1) consisting of six (6) 84 feet (ft.) x 288 ft. greenhouses (145,000 sq. ft.), six (6) outdoor grow spaces around the main office, and an agriculture building (40,000 sq. ft.) containing seed sowing lines, storage and an office. Additionally, Phase 1 will include water tank(s), access roads, domestic irrigation, fire water infrastructure, storm water infrastructure, and electrical & gas utility infrastructure. Future phases of the proposed project will be built over a six (6) year period based on current forecasts, 2020 through 2026. Phasing of the proposed project is outlined in **Figure 1.6 Phasing Plan**. The timing of future phases after Phase 1 is estimated at this time and may be revised to beyond 2026 depending on project needs and operations after completion of Phase 1.

In general, the parcel is to be divided into aligned blocks of outdoor growing beds and greenhouses further divided by access roads and areas designated for support buildings. A figure showing the modeled site layout is provided in **Figure 1.7 Site Model**.

The following discussion provides a more detailed description of key proposed project elements, including construction activities and schedule, grading & tree removal requirements, fencing, water, wastewater, drainage, electrical & gas utilities, operation, and fire and police protection.

CONSTRUCTION

Construction of the first Phase (Phase 1) will occupy the southern half of site and consist of six (6) 84 ft. x 288 ft. greenhouses (145,000 sq. ft.), six (6) outdoor grow spaces around the main office, and an agriculture building (40,000 sq. ft.) containing seed sewing lines, storage and an office. Additionally, Phase 1 will include water tank(s), access roads, domestic irrigation, and infrastructure for fire suppression, water delivery, storm water improvements, and electrical & gas utility infrastructure.

Construction activities would be limited to weekdays between the hours of 7 a.m. to 5 p.m. and no night-time construction is proposed. Construction activities will include site preparation, paving, grading, building construction and architectural coating. Construction equipment will include, but will not be limited to graders, tractors/loaders/backhoes, cement and mortar mixers, pavers, rollers, saws, dozers, cranes, forklifts, and air

compressors. Staging areas will be located on-site. Parking will be provided on-site, or on the shoulder of the entrance road. No separate construction access roads will be needed.

CONSTRUCTION SCHEDULE/PHASING

Construction of Phase 1 will take place over approximately 175 calendar days. Construction is anticipated to begin in early 2020, with the first full year of operation to take place in 2021. Future construction phases of the proposed project are projected to be built over time as outlined above and in **Figure 1.6 Phasing Plan**.

SITE FENCING

Perimeter fencing will be installed on-site as depicted in **Figure 1.5**. Intact existing fencing will be retained where adequate (primarily north and east perimeter). Protective fencing along the banks of Pacheco Creek (deer fencing) will be installed along the west border of the site to maintain a 50-foot setback from the top of bank of the creek. Along the south perimeter of the site, along Orchard Road, a new seven-foot high chain link fence will be installed. The remainder of the site boundary, including the portion of the property bordering Highway 152, will be fenced with deer fencing. All deer fencing will be eight-ft. in height. Five gates will be constructed on the site; entrances and internal gates will be fence-height and 20-ft. wide. No development or construction will occur within the setback area and area shown as Pacheco Creek on **Figure 1.5**.

GRADING & TREE REMOVAL

Existing terrain generally slopes from the northeast to the southwest at about 0.5%. New site improvements are anticipated to conform to existing site terrain with minimal grading required. The existing site is highly disturbed and most of the site is cleared of vegetation from past land uses. The proposed project includes rough grading and general site preparation to a maximum of (3) three ft. below the existing surface. Utility trenching is planned to an average depth of three (3) ft. and a maximum depth of five (5) ft. where utility lines cross and greater depth is required to meet minimum separation requirements. The proposed project involves approximately 82,300 cubic yards of cut and 82,300 cubic yards of fill and will not require any import or export of cut and fill materials. The proposed grading and compaction will be limited to the minimum areas required for building or pavement construction. As a major portion of the site will be left open for growing areas and many of the access roads will be rock, compacted areas will be minimized. Per County of San Benito Ordinance (Chapter 19.17: Grading, Drainage and Erosion Control Section 19.17.005) (Riparian Protection), no grading activity is allowed within 50 ft. (measured horizontally) from the top of the bank of stream or creek, river (or within 50 ft. of a wetland or other body of water). See **Figure 1.5** for a depiction of this area.

A tree assessment/arborist report has been prepared that identifies those trees identified for removal which are nearest or within development areas. There are 22 trees proposed for removal during site grading for Phase 1 construction, as shown on **Figure 1.5**. (See **Section 4.2 Biological Resources** for more information)

WATER

There are currently two (2) existing wells onsite as shown on **Figure 1.5**. Historical use of these wells was for irrigation and domestic water use to supply previous uses on the site. The existing wells will be retained and will be used for irrigation and fire suppression water, with appropriate approvals by the County Public Works. A new domestic water well will be constructed to serve the 50-person occupant-load at project buildout and will support restrooms and break room facilities. Central Valley Water Project (non-potable "blue valve") water is also available onsite. Two new water storage tanks (283,000 gallons each) will be installed to accommodate both irrigation and fire suppression systems. Water storage tanks are proposed as steelbolted tank structures,

32 ft. tall, 39 ft. in diameter. Additionally, well drilling and water system permit approvals will be required from San Benito County Water District.

WASTEWATER

A new septic tank and leach field sewer system will be designed to support the office space at the Center Building. Sizing requirements will be based on the 50-person occupant-load at full buildout and will support restrooms, break rooms and domestic needs. Additionally, a sewage disposal permit will be required from San Benito County Health Department.

DRAINAGE

The site is constrained with low percolation rates and Pacheco Creek to the west. The existing site conditions include a large area characterized by gentle slopes and existing drainage ditches that allow drainage to be managed onsite. The site will be developed with a minimum 50-foot setback to Pacheco Creek to direct runoff away from the creek; drainage improvements and grading will be implemented to buffer the creek from any unintended runoff or other impacts to the creek. Control of on-site drainage is proposed to be managed by surficial drainage to the southwest corner of the parcel. Two new vegetated basins totaling 15.2 acre-ft. will be constructed (see Figure 1.5) a 1,500-foot long vegetated swale at the south edge of the property will have a shallow slope and be vegetated to treat runoff as it flows through the swale. These features are designed and located to retain and clean stormwater as well as to intercept runoff before there is any discharge from the site.

Onsite site percolation was measured to be very low; the two basins proposed for the project are designed and engineered to accommodate runoff from their respective tributary areas to the north and east. Basin 2, at the center of the project, will temporarily detain runoff and release it at pre-project rates to a vegetated swale along the south edge of the property, which gently flows towards Basin 1. Basin 1, at the southwest corner of the property will be adequately sized to retain the 85th and 95th percentile storm events, detain the 2-year and 10-year storm events to pre-project levels, and detain the 100-year storm event to the pre-project 10-year flow rate before discharging towards the existing offsite ditch which runs along Highway 156. The final design of the drainage basins would be required to comply with applicable County Code requirements as well as other applicable standards and requirements with respect to flooding and drainage, subject to review and approval by the County Public Works Department.

ELECTRICAL & GAS UTILITIES

Electricity and natural gas are provided to the property by the Pacific Gas and Electric Company (PG&E). New electrical and gas services will be required or reuse of existing services as available.

ACCESS, DRIVEWAYS & ON-SITE CIRCULATION

The project site is located on Orchard Road, approximately 4,500 ft. (0.86 miles) north of Fairview Road, in northern San Benito County. Site access is via Orchard Road. Regional access to the project site is provided by State Route 156 and Fairview Road. The project proposes three gated driveways onto Orchard Road. Encroachment permits from San Benito County Public Works will be required to install driveways. Most of the project traffic is anticipated to use the central driveway, as it provides the most direct access to the on-site parking area at the center of the project site. Each of the driveways would be paved at Orchard Road and would become gravel roads as one progresses into the project site. The driveways connect to various on-site gravel roadways located between the greenhouses, all of which are 40 ft. in width. Internal circulation roadway width is designed to allow trucks and vehicles to pass one another during operations and to maintain adequate distance from the greenhouse structures. Orchard Road improvements and access will be subject to final design and

applicable County road improvement requirements for pavement width and right-of-way, per County Public Works Department.

OPERATION

The nursery will operate all months of the year with the hours of operation from 5 a.m. to 6 p.m., truck pick-up and delivery will be between 5 a.m. and extending to 10 p.m. The project is estimated to generate 133 daily trips, with 20 trips (15 in, 5 out) during the a.m. peak hour and 18 trips (7 in, 11 out) during the p.m. peak hour. At project buildout, the nursery operations will require 50 employees; in 2020 as the nursery will not be at full buildout yet, there will only be 12 employees required.

POLICE AND FIRE PROTECTION

The proposed project area is served by the San Benito County Sheriff 's Office and the City of Hollister Fire Department under contract to the County of San Benito. The project will include a fire sprinkler system and conform to all fire code requirements.

PROJECT NOTES

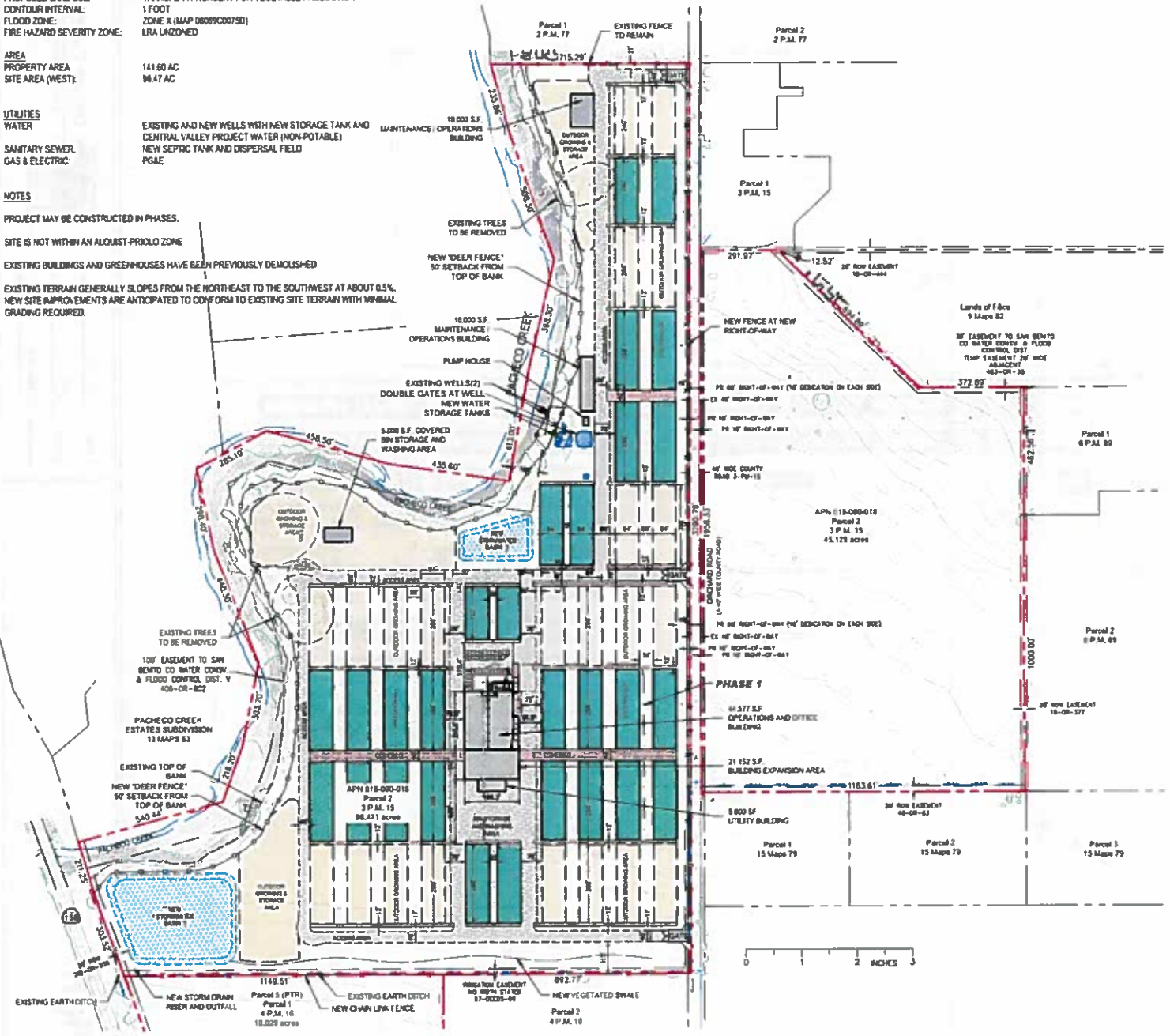
PROPERTY DATA
 ADDRESS: 1290 ORCHARD ROAD
 ASSESSOR'S PARCEL NO.: 018-080-018
 GENERAL PLAN LAND USE: AGRICULTURE
 EXISTING ZONING: AGRICULTURE PRODUCTIVE
 PREVIOUS LAND USE: GREENHOUSE / NURSERY
 PROPOSED LAND USE: TRANSPLANT NURSERY FOR VEGETABLE PRODUCTION
 FLOOD RISK INTERVAL: 1 FOOT
 FLOOD ZONE: ZONE X (MAP 0809C0015D)
 FIRE HAZARD SEVERITY ZONE: LRA UNZONED

AREA
 PROPERTY AREA: 141.60 AC
 SITE AREA (WEST): 96.47 AC

UTILITIES
WATER: EXISTING AND NEW WELLS WITH NEW STORAGE TANK AND CENTRAL VALLEY PROJECT WATER (NON-POTABLE)
SANITARY SEWER: NEW SEPTIC TANK AND DISPERSAL FIELD
GAS & ELECTRIC: PG&E

NOTES
 PROJECT MAY BE CONSTRUCTED IN PHASES.
 SITE IS NOT WITHIN AN ALQUIST-PRIOLO ZONE
 EXISTING BUILDINGS AND GREENHOUSES HAVE BEEN PREVIOUSLY DEMOLISHED
 EXISTING TERRAIN GENERALLY SLOPES FROM THE NORTHEAST TO THE SOUTHWEST AT ABOUT 0.5%. NEW SITE IMPROVEMENTS ARE ANTICIPATED TO CONFORM TO EXISTING SITE TERRAIN WITH MINIMAL GRADING REQUIRED.

- KEY**
- GREENHOUSE
 - OUTDOOR AREA
 - CONCRETE SURFACE (139,270 SF)
 - ASPHALT (19,088 SF)
 - GRAVEL (611,315 SF)
 - STORMWATER BASIN



Source: Paul Davis Partnership, October 2018

Title: **Master Plan**

Date: 11/6/2018
 Scale: N/A
 Project: 2018-32



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Denise Duffy and Associates, Inc.
 Environmental Consultants Resource Planners
 947 Case Street, Suite 5
 Monterey, CA 93940
 (831) 373-4341

Figure **1.5**



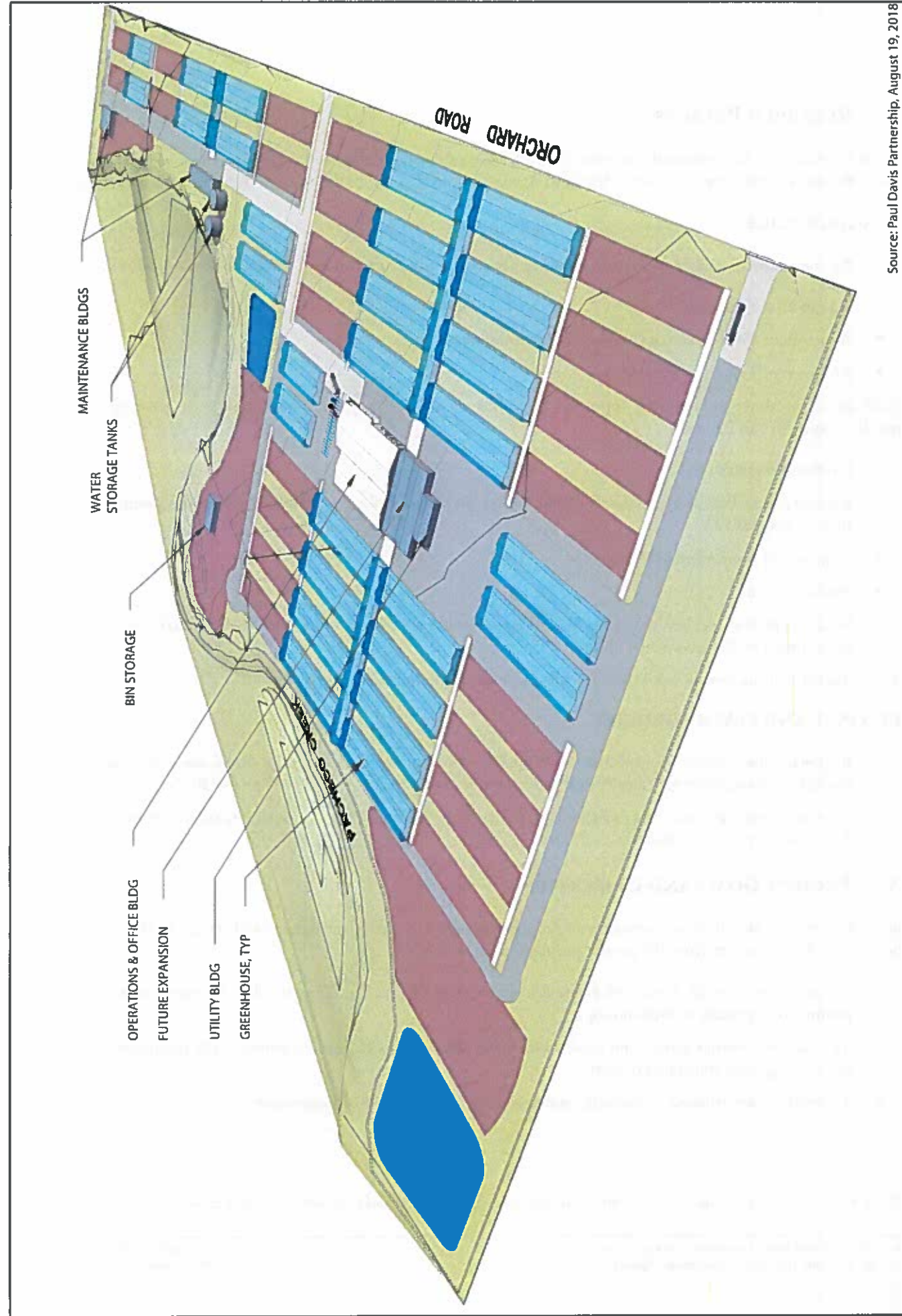
LEGEND

2020	PHASE ONE
2021	PHASE TWO
2022	PHASE THREE
2022	PHASE FOUR
2026	PHASE FIVE
2026	PHASE SIX
- - - -	PARCEL BOUNDARIES



Source: Whitson Engineers, May 2018

<p>Denise Duffy and Associates, Inc. Environmental Consultants Resource Planners 947 Cass Street, Suite 5 Monterey, CA 93940 (831) 373-4341</p> 	<p>Date: 8/1/2018</p> <p>Scale: N/A</p> <p>Project: 2018-32</p>	<p>Monterey San Jose</p>	<p>Figure 1.6</p>
	<p>Phasing Plan</p>	<p>DD&A</p>	<p>Whitson Engineers</p>



Source: Paul Davis Partnership, August 19, 2018

Title
Site Model

Date	9/6/2018
Scale	N/A
Project	2018-32



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 Environmental Consultants Resource Planners
 Monterey | San Jose
 547 Cass Street, Suite 5
 Monterey CA 93940
 (831) 373-4341

Figure
1.7

1.5 REQUIRED PERMITS

This Initial Study is an informational document for both agency decision-makers and the public. The San Benito County Resource Management Agency is the Lead Agency responsible for certification of this Initial Study.

LOCAL AGENCIES

A list of the anticipated discretionary permits requiring approval by the County of San Benito is provided below:

- Adoption of the IS/MND
- Approval of Use Permit for Commercial Greenhouses
- Approval of Tree Removal Permit

In addition to the above discretionary approvals, the following additional approvals will need to be obtained from the County of San Benito:

- Grading Permit(s)
- Encroachment Permit from County Public Works for any work being performed within the County right-of-way (ROW)¹
- Approval of Improvement Plan(s)
- Building Permit
- Well Permit from San Benito County Water District and Water System Permit from San Benito County Department of Environmental Health

It is anticipated that the project would also require the following permits and approvals²:

REGIONAL AND STATE AGENCIES

- Regional Water Quality Control Board (RWQCB) – National Pollutant Discharge Elimination System (NPDES) General Storm Water Permit and Storm Water Pollution Protection Plan (SWPPP)
- Approval from the State Office of Drinking Water, State Water Resources Control Board (SWRCB) for potable wells, if required

1.6 PROJECT GOALS AND OBJECTIVES

The primary goal of the proposed project is to construct a vegetable transplant nursery and related facilities. The project's key objectives from the project proponents are as follows:

- To utilize the recently developed planting technology known as PlantTape to allow for mechanized planting of vegetable transplant crops.
- To redevelop former agricultural parcels and underutilized property into an economically productive use as a vegetable transplant nursery.
- To build a more efficient, sustainable, and productive vegetable nursery operation.

² This list is not considered exhaustive and additional agencies and/or jurisdictions may have permitting authority.

Chapter 2. Environmental Factors Potentially Affected

The environmental factors identified below are discussed within **Chapter 4. Initial Study Environmental Checklist** Sources used for analysis of environmental effects are cited in parenthesis after each discussion, and are listed in **Chapter 5. References**.

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Aesthetics | <input checked="" type="checkbox"/> Agricultural Resources | <input checked="" type="checkbox"/> Air Quality |
| <input checked="" type="checkbox"/> Biological Resources | <input checked="" type="checkbox"/> Cultural Resources | <input checked="" type="checkbox"/> Geology/Soils |
| <input checked="" type="checkbox"/> Hazards/Hazardous Materials | <input checked="" type="checkbox"/> Hydrology/Water Quality | <input checked="" type="checkbox"/> Land Use/Planning |
| <input type="checkbox"/> Mineral Resources | <input checked="" type="checkbox"/> Noise | <input checked="" type="checkbox"/> Population/Housing |
| <input checked="" type="checkbox"/> Public Services | <input type="checkbox"/> Recreation | <input checked="" type="checkbox"/> Transportation/Traffic |
| <input checked="" type="checkbox"/> Tribal Cultural Resources | <input checked="" type="checkbox"/> Utilities/Service Systems | <input checked="" type="checkbox"/> Mandatory Findings of Significance |

ENVIRONMENTAL FACTORS NOT AFFECTED

As part of the scoping and environmental analysis conducted for the project, the following environmental resources were considered but no potential for adverse impacts to these resources were identified. Consequently, there is no further discussion regarding these resources in this document.

Mineral Resources: The project site is not located in an area designated for mineral resources. Moreover, implementation of the proposed project would not result in any large-scale development or other activities requiring significant removal of mineral resources. As a result, the proposed project would not: 1) result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state, and, 2) result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan specific plan or other land use plan. There would be no impact to mineral resources. (1, 2, 21)

Recreation: The project would not affect park services, since the proposed project would not increase population or otherwise affect these facilities. As stated above, the proposed project is a transplant nursery and will not include recreational facilities. The project will not induce population growth such that new recreational facilities are required. As a result, the proposed project would not: 1) increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated, and, 2) require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment. There would be no impact to recreational resources. (1, 2)

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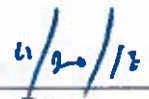
Chapter 3. Determination

On the basis of this initial evaluation:

- I find that the Proposed Project **COULD NOT** have a significant effect on the environment, and a **NEGATIVE DECLARATION** will be prepared.
- I find that although the Proposed Project could have a significant effect on the environment there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A **MITIGATED NEGATIVE DECLARATION** will be prepared.
- I find that the Proposed Project **MAY** have a significant effect on the environment, and an **ENVIRONMENTAL IMPACT REPORT** is required.
- I find that the Proposed Project **MAY** have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An **ENVIRONMENTAL IMPACT REPORT** is required, but it must analyze only the effects that remain to be addressed.
- I find that although the Proposed Project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or **NEGATIVE DECLARATION** pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or **NEGATIVE DECLARATION**, including revisions or mitigation measures that are imposed upon the Proposed Project, nothing further is required.



Signature



Date

Richard Felsing, County of San Benito



Printed Name

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Chapter 4. Initial Study Environmental Checklist

The following chapter assesses the environmental consequences associated with the proposed project. Mitigation measures, where appropriate, are identified to address potential impacts.

EVALUATION OF ENVIRONMENTAL IMPACTS

1. A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on project-specific screening analysis).
2. All answers must take into account the whole action involved, including offsite as well as onsite, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
3. Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.
4. "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level.
5. Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration (Section 15063(c)(3)(D)). In this case, a brief discussion should identify the following:
 - a) Earlier Analysis Used. Identify and state where they are available for review.
 - b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
 - c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures, which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
6. Lead agencies are encouraged to incorporate information sources for potential impacts (e.g., general plans, zoning ordinances) into the checklist references. Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.
7. Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
8. This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.
9. The explanation of each issue should identify:
 - a) The significance criteria or threshold, if any, used to evaluate each question; and
 - b) The mitigation measure identified, if any, to reduce the impact to less than significance.

4.1 AESTHETICS

4.1.1 Environmental Setting

The 2035 San Benito County General Plan Update Recirculated Draft EIR (RDEIR) notes that the County's most striking features are the Diablo and Gabilan Mountain Ranges and the San Benito Valley between them. The project is located at the mouth of the San Benito Valley. There are no State designated scenic highways located in the County. However, three highways are County designated scenic highways, including U.S. Route 101, located approximately 9.6 miles west of the project site; State Route (SR) 146, located over 30 miles south of the project site; and SR 129, located approximately 11 miles west of the project site. SR 25 from SR 198 to Hollister, located approximately 4 miles west of the project site, is eligible for designation as a State Scenic Route, but is not a County designated scenic roadway. Additionally, SR 156, directly adjacent to the project site, is eligible for designation as a State Scenic Route, but it is not a County designated scenic roadway (Figure 4.1-1, Photos of Project Site from Highway 156).

According to the 2035 San Benito County General Plan RDEIR, important vistas within San Benito County that define its visual character include agricultural croplands, rangelands, rolling hills, open spaces, historic towns and mining sites, and views of the Diablo and Gabilan ranges to the east and west of the County. These agricultural and rangeland areas constitute more than 75 percent of the County's total land area. Also, the County's topography includes valleys and rolling hills, particularly in the northern portion of the County near the cities of Hollister and San Juan Bautista, where most of the County's population dwells.

The project site is currently comprised of non-native invasive and ruderal plant species (please refer to Section 4.4 Biological Resources). The aesthetic quality of the site has already been altered by the former use of the site as a plant nursery. A large-scale wholesale nursery operation was active on the site and agricultural uses included a number of buildings on the property. These buildings have since been demolished and the site is currently vacant with only remnants of the previous use remaining (See Figure 1.3). The proposed use of the site will require development of new buildings, greenhouses, planting areas, access roads and landscaping. In general, the property is to be divided into aligned blocks of outdoor growing beds and greenhouses, connected by access roads and with specified areas designated for support buildings. Development is proposed in phases with the first phase consisting of the 40,000 sq. ft. metal office building to be constructed in the approximate center of the southwestern portion of the site and multiple greenhouses and outdoor growing areas located adjacently. A model of the transplant nursery building elevations and design is presented in Figure 4.1-2. The Master Plan is shown on Figure 1.5. Other improvements include two water storage tanks are proposed as steel-bolted tank structures, 32 ft. tall, 39 ft. in diameter, and hunter green in color.

Construction of the proposed project would not require any nighttime construction, and, therefore, construction activities would not result in any new nighttime lighting or glare. New exterior lighting would be required for operation of the proposed project; however, proposed exterior lighting would be downward facing and consistent with the County lighting ordinances. The site is bordered by light industrial and rural residential land uses, both of which produce noticeable light sources. Section 19.31.005 of the San Benito County Code establishes three lighting zones, with Zone I having the strictest regulations and Zone III imposing the least restrictive. The project site is located in Zone III. General requirements are applicable to all zones, under Section 19.31.006, and the special requirements applicable to Zone III set forth in Section 19.31.009 are listed below.

Total outdoor light output (excluding streetlights used for illumination of county roadways or private roadways) related to any development project in Zone III shall not exceed 100,000 initial raw lamp lumens per net acre, averaged over the entire project. Additionally, no more than 5,500 initial raw lamp lumens per net acre may be accounted for by lamps in unshielded fixtures permitted in Table 19.31.006(1) of the San Benito County Code.

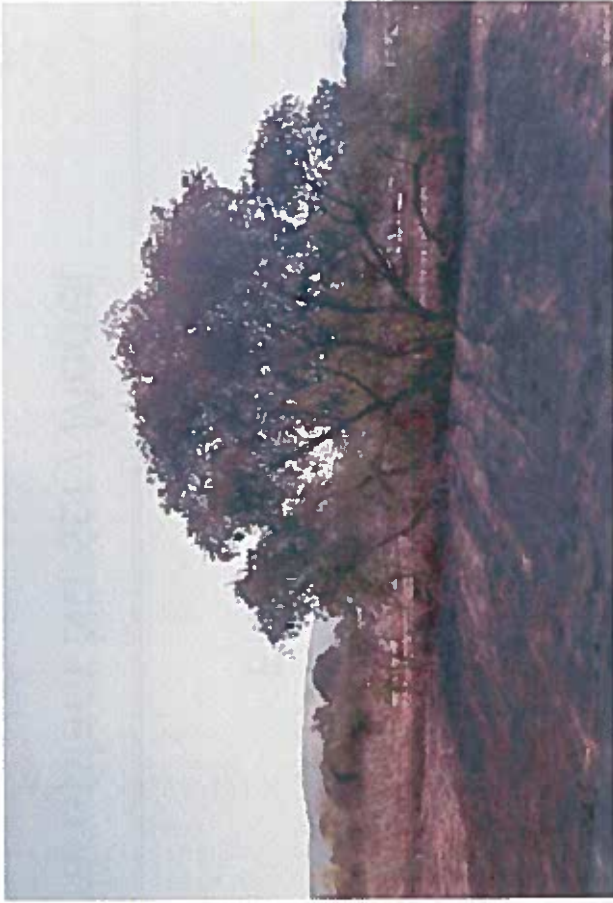


Photo 1. Southern portion of Project site facing east from Northbound Highway 156.



Photo 2. Southern portion of Project site facing east from Northbound Highway 156.



Photo 3: Southern portion of Project site facing east from Southbound Highway 156.



Photo 4: Southern portion of Project site facing east from Southbound Highway 156.

Title

Photos of Project Site from Highway 156

Date 8/9/2018

Scale N/A

Project 2018-32



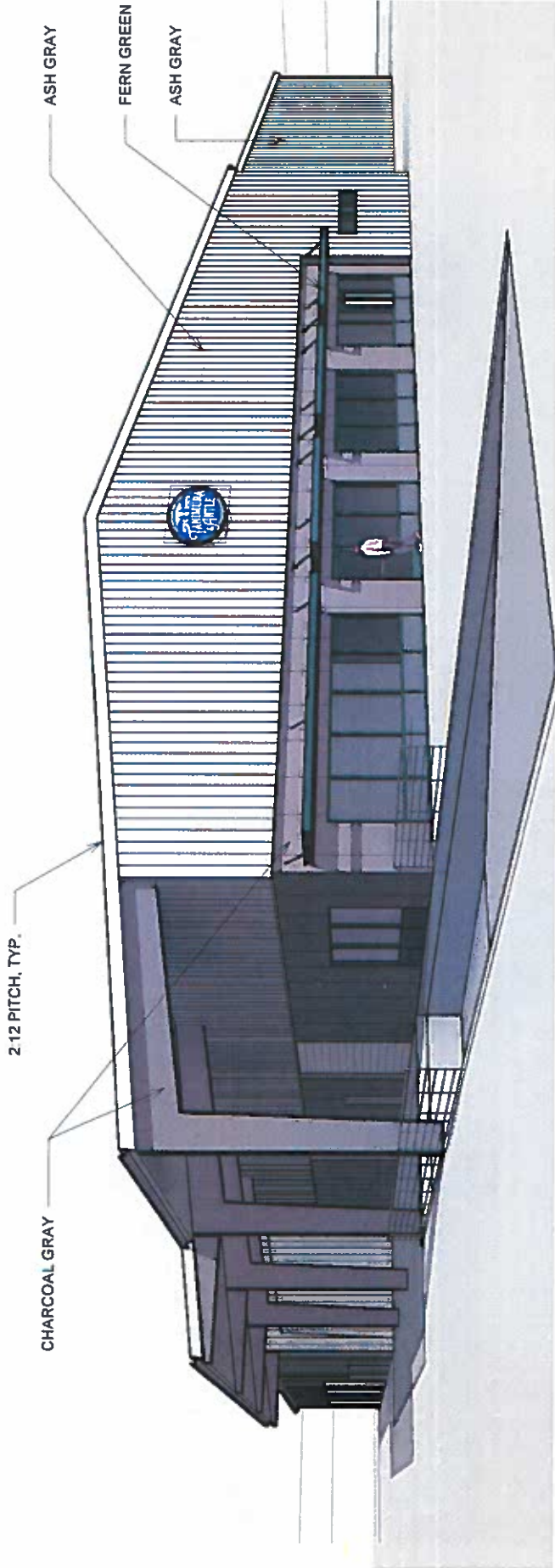
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Environmental Consultants Resource Planners

547 Cass Street, Suite 5
Monterey, CA 93946
(831) 373-4341

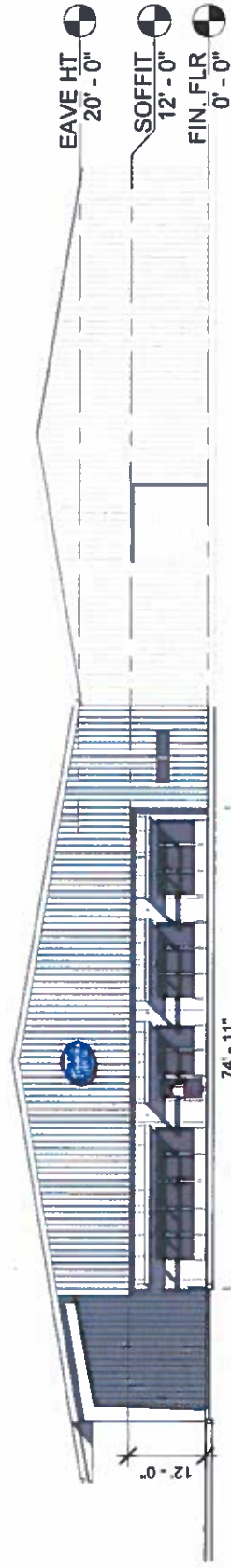
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Figure

4.1-1



PERSPECTIVE



ENTRY ELEVATION

Source: Paul Davis Partnership, June 26, 2018

Figure 4.1-2

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 547 Cass Street, Suite 5
 Monterey, CA 93940
 (831) 373-4341



Date	6/24/2018
Scale	N/A
Project	2018-32

Title: **Transplant Nursery Model**

- (A) Outdoor recreational facilities in Zone III shall not be illuminated after 11:00 p.m. except to conclude a scheduled recreational or sporting event in progress prior to 11:00 p.m.
- (B) Outdoor internally illuminated advertising signs shall be constructed with either an opaque background and translucent letters and symbols, or with a colored (not white, cream, off-white or yellow) background and lighter letters and symbols. Lamps used for internal illumination of the signs shall not be included in the lumens per net acre limit set in this division. The signs shall be turned off at 11:00 p.m. or when the business closes, whichever is later.

4.1.2 Environmental Impacts

Environmental Impacts	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
AESTHETICS. Would the project:				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4.1.3 Explanation

The visual setting and proposed project were evaluated from the following primary observation locations. These locales represent common public viewing locations with views toward the project site.

- Highway 156 at the property boundary: This location represents the area where automobiles traveling in either direction on Highway 156 would potentially view the project site.
- Orchard Road and Fairview Road: This site was evaluated; however, no public views of the property are available from this vantage point.
- Orchard Road: This represents the viewshed from passing motorists traveling on Orchard Road and views of the site at the existing site entrance on Orchard Road.

Additionally, views from Pacheco Creek Estate Road were reviewed. This road is located off Highway 156 past Pacheco Creek and is used by residents of Pacheco Creek Estates residential subdivision for access to their homesites. The project site is not visible from any public viewpoints along Pacheco Creek Estate Road.

There are three to four homes located along Pacheco Creek Estates Road (on the hillside above Pacheco Creek) whose private views may view the project site. However, CEQA distinguishes between public and private views

and focuses on whether a project would affect the public environment rather than the views of particular individuals. Effects on private views, such as from individual homes, are not considered significant impacts on the environment pursuant to CEQA. Accordingly, views from private residences are not discussed in this impact analysis. The evaluation of aesthetic impacts is focused on potential impacts on viewsheds from common public viewing areas along Highway 156 and Orchard Road.

- a) **Less than Significant Impact.** The project is located on a previously developed lot which has been highly disturbed. New buildings and structures would be on 75.6 acres of the site to allow development of a transplant nursery within an area zoned for agricultural uses. The San Benito Zoning Ordinance for AP Districts sets a building height limit of 35-ft. maximum. Buildings associated with the project would be approximately 30 ft. high and would not exceed this building height threshold. Proposed structures on the site would include 100,000 sq. ft. of new buildings, including an agricultural processing building, storage, an office, and 28 greenhouse structures. The site views would be broken up by approximately 500,000 sq. ft. of outdoor growing area and work area. Other than greenhouses, the nearest building structure visible from Highway 156 would be the office building, which is approximately 1,600 ft. from those traveling on Highway 156 to the south and west.

A scenic vista is generally characterized as a viewpoint that provides expansive views of a highly valued landscape for the benefit of the general public. The San Benito County General Plan does not identify the project site as having any scenic vistas. The project site and immediate vicinity, as with most of the County as a whole, has a primarily rural character dominated by agricultural lands and upland grazing area. Immediate views in the project area are limited and include primarily agricultural uses from views along Highway 156 and Orchard Road. Further long-range views include upper area hillsides and limited rural residential uses. The scenic views of the mountain ranges would continue to be available from residential neighborhoods. The project would not exceed the 35-foot building height threshold, longer-range views would not be obstructed by the project, and the project would not have a substantial adverse effect on a scenic vista. This is considered a less than significant impact. (1, 2, 3, 22)

- b) **Less than Significant Impact with Mitigation Incorporated.** As discussed in the Environmental Setting section above, there are many scenic resources in the County. The project site is not located on a County designated scenic roadway and there are also no designated State Scenic Highways in the project vicinity. Highway 156 bordering the site is eligible for designation as a State Scenic Route, however, the roadway is not designated as a scenic highway and San Benito County would be responsible for designation of this portion of eligible scenic highway. Approximately 400 ft. of the development area of the project site border Highway 156 (see **Figure 4.1-1**, Photos of Project Site from Highway 156) with approximately 300-400 ft. visible from this roadway. Proposed uses immediately adjacent to the Highway do not include structures and are limited to drainage improvements and planting areas. The proposed agricultural processing/office building is approximately 1,600 ft. away from the Highway and would not impact views from Highway 156. There are proposed greenhouses and planting areas between the Highway and the proposed agricultural processing/office building. Views of development on this site would be broken up by the outdoor, planting areas aligned near greenhouses along Highway 156. Outdoor growing areas consist of approximately three-ft. high growing tables or benches which are used for plantings. These are not covered with any overhead structure, lighting or shades. Additionally, greenhouse design would allow for retractable walls which would at times be open to views depending on orientation. Application of the landscaping mitigation below **Mitigation Measure AES 4.1-1** would reduce impacts to less than significant. Also, the retractable wall design feature would further minimize visual impacts by breaking up views of buildings, walls, or structures. Those traveling Highway 156 would have views of the project site, however, these views would be predominantly of the proposed greenhouses and planting

areas. The duration of views would be of limited duration due to the length of property bordering the Highway, as well as average speed traveling along the Highway reducing views from motorists. The project would not obstruct any distant views of the Diablo and Gabilan ranges. Effects associated with impacting scenic resources would be minimized through the implementation of **Mitigation Measure AES 4.1-1**.

With the implementation of **Mitigation Measure AES 4.1-1**, below, the project would have a less than significant impact on the existing visual character or quality of the site and its surroundings. (1, 2, 3, 22)

Mitigation

AES 4.1-1 The project proponent shall submit a landscaping plan for review and approval by the RMA Planning Division prior to the issuance of a building permit. The landscaping plan shall incorporate landscape plantings every 10 to 15 ft. along the 300 to 400-foot frontage of Highway 156, from Pacheco Creek to the project boundary to partially screen potential views of the project from Highway 156. Landscaping shall consist of drought-tolerant native species along with other acceptable species identified by the County. Final landscaping plan shall identify the location, number, and types of plantings that would soften the visual impacts from Highway 156 and shall identify success metrics, such as survival and growth rate for the plantings. Plant material shall be selected to grow to be at least fence height (6 to 8 feet tall) and be strategically placed to minimize impacts to scenic views from those traveling on Highway 156.

The above referenced standards, components and materials shall be denoted on building plans. A copy of said standards, components, and materials shall be submitted with grading and building plans prior to issuance of building permit(s) for project development.

Note: The purpose of this mitigation is to reduce impacts from short-range views of the project from Highway 156 through the strategic placement of landscape planting; complete visual screening of the project site is not proposed.

- c) **Less than Significant Impact with Mitigation Incorporated.** The viewshed of the County as a whole, has a rural character dominated by agricultural and grazing land, rolling hillsides, and rural residential uses. The visual character of the project site is that of a previously developed vacant site. The site itself has been used for agricultural purposes with a history of agricultural and greenhouse development for a number of decades and with agricultural use since at least 1939. Uses within the immediate vicinity of the project include primarily agricultural uses with some light industrial and rural residential properties. The resulting rural visual character, although not unique within the County, would be considered scenic and is treated as such by the County's General Plan. The proposed project proposes an office structure, and related improvements including water tanks, greenhouses and planting areas at project buildout. The proposed uses are consistent with agricultural zoning and uses of the area, however, new structures and future development have the potential to impact the existing visual setting of the site. Pacheco Creek and the 50-foot buffer along this portion of the site will be retained and provide open space and vegetated riparian area. New structures associated with the project must comply with the County's design standards contained in Chapter 25.29 of the Code of Ordinances, along with the County's General Plan Land Use goals and policies related to visual character. Additionally, prior to issuance of a building permit for the first phase of the project, the

project design plans must be reviewed and approved by the County for review of design standards including building elevations, materials, colors, textures, light fixtures, and perimeter fencing.

With the implementation of **Mitigation Measure AES 4.1-1**, above and **Mitigation Measure AES 4.1-2**, below, the project would have a less than significant impact on the existing visual character or quality of the site and its surroundings. (1, 2, 3, 22)

Mitigation

AES 4.1-2 The scenic character and quality of the area surrounding the project site would be protected by taking the following (or equivalent) actions:

Prior to issuance of the first building permit for the project, the project proponent shall submit architectural plans for review and approval by County Planning staff. The architectural plans shall include all proposed building elevations, materials, colors, textures, light fixtures, and perimeter fencing, and shall satisfy the following:

- Building colors compatible with surrounding terrain (earth tones and non-reflective paints) shall be used on exterior surfaces of all structures, including greenhouses, fences and walls.
- High contrast color combinations, such as very dark brown adjacent to white, shall be avoided on the exterior of buildings or individual structures' roofs, walls, and fascia.
- Roof vents shall be the same earth tone shade as the surrounding roof surface.
- Use minimally reflective glass and paint colors on buildings to minimize reflective glare.
- Lighting shall follow all necessary design requirements as outlined in County Ordinance Chapter 19.31.

The above referenced standards, components, and materials shall be denoted on building plans and apply to all phases of the project. A copy of said standards, components, and materials shall be submitted with grading and building plans prior to issuance of building permit(s) for project development.

- d) **Less than Significant Impact with Mitigation Incorporated.** Construction activities would occur during daytime hours and nighttime lighting for construction activities would not be required. New permanent exterior lighting is proposed as part of the project. Hours of operation would be from 5 a.m. to 6 p.m., with nighttime deliveries extending to 10 p.m. Lighting would primarily consist of yard lighting in the main areas around the central building for loading and early morning and evening deliveries. Potential LED lighting may be required in the interior of the greenhouses for growing during days of low light; lighting could start as early as 4 a.m. depending on the time of year and extend until 7 p.m. daily. All lighting would be automated and would be downlighting immediately over the planting benches located within the greenhouses. Overall, nighttime lighting would be minimal and would only include that which is necessary for nursery operations, safety for vehicular movement, and security.

The introduction of new lighting into a minimally lit area would extend the light glow of a developed agricultural area further into the surrounding rural area, proportionally affecting the extent of potential

light glow in the nighttime sky. However, the proposed project would be required to conform with applicable provisions of the County “Dark Skies” Ordinance (Chapter 19.31), which requires the use of outdoor lighting systems and practices designed to reduce light pollution and glare, and to protect the nighttime visual environment by regulating outdoor lighting that interferes with astronomical observations and enjoyment of the night sky. The proposed project would introduce new sources of glare on the project site, which could adversely affect daytime views of the site. Potential sources of glare associated with the proposed project would consist of glazing (windows) and other reflective materials used in the façades of proposed structures, the reflective surfaces of vehicles parked and travelling within and around the project site, and night time vehicle headlights. Although not proposed, any highly reflective façade materials would be of particular concern, as buildings would reflect the bright sunrises. The project’s greenhouses are designed to incorporate light (rather than reflect light) and would minimize visual impacts due to glare.

Compliance with the above requirements of the County “Dark Skies” Ordinance Chapter 19.31 of the San Benito County Code and implementation of **Mitigation Measure AES 4.1-2** would reduce impacts from lighting to a less than significant level. Additionally, as part of the Use Permit process with the County, the proposed project would go through design review and approval in order to confirm consistency with applicable standards, requirements and design guidelines. This process and implementation of **Mitigation Measure AES 4.1-2** above, including the requirement that lighting shall follow all necessary design requirements as outlined in County Ordinance Chapter 19.31 would ensure impacts from nighttime lighting and glare would be less than significant with mitigation incorporated and would not adversely affect day or nighttime views in the area. (1, 2, 3, 22)

4.2 AGRICULTURAL AND FOREST RESOURCES

4.2.1 Environmental Setting

The California Department of Conservation Farmland Mapping and Monitoring Program (FMMP), established by the State Legislature in 1982, assesses the location, quality, and quantity of agricultural lands and conversion of these lands over time. The FMMP is a non-regulatory program contained in Section 612 of the Public Resources Code. The Program contains five farmland categories (Prime Farmland, Farmland of Statewide Importance, Unique Farmland, Farmland of Local Importance, and Grazing) with a purpose of providing consistent and impartial analysis of agricultural land use and land use changes throughout California, as called for under Section 65570(b) of the Government Code:

- Prime Farmland (P) comprises the best combination of physical and chemical features able to sustain long-term agricultural production. Irrigated agricultural production is a necessary land use four years prior to the mapping date to qualify as Prime Farmland. The land must be able to store moisture and produce high yields.
- Farmland of Statewide Importance (S) possesses similar characteristics to Prime Farmland with minor shortcomings, such as less ability to hold and store moisture and more pronounced slopes.
- Unique Farmland (U) has a production history of propagating crops with high-economic value.
- Farmland of Local Importance (L) is important to the local agricultural economy. Local advisory committees and a county specific Board of Supervisors determine this status.
- Grazing Land (G) is suitable for browsing or grazing of livestock.

While it does not meet the criteria for Prime Farmland or Farmland of Statewide Importance, a majority of the project site is currently designated as Unique Farmland in the FMMPA, with some of the land on the east side or Orchard Road designated as Grazing Land, however this portion of land is not proposed for development.

Grade 1 soils cover approximately 95% of the project site, per the County of San Benito GIS. The 1969 Soil Survey of San Benito County defines Grade 1 soils as those soils suitable for farming that have a Storie Index rating in the 80 to 100 range. The Index is California-specific, and distinct from USDA soil classification/taxonomic rating system.

In addition, the County’s “Right to Farm” ordinances and General Plan Policy LU-3.9: Right to Farm and Ranch, are applicable and encourage the protection of agricultural lands and operations by including provisions such as disclosure requirements and buffers. In so doing, these policies help to minimize land use conflicts in the County by supporting the rights of farming operations, even when established urban uses in the area may result in complaints against agricultural practices.

The Williamson Act, codified in 1965 as the California Land Conservation Act, allows local governments to enter into contracts with private landowners, offering tax incentives in exchange for an agreement that the land will remain as agricultural or related open space use for a period of 10 years. The project site is not under a Williamson Act contract.

According to the California Public Resources Code §4526, the California Board of Forestry and Fire Protection defines “Timberland” as land not owned by the federal government, nor designated as experimental forest land, which is capable and available for growing any commercial tree species. The board defines commercial trees on a district basis following consultation with district committees and other necessary parties. According to the RDEIR prepared for the 2035 San Benito County General Plan Update, there are no forest land, timberland, or timberland production areas, as zoned by applicable state and local regulations located within the County.

4.2.2 Environmental Impacts

Environmental Impacts	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
<p>AGRICULTURAL AND FOREST RESOURCES. In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state’s inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:</p>				
<p>a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Environmental Impacts	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Result in the loss of forest land or conversion of forest land to non-forest uses?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

4.2.3 Explanation

- a) **Less than Significant Impact.** As noted above, the FMMP of the California Resources Agency classifies the majority of the project site as Unique Farmland. The majority of the property has been previously converted from farmland and used for a wholesale nursery and for agricultural purposes. The proposed development of a plant nursery with associated planting areas, greenhouses and related structures would continue agricultural production on major portions of the site (500,00 sq. ft. of outdoor planting areas and 700,000 sq. ft. of greenhouses surround the ancillary and supporting structures). Since the project would not convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance to a non-agricultural use; this is considered a less than significant impact. (1, 2, 3, 4, 5)
- b) **No Impact.** As noted above, the project site is not within a Williamson Act contract. There is no impact. (1, 2, 3, 4)
- c-d) **No Impact.** As noted above, there are no forest land, timberland, or timberland production areas, as zoned by applicable state and local laws and regulations located within the County, or otherwise present on-site. There is no impact. (1, 2, 3)
- e) **Less than Significant Impact.** The proposed project constitutes an agricultural use and would not convert Farmland (as discussed in answer a) above) or involve other changes in the existing environment which would convert Farmland to a non-agricultural use. There is no forest land in the County. This is considered a less than significant impact. (1, 2, 3, 4, 5)

4.3 AIR QUALITY

4.3.1 Environmental Setting

The federal Clean Air Act and the California Clean Air Act mandate the control and reduction of certain air pollutants. Under these Acts, the United States Environmental Protection Agency and the California Air Resources Board (ARB) have established ambient air quality standards for specific "criteria" pollutants. These

pollutants are carbon monoxide (CO), ozone (O₃), sulfur dioxide (SO₂), nitrogen oxides (NO_x), particulate matter less than 10 microns in diameter (PM₁₀), lead, and particulate matter less than 2.5 microns in diameter (PM_{2.5}).

The project site is located within the North Central Coast Air Basin (NCCAB), which is comprised of Santa Cruz, San Benito, and Monterey Counties, and is regulated by the Monterey Bay Air Resources District (MBARD, formally known as Monterey Bay Unified Air Pollution Control District).

The EPA administers the National Ambient Air Quality Standards (NAAQS) under the Federal Clean Air Act. The EPA sets the NAAQS and determines if areas meet those standards. Violations of ambient air quality standards are based on air pollutant monitoring data and evaluated for each air pollutant. Areas that do not violate ambient air quality standards are considered to have attained the standard. The NCCAB is in attainment for all NAAQS and for all California Ambient Air Quality Standards (CAAQS) except O₃ and PM₁₀. The primary sources of O₃ and PM₁₀ in the NCAAB are from automobile engine combustion. To address exceedance of these CAAQS, the MBARD has developed and implemented several plans including the 2005 Particulate Matter Plan, the 2007 Federal Maintenance Plan, and the 2012-2015 Air Quality Management Plan (AQMP), a revision to the 2012 Triennial Plan. NCCAB Attainment Status to National and California Ambient Air Quality can be found in **Table 4.3-1 North Central Coast Air Basin Attainment Status** below.

Table 4.3-1 North Central Coast Air Basin Attainment Status – January 2015		
Pollutant	State Standards ¹	National Standards
Ozone (O ₃)	Nonattainment ²	Attainment/Unclassified ³
Inhalable Particulates (PM ₁₀)	Nonattainment	Attainment
Fine Particulates (PM _{2.5})	Attainment	Attainment/Unclassified ⁴
Carbon Monoxide (CO)	Monterey Co. – Attainment San Benito Co. – Unclassified Santa Cruz Co. – Unclassified	Attainment/Unclassified
Nitrogen Dioxide (NO ₂)	Attainment	Attainment/Unclassified ⁵
Sulfur Dioxide (SO ₂)	Attainment	Attainment ⁶
Lead	Attainment	Attainment/Unclassified ⁷
Notes:		
1) State designations based on 2010 to 2012 air monitoring data.		
2) Effective July 26, 2007, the ARB designated the NCCAB a nonattainment area for the State ozone standard, which was revised in 2006 to include an 8-hour standard of 0.070 ppm.		
3) On March 12, 2008, EPA adopted a new 8-hour ozone standard of 0.075 ppm. In April 2012, EPA designated the NCCAB attainment/unclassified based on 2009-2011 data.		
4) This includes the 2006 24-hour standard of 35 µg/m ³ and the 2012 annual standard of 12 µg/m ³ .		
5) In 2012, EPA designated the entire state as attainment/unclassified for the 2010 NO ₂ standard.		
6) In June 2011, the ARB recommended to EPA that the entire state be designated as attainment for the 2010 primary SO ₂ standard. Final designations to be addressed in future EPA actions.		
7) On October 15, 2008 EPA substantially strengthened the national ambient air quality standard for lead by lowering the level of the primary standard from 1.5 µg/m ³ to 0.15 µg/m ³ . Final designations were made by EPA in November 2011.		
8) Nonattainment designations are highlighted in Bold .		

Plans to attain these standards already accommodate the future growth projections available at the time these plans were prepared. Any development project capable of generating air pollutant emissions exceeding regionally-established criteria is considered significant for purposes of CEQA analysis, whether or not such emissions have been accounted for in regional air planning. Any project that would directly cause or

substantially contribute to a localized violation of an air quality standard would generate substantial air pollution impacts. The same is true for a project that generates a substantial increase in health risks from toxic air contaminants or introduces future occupants to a site exposed to substantial health risks associated with such contaminants.

Sensitive receptors are more susceptible to the effects of air pollution than the general population. Land uses that are considered sensitive receptors include residences, schools, and health care facilities. Sensitive receptors in the vicinity of the project consist of single-family residences located approximately 250 ft. from the project site on the opposite bank of Pacheco Creek, additional single-family houses surround the site on all sides within less than 1/2 mile.

4.3.2 Environmental Impacts

Environmental Impacts	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
AIR QUALITY. Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

4.3.3 Explanation

- a) **No Impact.** CEQA Guidelines §15125(b) requires an evaluation of project consistency with applicable regional plans, including the AQMP. As stated above, the MBARD has developed and implemented several plans to address exceedance of State air quality standards, including the MBARD 2012-2015 AQMP. The MBARD is required to update their AQMP once every three years; the most recent update (MBARD, 2017) was approved in March of 2017. This plan addresses attainment of the State ozone standard and federal air quality standard. The AQMP accommodates growth by projecting growth in emissions based on population forecasts prepared by the Association of Monterey Bay Area Governments (AMBAG) and other indicators.

Consistency determinations are issued for commercial, industrial, residential, and infrastructure related projects that have the potential to induce population growth. A project is considered inconsistent with the AQMP if it has not been accommodated in the forecast projections considered in the AQMP. The proposed project would not induce potential population growth beyond existing levels. The project would not conflict with and/or obstruct the implementation of the AQMP, or any other plans to address exceedance of State air quality standards. There would be no impact in connection with the proposed project. (1, 2, 3, 6, 7)

b) **Less than Significant Impact.** The MBARD 2016 CEQA Air Quality Guidelines (Guidelines) contains standards of significance for evaluating potential air quality effects of projects subject to the requirements of CEQA. According to MBARD, a project would violate an air quality standard and/or contribute to an existing or projected violation if it would:

- Emit 137 pounds per day (lb/day) or more of volatile organic compounds (VOC) or NO_x;
- Directly emit 550 lb/day of CO;
- Generate traffic that significantly affects levels of service;
- Directly emit 82 lb/day or more of PM₁₀ onsite during operation or construction;
- Generate traffic on unpaved roads of 82 lb/day or more of PM₁₀; or
- Directly emit 150 lb/day or more of oxides of Sulfur (SO_x).

The project would generate both operational and construction air pollutants. Table 4.3-2, Construction & Operational Air Quality Emissions, identifies anticipated air quality emissions associated with the project based on the results of CalEEMod modeling conducted by DD&A. A copy of the CalEEMod results is included in Enclosure B of Appendix A.

Pollutant	Construction (lbs/day)	Operation (lbs/day)	Exceed Threshold?
PM ₁₀	0.1353	1.2094	No
PM _{2.5}	0.0796	0.3816	No
CO	0.7600	5.7681	No
NO _x	1.0249	7.0590	No
SO ₂	1.53E-003	0.0259	No
Notes:			
Emissions Source: Attachment 2, Air Quality and GHG Calculations Spreadsheets			
Significance Threshold Source: MBARD, 2016			

As noted in Table 4.3-2 Construction & Operational Air Quality Emission, all construction-related emissions would be below the applicable MBARD thresholds of significance for temporary construction emissions. As a result, the proposed project would not exceed the MBARD's thresholds of significance. Temporary construction-related emissions would be less than significant. In addition, the project would also implement standard construction Best Management Practices (BMPs) related to dust suppression, which would include: 1) watering active construction areas; 2) prohibiting grading activities during periods of high wind (over 15 mph); 3) covering trucks hauling soil; and, 4) covering exposed stockpiles. The implementation of BMPs would further ensure that potential construction-related emissions would be minimized. This represents a less than significant impact.

The project would generate air quality emissions in connection with the operation of the transplant nursery. These emissions would be below applicable MBARD thresholds of significance based on the CalEEMod results identified in Table 4.3-2 Construction & Operational Air Quality Emissions. As a result, potential operational air quality effects would be less than significant. Operation of the proposed transplant nursery would not exceed any operational threshold of significance, as a result, the project would result in a less than significant operational air quality effect. (1, 2, 3, 6, 7, 8)

- c) **Less than Significant Impact.** The project would result in increases in PM₁₀ during construction, as described below (please refer to Response d, below). Potential construction-related impacts would be temporary in nature. Construction impacts would not result in a cumulatively considerable net increase in a criteria pollutant as they would be short term in nature and would be minimized with implementation of standard BMPs. In addition, project operation would not result in a significant air quality impact (see Response b, above). All impacts would be below applicable MBARD thresholds of significance, including thresholds for ozone precursors. Since project operation would have a less than significant impact on air quality, there would not be a significant cumulatively considerable net increase in any criteria pollutant. Air quality impacts associated with the project would not be significant. This represents a less than significant impact. (1, 2, 3, 6, 7, 8)
- d) **Less than Significant Impact.** A “sensitive receptor” is generally defined as any residence including private homes, condominiums, apartments, or living quarters; education resources such as preschools and kindergarten through grade twelve (k-12) schools; daycare centers; and health care facilities such as hospitals or retirement and nursing homes. There are several single-family residences within the vicinity of the proposed project. The closest residence is located approximately 250 ft. from the project site on the opposite bank of Pacheco Creek. The MBARD CEQA Air Quality Guidelines state that a project would have a significant impact to sensitive receptors if it would cause a violation of any CO, PM₁₀ or toxic air contaminant standards at an existing or reasonably foreseeable sensitive receptor.

As stated above, the construction contractor would be required to implement the air quality best management practices and emissions of CO resulting from construction of the proposed project would be approximately 0.76 lbs/day. As discussed in b) above, the proposed project would not exceed any MBARD thresholds, including CO and PM₁₀. Compliance with applicable MBARD regulations would also include, but is not limited to, Rule 402³, which would minimize potential nuisance impacts to occupants of nearby land uses. For these reasons, construction activities would be considered to have a less than significant impact to sensitive receptors.

Additionally, implementation of the proposed project would not result in the installation of any major stationary or mobile sources of emissions. Operational activities of the project would have a less than significant impact to nearby receptors. (1, 2, 3, 6, 7, 8)

- e) **Less than Significant Impact.** Pollutants associated with objectionable odors include sulfur compounds and methane. Typical sources of odors include landfills, rendering plants, chemical plants, agricultural uses, wastewater treatment plants, and refineries (MBARD, 2008). The proposed project may create objectionable odors due to its agricultural uses. The project site is located in a rural,

³ MBARD Rule 402 “Nuisance” states, “A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property. The provisions of this rule shall not apply to odors emanating from agricultural operations necessary for the growing of crops or the raising of fowl or animals.”

agricultural landscape with neighboring properties generating similar odors. This is considered a less than significant impact. (1, 2, 7)

4.4 BIOLOGICAL RESOURCES

4.4.1 Environmental Setting

DD&A prepared a Biological Resources Report for the proposed project (July 2018). The analysis presented in this report describes existing biological resources within the site, identifies any special status species and sensitive habitats known or with the potential to occur on the site, looks generally at what types of biological impacts could occur as a result of construction of vegetable transplant nursery greenhouses and related facilities on the site, and provides generalized recommended avoidance, minimization, and mitigation measures to reduce project impact to biological resources. In addition, the report includes an overview of applicable federal, state, and local regulation and a list of regulatory and responsible agencies with jurisdiction over sensitive resources within the site. The Biological Resources Report is presented in **Appendix B**. This section summarizes the findings in the report.

A reconnaissance survey was conducted at the site on May 30, 2018 by DD&A Senior Environmental Scientist Josh Harwayne and Assistant Environmental Scientist Liz Camilo to characterize habitats present within the site and to identify any special-status plant or wildlife species or suitable habitat for these species within the site. Survey methods included walking the site and using aerial maps and GPS to map the biological resources. Available reference materials were reviewed prior to conducting the field survey (see “Data Sources” in the Biological Resources Report). Data collected during the survey was used to assess the environmental conditions of the site and its surroundings.

Vegetation Types

The project site is highly degraded and is dominated by non-native invasive and ruderal plant species. Most of the site has been recently scraped and is now sparsely or moderately vegetated with ruderal species (**Figure 4.4-1**).

Ruderal

Ruderal areas are those areas which have been developed and disturbed by human activities (e.g. existing roads or structures) and are devoid of vegetation or dominated by non-native species. Within the evaluation area, this habitat includes a former greenhouse area, an overgrown fallow field, dirt roads, and a former residential development (**Figure 4.4-1**). These areas are either mostly devoid of vegetation or are dominated by non-native, “weedy” species such as black mustard (*Brassica nigra*), cheese weed (*Maha parviflora*), and poison hemlock (*Conium maculatum*).

Common wildlife species which do well in urbanized and disturbed areas that may occur within the ruderal habitat include American crow (*Corvus brachyrhynchos*), raccoon (*Procyon lotor*), striped skunk (*Mephitis mephitis*), California scrub jay (*Aphelocoma californica*), European starling (*Sturnus vulgaris*), western fence lizard (*Sceloporus occidentalis*), and rock dove (*Columba livia*). Special-status raptors or migratory bird species may forage or nest within the ruderal habitat. No special-status plant species or other special-status wildlife species were observed or are expected to occur within the ruderal habitat.

Sensitive Habitats

Riparian

Riparian habitat occurs adjacent to the project site as depicted in **Figure 1.2 Project Location**.

Wetlands and Other Waters

Wetlands and other waters of the U.S. potentially under the jurisdiction of the U.S. Army Corps of Engineers (USACE) and RWQCB have the potential to occur in some portions of the riparian corridor adjacent to the project site.

Special-Status Wildlife Species

Published occurrence data within the site and surrounding U.S. Geological Survey (USGS) quadrangles were evaluated to compile a table of special-status species known to occur near the project site (Appendix C of the Biological Resources Report). Each of these species was evaluated for their likelihood to occur within and immediately adjacent to the site. The special-status species that are known to or have been determined to have a moderate or high potential to occur within the site are discussed below. All other species within the table are assumed “unlikely to occur” or have a low potential to occur at the site for the species-specific reason presented in Appendix C of the Biological Resources Report, are not likely to be impacted by the project and are not discussed further.

Raptors and Other Nesting Bird Species


Raptors and other nesting bird species are protected under California Fish and Wildlife (CDFW) Code. While the life histories of these species vary, overlapping nesting season (approximately February through August) and foraging similarities allow for their concurrent discussion. Most raptors are breeding residents throughout most of the wooded portions of the state. Stands of live oak, riparian deciduous, or other forest vegetation types, as well as open grasslands, are used most frequently for nesting. Breeding occurs February through August, with peak activity May through July. Prey for these species includes small birds, small mammals, and some reptiles and amphibians. Many raptor species hunt in open woodland and habitat edges.

During the May 2018 reconnaissance survey, an active raptor nest was observed in an ash tree (*Fraxinus* sp.) which is planned for removal.

Special-Status Plant Species

No special status plants were identified on the project site during the reconnaissance survey and none are expected to occur.



<p>Title</p> <h1>Habitat Map</h1>	<p>Date. <u>8/1/2018</u></p> <p>Scale. <u>N/A</u></p> <p>Project <u>2018-32</u></p>	 <p>Monterey San Jose Denise Duffy and Associates, Inc. Environmental Consultants Resource Planners 947 Cass Street, Suite 5 Monterey, CA 93940 (831) 373-4341</p>	<p>Figure 4.4-1</p>
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4.4.2 Environmental Impacts

Environmental Impacts	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
BIOLOGICAL REOSURCES. Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

4.4.3 Explanation

- a) **Less than Significant Impact with Mitigation Incorporated.** Published occurrence data within the site and surrounding USGS quadrangles were evaluated to compile a table of special-status species known to occur near the project site (See Appendix C of the Biological Report). Each of these species was evaluated for their likelihood to occur within and immediately adjacent to the project site based on the species-specific reason presented in the table. All the wildlife species, except for raptors and other nesting birds, that were considered within the table were determined unlikely to occur or have a low potential to occur and are unlikely to be impacted by the project.

Raptors and other nesting bird species have the potential to occur within or immediately adjacent to the site. Tree and vegetation removal may result in direct mortality of individuals and impacts to nests for raptors or other nesting birds, if present at the time of activities. Additionally, activities during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment within the site and immediately adjacent areas. This would be a potentially significant impact by causing a substantial adverse effect to raptors and other nesting birds that can be reduced to a less than significant level with implementation of the following mitigation measure. (1, 2, 3, 9, 10, 11, 12)

Mitigation

BIO 4.4-1 A note shall be placed on Final Grading and Building Plans that the Project shall adhere to the following requirements:

Activities that may directly affect (e.g. vegetation removal) or indirectly affect (e.g. noise/ground disturbance) nesting raptors and/or nesting bird species occurring within or immediately adjacent to the project site will be timed to avoid the breeding and nesting seasons. Specifically, the project applicant will schedule grading with heavy machinery and vegetation and/or tree removal after September 16 and before January 31.

If activities must occur during the breeding and nesting season (February 1 through September 15), a qualified biologist shall conduct pre-construction surveys for nesting raptors and other protected nesting bird species within 300 feet of the proposed construction activities. Pre-construction surveys should be conducted no more than 7 days prior to the start of the construction activities during the early part of the breeding season (February through April) and no more than 14 days prior to the initiation of these activities during the late part of the breeding season (May through August).

If raptor or other bird nests are identified within or immediately adjacent to the project site during the pre-construction surveys, the qualified biologist shall notify the proponent and an appropriate no-disturbance buffer shall be imposed within which no construction activities or disturbance shall take place (generally 300 feet in all directions for raptors; other avian species may have species-specific requirements) until the young of the year have fledged and are no longer reliant upon the nest or parental care for survival, as determined by a qualified biologist.

- b-c) **Less than Significant Impact.** The project site consists of previously disturbed non-native invasive and ruderal plant species and does not contain any sensitive natural communities. Riparian habitat occurs adjacent to the project site as depicted in **Figure 4.4-1**. In addition, wetlands and other waters of the U.S. potentially under the jurisdiction of the USACE and RWQCB have the potential to occur in some portions of the riparian corridor adjacent to the project site. The project avoids the riparian corridor by design (i.e. fencing and 50-foot setback from the top of bank of Pacheco Creek). Although the project would not result in a direct impact to any riparian habitat the proposed project could indirectly impact sensitive riparian habitat and wetlands/waterways along the riparian corridor in the project vicinity through sedimentation and erosion during construction. As discussed in Section 4.9 Hydrology and Water Quality, impacts related to erosion and sedimentation would be less than significant pursuant to required adherence to applicable laws and regulations. This includes the NPDES program, which would require preparation of a Storm Water Pollution Prevention Plan (SWPPP) and implementation of BMPs. This also includes adherence to Chapter 19.17 of the San Benito County Code, which regulates grading, drainage and erosion, and contains requirements regarding discharge

and construction site stormwater runoff control regulations. Compliance with these existing requirements would result in less than significant impacts related to erosion and off-site sedimentation, and no additional buffers from sensitive and riparian communities or wetlands/waterways or mitigation measures are required. This is considered a less than significant impact. (1, 2, 3, 9, 10, 11, 12)

- d) **Less than Significant Impact with Mitigation Incorporated.** The project is located adjacent to Pacheco Creek, which may provide a movement corridor for fish and/or wildlife; however, the project would not impact Pacheco Creek or the associated riparian habitat. As discussed above, the project would have less than significant direct and indirect impacts to the creek, avoids the creek by design (i.e. fencing and a 50-foot setback from the top of bank of Pacheco Creek), and would not direct runoff into the creek. With the possible exception of nesting raptors (see a) above), the project would not substantially interfere with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors or impede the use of native wildlife nursery sites (see Response 4.2.3 a) above). With the implementation of **Mitigation Measure BIO 4.4.1**, this is considered a less-than-significant impact. (1, 2, 3, 9, 10, 11, 12)
- e) **Less than Significant Impact with Mitigation Incorporated.** A Tree Assessment/Arborist Report (see **Appendix C**) has been prepared by Frank Ono, certified arborist, and identified 22 trees to be removed from the site for development. The Tree Assessment reported most of the tree canopy and cover is located within the Pacheco creek area, primarily contained to the hillsides of the nearby Pacheco Creek and the area near the Creek. This area contains some scattered oaks, Coast live oak (*Quercus agrifolia*) and Valley oak (*Quercus lobata*), sycamores (*Platanus racemose*), and redwoods (*Sequoia sempervirens*). The proposed project area (the site of the previous operations headquarters) also has several native and non-native trees planted around the edge. Planted trees include Evergreen ash (*Fraxinus uhdei*), California pepper (*Schinus molle*), Redwood, Strawberry tree (*Arbutus unedo*), and Grapefruit (*Citrus paradise*). Of the 22 trees proposed for removal, two (2) are dead and five (5) are in poor condition as determined in the Tree Assessment/Arborist Report (see Tree Removal Chart in **Appendix C**). San Benito County Code exempts trees under article 25.29.216(I) that are determined by an arborist to be “reasonably unlikely that the tree can be fully restored to a condition of good health.” The remaining 15 trees that are to be removed and are considered to be in fair condition include four (4) oak trees, three (3) California pepper trees, three (3) ash trees, one (1) Aleppo pine tree, one (1) citrus tree, one (1) strawberry tree, one (1) sycamore tree, and one (1) eucalyptus tree. San Benito County’s Code 19.33.005 requires a discretionary tree removal permit to remove trees. Woodland trees are also considered protected as defined by the County of San Benito, Chapter 19.33.001 Code of Ordinance. unless exempt. The Tree Assessment identified a total of 517 sq. ft. of total canopy coverage on the project site. The largest amount of contiguous canopy coverage lines the river bed and outlying areas. Trees proposed for removal are located mainly outside the areas adjacent to Pacheco Creek and are scattered in small clusters on the property independent of the contiguous canopy lining the riverbed. The remaining vast majority of the property does not contain tree cover and will be utilized for agricultural uses. The project proposes removal of 22 trees outside of the contiguous canopy, these trees comprise less than 10% of the total canopy coverage. Determination for requirements of a tree removal permit are to be made by the County. Impacts due to tree removal would be minimized by adhering to relevant San Benito County Codes and the recommendations found in the Tree Assessment/Arborist Report. This is considered a potentially significant impact that can be reduced to a less than significant level with the implementation of **Mitigation Measures BIO 4.4-2, BIO 4.4-3, and BIO 4.4-4** described below. (1, 2, 3, 9, 10, 11, 12)

Mitigation

BIO 4.4-2 A note shall be placed on Final Grading and Landscaping Plans that the Project shall adhere to the following requirements: Prior to site work involving any tree removal 22 trees to be removed from the project site (as shown with the project's design) a tree removal contractor shall verify absence of active animal or bird nesting sites at the project site. If any active animal or bird nesting sites are found prior to tree removal, work shall be stopped until a qualified biologist is contracted to ensure that no nests of species protected by the Migratory Bird Treaty Act or the California Fish and Game Code will be disturbed during construction activities.

BIO 4.4-3 A note shall be placed on Final Grading and Landscaping Plans that the Project shall adhere to the following requirements. The project applicant and construction manager shall be responsible for implementing the best management practices presented below prior to tree removal or site grading.

A) Do not deposit any fill around trees, which may compact soils and alter water and air relationships. Avoid depositing fill, parking equipment, or staging construction materials near existing trees. Covering and compacting soil around trees can alter water and air relationships with the roots. Fill placed within the drip-line may encourage the development of oak root fungus (*Armillaria mellea*). As necessary, trees may be protected by boards, fencing or other materials to delineate protection zones.

B) Pruning shall be conducted so as not to unnecessarily injure the tree. General principals of pruning include placing cuts immediately beyond the branch collar, making clean cuts by scoring the underside of the branch first, and for live oak, avoiding the period from February through May.

C) Native live oaks are not adapted to summer watering and may develop crown or root rot as a result. Do not regularly irrigate within the drip line of oaks. Native, locally adapted, drought resistant species are the most compatible with this goal.

D) Root cutting should occur outside of the springtime. Late June and July would likely be the best. Pruning of the live crown should not occur February through May.

E) Oak material greater than 3 inches in diameter remaining onsite more than one month that is not cut and split into firewood should be covered with clear plastic that is dug in securely around the pile. This will discourage infestation and dispersion of bark beetles.

F) If trees along near the development are visibly declining in vigor, a Professional Forester or Certified Arborist should be contacted to inspect the site to recommend a course of action.

BIO 4.4-4 A note shall be placed on Final Grading and Landscaping Plans that the Project shall adhere to the following requirements. Prior to the commencement of any construction activities on the project site, the following tree protection measures shall be implemented and approved by a qualified arborist or forester retained by the project applicant:

- Trees located adjacent to the construction area shall be protected from damage by construction equipment by the use of temporary fencing and when necessary through wrapping of trunks with protective materials.
- Fencing shall consist of chain link, snowdrift, plastic mesh, hay bales, or field fence. Existing fencing can also be used.
- Fencing is not to be attached to the tree but free standing or self-supporting so as not to damage trees. Fencing shall be rigidly supported and shall stand a minimum of height of four feet above grade and should be placed to the farthest extent possible from the trees base to protect the area within the trees drip line (typically 10-12 feet away from the base of a tree).
- In cases where access or space is limited for tree protection it is permissible to protect the tree within the 10-12 feet distance after determination and approval by a qualified forester or arborist.
- Soil compaction, parking of vehicles or heavy equipment, stockpiling of construction materials, and/or dumping of materials should not be allowed adjacent to trees on the property especially within fenced areas.
- Fenced areas and the trunk protection materials should remain in place during the entire construction period.

During grading and excavation activities:

- All trenching, grading or any other digging or soil removal that is expected to encounter tree roots should be monitored by a qualified arborist or forester to ensure against drilling or cutting into or through major roots.
- The project architect and qualified arborist should be onsite during excavation activities to direct any minor field adjustments that may be needed.
- Trenching for retaining walls or footings located adjacent to any tree should be done by hand where practical and any roots greater than 3-inches diameter should be bridged or pruned appropriately.
- Any roots that must be cut should be cut by manually digging a trench and cutting exposed roots with a saw, vibrating knife, rock saw, narrow trencher with sharp blades, or other approved root pruning equipment.
- Any roots damaged during grading or excavation should be exposed to sound tissue and cut cleanly with a saw.

If at any time potentially significant roots are discovered:

- The arborist/forester will be authorized to halt excavation until appropriate mitigation measures are formulated and implemented.

- If significant roots are identified that must be removed that will destabilize or negatively affects the target trees negatively, the property owner will be notified immediately and a determination for removal will be assessed and made as required by law for treatment of the area that will not risk death decline or instability of the tree consistent with the implementation of appropriate construction design approaches to minimize affects, such as hand digging, bridging or tunneling under roots, etc.
- f) **No Impact.** The project site is not located within the plan area for any habitat conservation plans, natural community conservation plans, or other approved local, regional, or state habitat conservation plans. (1, 2, 3, 9)

4.5 CULTURAL RESOURCES

4.5.1 Environmental Setting

A Cultural Resources Report was prepared by Holman & Associates (June 2018)⁴. This study included the following tasks:

- A search of relevant records and maps maintained by the Northwest Information Center (NWIC) of the California Historical Resources Information System (CHRIS) at Sonoma State University;
- A pedestrian reconnaissance of the project area;
- Subsurface presence/absence testing at specific locations within the project area;
- A sacred lands search and consultation with Native American contacts with local knowledge through the Native American Heritage Commission (NAHC) under AB 52 Amendment to CEQA (see **Section 4.13 Tribal Cultural Resources** for more information); and,
- Complete Cultural Resources Report and recommendations regarding the project's potential impact to significant cultural resources.

The records search showed that portions of the project area have been previously surveyed for cultural resources and that one recorded resource (CA-SBN-49/H) has been recorded in the north portion of the project area. The reconnaissance found no evidence of CA-SBN-49/H or any other potentially significant resources. Similarly, the subsurface testing found no evidence of CA-SBN-49/H or other potentially significant resources.

According to the NAHC the Sacred Land File search was positive for Native American tribal resources with the Amah Mutsun Tribal Band listed as contact for the resource. Native American consultation resulted in direct communication with four of the five tribal contacts provided by the NAHC. The local knowledge obtained through the consultation process suggests the area should be considered very sensitive for Native American sites and burials.

⁴ For a copy of the Cultural Resources Report please contact the Lead Agency, the Cultural Resources Report is not attached to the document for privacy.

4.5.2 Environmental Impacts

Environmental Impacts	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
CULTURAL RESOURCES. Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in 15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to 15064.5?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4.5.3 Explanation

- a) **No Impact.** CEQA Guidelines §15064.5 describes a historical resources as: 1) any resource that is listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources; 2) a resource included in a local register of historical resources; and, 3) any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant based on substantial evidence in light of the whole record. A substantial change includes the physical demolition, destruction, relocation, or alteration of a resource or its immediate surroundings such that the significance would be materially impaired (CEQA Guidelines §15064.5(b)).

The project site does not contain any historic resources listed in the California Inventory of Historical Resources, California Historical Landmarks, or the National Register of Historic Places. The proposed project would not cause a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines §15064.5. Implementation of the project would not have an impact on a historical resource as defined in accordance with the requirements of CEQA. There would be no impact in connection with the proposed project. (1, 2, 3, 13)

- b) **Less-Than-Significant Impact with Mitigation Incorporated.** Public Resources Code §21083.2 requires that lead agencies evaluate potential impacts to archaeological resources. Specifically, lead agencies must determine whether a project may have a significant effect or cause a substantial adverse change in the significance of an archaeological resource. The Cultural Resources Report (Holman & Associates, 2018) determined that the project site does not contain evidence of an archaeological resource. Accordingly, the project would not significantly impact a known archaeological resource. While no archaeological resources have been documented on-site, previously unknown or buried archaeological resources could, nevertheless, be present. The project could impact potentially unknown or buried resources during construction. In order to minimize potential impacts, mitigation is necessary. The implementation of the following mitigation measure would ensure that potential

impacts related to a substantial adverse change in the significance of unknown archaeological resources would be less than significant. (1, 2, 3, 13)

Mitigation

A note shall be placed on Final Grading and Landscaping Plans that the Project shall adhere to the following requirements contained in Mitigations CUL 4.5-1 through CUL 4.5-4:

CUL 4.5-1 The project applicant shall retain a qualified archaeologist (project archaeologist) to be present on the project site from the start of ground disturbing work for the planned construction. If potentially significant archaeological resources are discovered, the project archaeologist is authorized to halt excavation until any finds are properly evaluated. If a find is determined to be significant, work may remain halted near the find to permit development and implementation of the appropriate mitigations (including selective data recovery) with the concurrence of the CEQA Lead Agency (San Benito County). At the discretion of the qualified archaeologist, monitoring could be discontinued if there is enough information collected from direct observation of the subsurface conditions to conclude that cultural resources do not exist.

CUL 4.5-2 Prior to construction, the project applicant's project archeologist should conduct a sensitivity training for cultural resources for all onsite personnel involved in ground disturbing activities.

CUL 4.5-3 If archaeological resources or human remains are accidentally discovered on the project site during construction, work shall be halted by the construction manager within 50 meters (150 feet) of the find until it can be evaluated by a qualified professional archaeologist. If the find is determined to be significant, appropriate mitigation measures shall be formulated and implemented. Materials of particular concern would be concentrations of marine shell, burned animal bones, charcoal, and flaked or ground stone fragments. (Ref: Health and Safety Code 7050.5)

- c) **No Impact.** There are no known paleontological resources or unique geologic features on the project site. The project site is not listed within an area identified as containing paleontological resources nor is it located in close proximity to any known paleontological resources. The project would not impact any paleontological resources, since none are known in the project area. (1, 2, 3, 13)
- d) **Less than Significant Impact with Mitigation Incorporated.** No known human remains, including those interred outside of formal cemeteries, are known to occur within the project site. In addition, local Native American Groups were consulted during the course of the preparation of the Cultural Resources Report. The project site is not a Sacred Lands site and the presence of known Native American remains was not identified during the course of consultation. While the likelihood of human remains, including those interred outside of a formal cemetery, with the project site is low, it is possible that previously unknown human remains may be present. Previously unknown human remains could be impacted during construction. In order to minimize potential impacts to less than significant, mitigation is necessary. The implementation of the following mitigation measure identified below would ensure that potential adverse impacts related to disturbing human remains would be reduced to a less than significant level. (1, 2, 3, 13)

Mitigation

CUL 4.5-4 If human remains are found at any time on the project site, work must be stopped by the construction manager, and the County Coroner must be notified immediately. If the Coroner determines that the remains are Native American, the Native American Heritage Commission will be notified as required by law. The Commission will designate a Most Likely Descendant who will be authorized to provide recommendations for management of the Native American human remains. (Ref: California Public Resources Code Section 5097.98; and Health and Safety Code Section 7050.5).

Specific County of San Benito provisions and further measures shall be required as follows if human remains are found:

If, at any time in the preparation for or process of excavation or otherwise disturbing the ground, discovery occurs of any human remains of any age, or any significant artifact or other evidence of an archeological site, the applicant or builder shall:

- a. Cease and desist from further excavation and disturbances within two hundred feet of the discovery or in any nearby area reasonably suspected to overlie adjacent remains.
- b. Arrange for staking completely around the area of discovery by visible stakes no more than ten feet apart, forming a circle having a radius of not less than one hundred feet from the point of discovery; provided, however, that such staking need not take place on adjoining property unless the owner of the adjoining property authorizes such staking. Said staking shall not include flags or other devices which may attract vandals.
- c. Notify Resource Management Agency Director shall also be notified within 24 hours if human and/or questionable remains have been discovered. The Sheriff-Coroner shall be notified immediately of the discovery as noted above.
- d. Subject to the legal process, grant all duly authorized representatives of the Coroner and the Resource Management Agency Director permission to enter onto the property and to take all actions consistent with Chapter 19.05 of the San Benito County Code and consistent with §7050.5 of the Health and Human Safety Code and Chapter 10 (commencing with §27460) of Part 3 of Division 2 of Title 3 of the Government Code. [Planning]

4.6 GEOLOGY AND SOILS

4.6.1 Environmental Setting

A Geotechnical Report was prepared for the proposed project by Grice Engineering, Inc. (June 2018) (**Appendix D**). The purpose of this report is to evaluate the geotechnical properties of the site relative to the construction of buildings, greenhouses, water storage tanks and storm water retention facilities. From these findings, recommendations are given for the design of the development and subsequent construction. As a part of the Geotechnical Report, the site was investigated, and prior information concerning construction and subsurface exploration in this area was examined for soils and materials data. The investigation consisted of a detailed site evaluation, which included: a site inspection; a review of literature, including Site Plans from

Whitson Engineers; geotechnical drilling and soil sampling; infiltration testing, materials evaluation; and analysis of the geotechnical properties of the site soils.

Site Soil Profile

As observed in the exploratory work, much of the near surface soils are disturbed from previous land use. The surface materials are typically gravel of 0.5 to 2.0-inch diameter imported presumably to improve egress of roadways and paths within and between greenhouses.

The native topsoil is dark brown silty clay or clayey silt and naturally contains few amounts of very fine to fine sands and trace amounts of clasts to fine gravel. Due to disturbance the imported gravels are usually blended with the upper six inches of topsoil. These materials were observed dry to damp and soft.

Beginning at approximately two ft. below grade is a similar soil of medium yellowish-brown color and comprised mostly of silt with variable amounts of clay and some amounts of fine sands occasionally of lenticular deposition and become a dominant constituent in the lower portion of the horizon. These soils were observed to have fine vesicular voids and were moist and medium stiff.

At approximately 10 ft. below grade the soils become stiff clays containing variable amounts of silts and little amounts of fine sands with occasional clasts to one inch. The fourth bore encountered large clasts beginning at approximately 15 ft. below grade and increasing in size with depth. The clays continue to maximum depth of exploration approximately 29 ft. below grade.

Complete soil characteristics and comments are reported on the boring logs at the depths observed. The logs are located in Appendix B of the Geotechnical Report.

Groundwater

Free groundwater was encountered at 26.5 ft. below grade.

Faults

According to the Geotechnical report, although no fault traces are thought to directly cross the building site, San Benito County is traversed by a number of both "active" and "potentially active" faults most of which are relatively minor hazards for the purposes of the site development. The most active is the San Andreas Rift System (Pajaro), located approximately 10.9 miles to the southwest. It has the greatest potential for seismic activity with estimated intensities of VI-VII Mercalli in this location. Other fault zones are the Quien Sabe Fault Zone, the center of which is located approximately 1.4 miles to the southeast, the Calaveras (south) Fault Zone, approximately 3.9 miles to the southwest, and the Sargent Fault Zone, approximately 6.5 miles to the southwest. These zones are not as liable to rupture as the San Andreas Rift System and a seismic event at any of the above fault zones would likely produce earth movements of a lesser intensity at the site. In addition to the fault zones as discussed above, local faults include the Quien Sabe Fault located 0.62 miles southeast of the project site and the Calaveras (south) Fault located 3.41 miles southwest of the project site.

Liquefaction

The site soils are considered not susceptible to liquefaction as they are either unsaturated or cohesive clays.

Settlement Potential

The recommendations given in the Geotechnical Report are such that concerns of settlement are negligible. The total settlement is expected to be less than ¼ inch and the expected differential settlement less than one half that.

Hydro-Collapse and Subsidence

As observed, the near surface soils to an approximate depth of three ft. are soft or loose. These soils possess some capacity to settle under hydraulic loading. The recommendations given in this report were established to reduce the potential of this occurring.

The area is not within a known Subsidence Zone.

Slope Stability

Inspection of the site indicates that no landslides are located above or below the building area and the area is generally not susceptible to slope failure due to the shallow grade. The descending slope to the Pacheco Creek was evaluated and other than erosion from discharge of concentrated drainage it is considered generally stable.

Seismic Strength Loss

The site soils are considered resistant to seismic strength loss and the resulting momentary liquefaction. The relatively short duration of earthquake loading will not provide a significant number of high amplitude stress cycles to alter the strain characteristics. Additionally, the clay-silt fraction is not considered quick nor sensitive, as such it will not have the associated loss of strength.

Expansive Soils

In general, the site soils are or contain silty clays to clayey silts are known to be of low plasticity. These soils are typical to the area. Expansivity has not been influential to the site characteristics and no deformations attributable to expansive soils were observed. Additionally, there are no known problems with expansive soils in the area.

Surface Rupture and Lateral Spreading

The project site is located 0.62 miles to the southeast of the Quien Sabe Fault. The site inspection did not reveal any surface features indicating a fault rupture has occurred at the site. The existing structure, driveways and roads do not reveal any strains which would be attributable to subsurface lateral or vertical displacements resulting from fault slip. Surface rupture from fault activity across the site is considered improbable.

The project site is underlain by relatively strong soils. These materials are considered resistant to lateral spreading. As such surface rupture from lateral spreading is considered improbable.

Seismicity

It is required that all structures be designed and built in accordance with the California Building Code's current edition. All buildings should be founded on undisturbed native soils and/or tested and accepted engineering fill to prevent resonance amplification between soils and the structure.

4.6.2 Environmental Impacts

Environmental Impacts	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
GEOLOGY AND SOILS. Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4.6.3 Explanation

- a.i) **Less than Significant Impact.** Surface rupture occurs along lines of previous faulting. According to the California Geologic Survey (CGS), the site is not located within an Alquist-Priolo Earthquake Fault Zone. According to the Geotechnical Report, no fault traces are thought to directly cross the project site, although the site is in an active or potentially active fault zone of which are relatively minor hazards for the purpose of site development. As described above the nearest active fault to the project site is located 0.62 miles to the southeast of the Quien Sabe Fault. The site inspection did not reveal any

surface features indicating a fault rupture has occurred at the site. As such, surface rupture from fault activity across the site is considered improbable and considered less than significant. (1, 2, 3, 4, 14)

- a.ii) **Less than Significant Impact with Mitigation Incorporated.** Due to its location in a seismically active region, the proposed project may be subject to strong seismic ground shaking during its design life in the event of a major earthquake on any of the region's active faults. Seismic impacts would be minimized by using standard engineering and construction techniques in compliance with the requirements of the California Building Code, relevant San Benito County ordinances and policies contained in the General Plan, and recommendations found in the Geotechnical Report. This is considered a potentially significant impact that can be reduced to a less than significant level with the implementation of **Mitigation Measure 4.6-1** described below. (1, 2, 3, 4, 14)

Mitigation

GEO 4.6-1 A note shall be placed on Final Grading and Building Plans that the project applicant shall be required to implement all of the recommendations from the Geotechnical Report prepared for the project and incorporate the recommendations into final plans and specifications, as required by the County, prior to the start of project construction (Geotechnical Report prepared by Grice Engineering, Inc. (June 2018) included as Appendix D to the IS/MND).

- a.iii) **Less than Significant Impact.** As described above, the proposed project may be subject to strong ground shaking in the event of a major earthquake. The Geotechnical Report determined that site soils are considered not susceptible to liquefaction as they are either unsaturated or cohesive clays. This is considered a less than significant impact. (1, 2, 3, 4, 14)
- a.iv) **Less than Significant Impact.** Inspection of the site indicates that no landslides are located above or below the building area and the area is generally not susceptible to slope failure due to the shallow grade. This is considered a less than significant impact. (1, 2, 3, 4, 14)
- b) **Less than Significant Impact with Mitigation Incorporated.** Preparation and construction activities associated with the proposed project would disturb soil and increase its susceptibility to erosion. Construction contractors would be required to conform to all legal requirements for avoiding erosion and sedimentation to protect water quality. This includes preparation of a SWPPP and use of BMPs. Please refer also to the discussion in **Section 4.9, Hydrology and Water Quality** of this document. (1, 2, 3, 4, 14, 23)

In addition, as stated in the Geotechnical Report, general surface drainage should be retained at low velocity by slope, sod or other energy reducing features sufficient to prevent erosion, with concentrated over-slope drainage carried in lined channels, flumes, pipe or other erosion preventing installations. **Mitigation Measure 4.6-1** above requires implementation of the recommendations in the Geotechnical Report, which would reduce any potential impacts from erosion to a less than significant level.

- c) **Less than Significant Impact.** As described above, the Geotechnical Report states that the project site is considered generally stable. This is considered a less than significant impact. (1, 2, 3, 4, 14)
- d) **Less than Significant Impact.** According to the Geotechnical Report, in general, the site soils are/or contain silty clays to clayey silts which were noted to be of low plasticity. These soils are typical to the area. Expansivity has not been influential to the site characteristics and no deformations attributable

to expansive soils were observed. Additionally, there are no known problems with expansive soils in the area. This is considered a less than significant impact. (1, 2, 3, 4, 14)

- e) **Less than Significant Impact with Mitigation Incorporated.** The proposed project includes an on-site wastewater treatment system with the effluent dispersed into the subsoils. During the geotechnical analysis two sets of infiltration-percolation tests were completed, the first consisting of four vertical bores, completed over a duration of greater than four (4) hours for the design of septic leach fields. These bores are located to the north of the proposed building. **Mitigation Measure 4.6-1** above requires implementation of the recommendations in the Geotechnical Report, which would reduce any potential impacts from soils incapable of adequately supporting the use of septic tanks/alternative wastewater disposal systems to a less than significant level. (1, 2, 3, 4, 14)

4.7 GREENHOUSE GAS EMISSIONS

4.7.1 Environmental Setting

Various gases in the earth's atmosphere, when exceeding naturally occurring or 'background' levels due to human activity, create a warming or greenhouse effect, and are classified as atmospheric greenhouse gases (GHGs). These gases play a critical role in determining the earth's surface temperature. Solar radiation enters the atmosphere from space and a portion of the radiation is absorbed by the earth's surface. The earth emits this radiation back toward space, but the properties of the radiation change from high-frequency solar radiation to lower-frequency infrared radiation. Greenhouse gases, which are transparent to solar radiation, are effective in absorbing infrared radiation. As a result, the radiation that otherwise would have escaped back into space is retained, resulting in a warming of the atmosphere known as the greenhouse effect. Among the prominent GHGs contributing to the greenhouse effect, or climate change, are carbon dioxide (CO₂), methane (CH₄), O₃, water vapor, nitrous oxide (N₂O), and chlorofluorocarbons (CFCs). Human-caused emissions of these GHGs in excess of natural ambient concentrations are responsible for the greenhouse effect. In California, the transportation sector is the largest emitter of GHGs.

4.7.2 Environmental Impacts

Environmental Impacts	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
GREENHOUSE GAS EMISSIONS. Would the project:				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

4.7.3 Explanation

- a) **Less than Significant Impact.** As previously stated, the project is located in the NCCAB, where air quality is regulated by MBARD. Neither the State, MBARD, nor San Benito County have adopted GHG emissions thresholds or a GHG emissions reduction plan that would apply to the project. However, it is important to note that other air districts within the State of California have recently adopted recommended CEQA significance thresholds for GHG emissions. For instance, on March 28, 2012 the San Luis Obispo Air Pollution Control District (SLOAPCD) Board approved thresholds of significance for the evaluation of project-related increases of GHG emissions. The SLOAPCD's significance thresholds include both qualitative and quantitative threshold options, which include a bright-line threshold of 1,150 MTCO_{2e}/year. On October 23, 2014, the Sacramento Metropolitan Air Quality Management District (SMAQMD) adopted a similar significance threshold of 1,100 MTCO_{2e}/year. The GHG significance thresholds are based on AB 32 GHG emission reduction goals, which take into consideration the emission reduction strategies outlined in the ARB's Scoping Plan. Development projects located within these jurisdictions that would exceed these thresholds would be considered to have a potentially significant impact on the environment which could conflict with applicable GHG-reduction plans, policies and regulations. Projects with GHG emissions that do not exceed the applicable threshold would be considered to have a less than significant impact on the environment and would not be anticipated to conflict with AB 32 GHG emission reduction goals. Given that the MBARD has not yet adopted recommended GHG significance thresholds, the above thresholds were relied upon for evaluation of the proposed project. For purposes of this analysis, project-generated emissions in excess of 1,100 MTCO_{2e}/year would be considered to have a potentially significant impact.

GHG emission from the project were estimated as part of the air quality analysis and are summarized below in **Table 4.7-1 GHG Emissions from Project.**

Table 4.7-1 GHG Emissions From Project	
Operational Emission	
Annualized Emissions	MT/CO_{2e}/yr
Mitigated Emissions	1,014 MT/CO _{2e} /yr
Threshold	1,100 MT/CO _{2e} /yr
Exceed Threshold	No
Construction Emissions	
Tons per Ten Month Period	Metric Tons CO_{2e}
Mitigated	11.946375
Source: T&A Transplant Nursery CalEEMod Annual Emissions	

The project is anticipated to generate temporary construction-related GHG emissions, with most of the emissions generated by construction equipment, materials hauling, and daily construction worker trips. The long-term operation of the project, however, would be consistent with current zoning and surrounding uses. As such, the project is not anticipated to generate substantial new or altered sources of GHGs emissions. Any impacts from GHG generation during construction would be short-term and temporary. As shown in **Table 4.7-1** above construction and operation of the proposed project would not exceed established thresholds for GHG emissions. As a result, the project is not anticipated to generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment. (1, 2, 3, 6, 7, 8)

- b) **Less than Significant Impact.** As previously stated, the project is located in the NCCAB, where air quality is regulated by MBARD. Neither the State, MBARD, nor San Benito County have adopted GHG emissions thresholds or a GHG emissions reduction plan that would apply to the project. But as shown above, the project would not exceed acceptable thresholds. Also, consistent with the General Plan Goals and Policies, the project would include energy and water-efficient appliances, fixtures, lighting, and windows that meet applicable State energy performance standards. The proposed project would not conflict with any applicable plans, policies, or regulations adopted for the purpose of reducing the emissions of greenhouse gases as described above. This represents a less than significant impact. (1, 2, 3, 6, 7, 8)

4.8 HAZARDS AND HAZARDOUS MATERIALS

4.8.1 Environmental Setting

Hazardous materials, as defined by the California Code of Regulations, are substances with certain physical properties that could pose a substantial present or future hazard to human health or the environment when improperly handled, disposed, or otherwise managed. A hazardous waste is any hazardous material that is discarded, abandoned, or slated to be recycled. Hazardous materials and waste can result in public health hazards if improperly handled, released into the soil or groundwater, or through airborne releases in vapors, fumes, or dust. Soil and groundwater having concentrations of hazardous constituents higher than specific regulatory levels must be handled and disposed of as hazardous waste when excavated or pumped from an aquifer.

Potential hazards impacts associated with the project were analyzed in an Environmental Site Investigation report conducted by Lee & Pierce, Inc. in April 2015, included as **Appendix E**. Information reviewed and included for the Environmental Site Investigation include: the 2006 Phase I Environmental Assessment Report (Phase I ESA), San Benito County Assessor Parcel Quest maps and information, site aerial maps, photo sheets showing site conditions, and lab analysis of soil sample results for asbestos. According to the Phase I ESA, no hazardous materials contamination has been documented within the project site during the previous investigations conducted in 2006 and 2015. An updated ASTM E1527-13 Phase I Environmental testing is required per County of San Benito (Email communication, County RMA, September 2018).

The State of California uses databases such as EnviroStor GeoTracker, and Cortese to map the location of hazardous waste sites including sites that have been remediated, sites currently undergoing remediation, and sites that require cleanup. Based on a search of the above databases, no hazardous materials contamination has been documented within the project site. A search of the EnviroStor and GeoTracker databases did not find any listings for the project site. The GeoTracker database found multiple listings directly adjacent to the project site that were either enrolled or terminated from the Irrigated Lands Regulatory Program.

To address airport safety hazards, San Benito County created an Airport Land Use Commission to provide orderly growth of San Benito's two public airports. The Commission ensures compatible land uses around the Hollister Municipal Airport and the Frazier Lake Airpark through the implementation of their respective Land Use Compatibility and Comprehensive Land Use Plans. The nearest airport to the project site is the Hollister Municipal Airport, located about 3.75 miles north of the project site. The project site is not located in an airport influence zone of any airport.

The California Department of Forestry and Fire Protection (CalFire) prepares maps of Very High Fire Hazard Severity Zones (VHFHS), which are used to develop recommendations for local land use agencies and for

general planning purposes. CalFire categorizes parcels into VHFHS and Non-VHFHS zones. The project site is not located in any fire hazard severity zones as delineated by CalFire.

4.8.2 Environmental Impacts

Environmental Impacts	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
HAZARDS AND HAZARDOUS MATERIALS. Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

4.8.3 Explanation

- a) **Less than Significant Impact.** Construction and operation of the project would not create a significant impact due to routine transport, use, or disposal of hazardous materials. Construction activities would, however, require the temporary use of hazardous substances, such as fuel for construction equipment, oil, solvents, or paints. Removal and disposal of hazardous materials from the project site would be conducted by an appropriately licensed contractor. Any handling, transporting, use, or disposal would comply with applicable laws, regulations, policies, and programs set forth by various federal, state, and local agencies. Required compliance with applicable hazardous material laws and regulations would ensure that construction-related hazardous material use would not result in significant impacts. These impacts would be temporary in nature and would be considered a less than significant impact.

The results of the Phase I ESA did not find evidence of hazardous materials contamination within the project site based on ASTM Standard E1527-00, however, this does not meet the current requirements of ASTM Standard E1527-13. Per County requirements, an updated ASTM E1527-13 Phase I Environmental testing/report will be required prior to any site grading and the project shall be required to adhere to and demonstrate compliance with the current requirements of ASTM Standard E1527-13 as a condition of approval for the project prior to the initiation of earthwork on this project site. In addition, because of the nature of the project, hazardous materials used on-site may vary, but would likely be limited to fertilizers, herbicides, pesticides, solvents, cleaning agents, and similar materials used for daily growing operations and maintenance activities. These types of materials are common for agricultural facilities such as the proposed project and represent a low risk to people and the environment when used as intended. Therefore, long-term operational impacts associated with hazardous materials would be less than significant with incorporation of standard county regulations and conditions of approval. (1, 2, 3, 15)

- b) **Less than Significant Impact.** Construction and operation of the project could result in the accidental release of a hazardous material resulting in a potential hazard to the public. Construction activities would require the use of hazardous materials (e.g., fuel for construction equipment, oil, solvents, or paints). Hazardous materials impacts could also occur during operation due to growing operations or maintenance activities. Hazardous materials used during construction and operation would be stored properly within the staging area, in accordance with BMPs and applicable regulations, and the staging area would be secured from public access and identified per County requirements. Runoff controls would be implemented to prevent water quality impacts, and a spill plan would be developed to address any accidental spills. Any waste products resulting from construction and operations would be stored, handled, and recycled or disposed of in accordance with federal, state, and local laws. This is considered a less than significant impact. (1, 2, 3)
- c) **No Impact.** There are no schools within one-quarter mile radius of the project boundaries. As a result, the project would not result in the generation of a hazardous emission within a one-quarter mile radius of a school. There would be no impact in connection with the proposed project. (1, 2, 3, 4)
- d) **No Impact.** The project is not located on a site that is included on a list of hazardous materials sites compiled pursuant to Government Code §65962.5. There would be no impact in connection with the proposed project. (15, 16)

- e-f) **No Impact.** There are two airports within the project vicinity, Hollister Municipal Airport and Frazier Lake Airpark. In addition, closest private airstrip is the Christensen Ranch Airport. The project site is not located within two (2) miles of any of these airports or private airstrips and would not create a safety hazard for people residing in the project area. There would be no impact in connection with the proposed project. (1, 2, 3)
- g) **No Impact.** San Benito County has prepared a Multi-Jurisdiction Local Hazard Mitigation Plan (LHMP) with the cities of Hollister and San Juan Bautista, and with two water agencies. The LHMP designates certain roadways in the County for primary evacuation routes. Panoche Road is the primary evacuation roadway for the County. The project site, located on Orchard Road, would not impair implementation of or physically interfere with designated evacuation routes or otherwise conflict with an adopted emergency response plan or emergency evacuation plan. The project would not interfere with any emergency response or evacuation plans. There would be no impact in connection with the proposed project. (1, 2, 3, 4, 17, 18)
- h) **Less than Significant Impact.** The CalFire prepares maps of VHFHS, which are used to develop recommendations for local land use agencies and for general planning purposes. The project site is not located in any fire hazard severity zones as delineated by CalFire. While the project is located in a semi-rural area, it is not adjacent to wildlands. While wildfire could occur on-site or on adjacent properties, the proposed project would comply with the applicable fire safety provisions of the California Building Code as well as standard conditions of approval, thereby reducing the risk of damage from fire to the maximum extent practicable. This is a less than significant impact. (1, 2, 3, 17, 18)

4.9 HYDROLOGY AND WATER QUALITY

4.9.1 Environmental Setting

Site Conditions

San Benito County has a moderate California coastal climate with a hot and dry summer season lasting May through October. Average annual rainfall ranges from seven inches in the drier eastern portion of the County, to 27 inches per year in high elevations to the south. Most of the annual rainfall occurs in the fall, winter, and to a lesser extent, spring, generally between November and April (San Benito County, 2015). Five creeks (Pacheco Creek, Arroyo de las Viboras, Arroyo Dos Picachos, Santa Anna Creek, Tres Pinos Creek) are located in San Benito County. Pacheco Creek borders the project site on the west. There are no water bodies on the project site.

The San Benito County Water District (SBCWD) is responsible for water management throughout the county, including monitoring of basin water levels and water quality, management of salts and nutrients in the water, recharge into the basins, and annual reporting on the status of groundwater. Groundwater is the major source of water supply in the County. Groundwater is generally available throughout the County. The project is located in the Hollister Groundwater Basin which is one of nine sub-basins of the Gilroy-Hollister Valley Groundwater basin. The Gilroy-Hollister Valley Groundwater Basin lies between the Diablo Range on the east and the Gabilan Range and the Santa Cruz Mountains to the west. The northern portion is drained toward Monterey Bay by the Pajaro River and its tributaries. The southern portion is drained by the San Benito River and its tributaries (Phase I ESA). Groundwater quality in this basin is characterized as highly mineralized in some areas, and of marginal quality for drinking and agricultural purposes. The mineralized water quality is typical of other relatively small Coast range groundwater basins but has also been impacted by decades of human-related activities, both agricultural and urban (San Benito County, 2015).

The Hollister Area subbasin lies within the northeast portion of the Gilroy-Hollister Valley Groundwater Basin and is bounded on the north and east by the Diablo Range. The Calaveras fault is the western boundary and abuts the Bolsa Area subbasin. These subbasin boundaries are primarily derived from geologic and hydrologic conditions. Groundwater occurs in the alluvium of Holocene age, an older alluvium. Santa Ana and Pacheco Creeks are the primary streams entering the subbasin from the Diablo Range. Tequisquita Slough drains the subbasin to the northwest into the Bolsa Area subbasin. Precipitation over most of the subbasin averages approximately 13 inches and increases to about 17 inches in the north (Phase I ESA). Most recharge to the subbasin is derived from rainfall and streamflow from creeks entering the basin. Pacheco Pass Water District operates North Fork Dam on Pacheco Creek for the primary purpose of supplying groundwater recharge to the northeast portion of the subbasin. Based on the most recent Annual Groundwater Report (December 2017) the recovery of the Gilroy-Hollister basin over the past three years is clearly shown through the water balance. Most notably, from 2015 to 2017, inflows almost doubled and outflows decreased substantially, reflecting increased precipitation and Central Valley Project (CVP) availability. More specifically, the estimated water balance for year 2017 show an increase in water level at the Hollister subbasin (Todd Groundwater 2017). In addition, the Hollister basin has been designated by the Department of Water Resources (DWR) as medium priority, recognizing that they are important sources of water supply, have been well-managed, and are not critically over-drafted.

SBCWD is continuing with long term water resource management planning, including compliance with the Sustainable Groundwater Management Act (SGMA) of 2014, which established a framework for sustainable, local groundwater management. In May 2017, the SBCWD became the Groundwater Sustainability Agency (GSA) for the San Juan Bautista, Hollister, and Bolsa subbasins within San Benito County (and is cooperating with Santa Clara Valley Water District, which is the GSA for small portions of the Hollister and San Juan Bautista basins within Santa Clara County). SBCWD will initiate preparation of a Groundwater Sustainability Plan (GSP) for these subbasins in 2018. SBCWD will also apply to the DWR for consolidation of these subbasins into a single groundwater basin; if approved, this will streamline the GSP process. GSP preparation must be completed by January 2022.

There are three sources of water that supply municipal, rural, and agricultural land uses in San Benito County. These include water purchased and imported from the CVP by the SBCWD, local surface water stored in and released from SBCWD-owned and operated Hernandez and Paicines reservoirs, and local groundwater pumped from wells. For the last decade of available data (2000-2010) total water use, including CVP water, surface water and groundwater, has ranged from between 35,000 and 47,000 acre-ft. per year in the CVP delivery area (termed Zone 6).

The existing parcel is currently vacant but has been used for agricultural purposes as well as for a wholesale greenhouse nursery by the previous ownership. The terrain is generally flat with a shallow slope of about 0.5 percent to the southwest. Two wells have been providing irrigation and domestic water to the property. The wells are located on the western portion of the property near Pacheco Creek. Previous operations on the site and drainage manipulation allowed agricultural runoff to flow directly into Pacheco Creek. The proposed Stormwater Control Plan (Whitson, 2018) indicates that stormwater runoff will be directed and contained onsite and controlled to avoid any runoff to Pacheco Creek. The Stormwater Control Plan provides measures to reduce erosion and maintain sediment control and proposes new Stormwater Control Measures (SCMs) to mitigate impacts in conformance with regulatory requirements. Specifically, the proposed runoff treatment, detention, and peak management strategy will be accomplished by implementing a 1,500-foot long vegetated swale and two detention basins totaling 15.2 acre-ft.. Site design and runoff reduction measures are outlined for implementation as required by the San Benito County Code of Ordinance and the Regional Water Quality Control Board. These SCMs will be within the property in accordance with applicable requirements. The design of the stormwater detention facility will be reviewed by San Benito County to confirm the Plan is in accordance

with the San Benito County Code of Ordinances, Article III Storm Drain Design Standards; and the Regional Water Quality Control Board Performance requirements.

There are no natural water bodies located on the site. The nearest surface water in the vicinity of the property is Pacheco Creek, located immediately along the northwest boundary of the property. Per the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map Community-Panel Number 06069C0050C, dated September 27, 1991, the site is located in Flood Zone X. Areas within Zone X are considered low risk and are defined as corresponding to areas outside the 100-year floodplains, areas of 100-year sheet flow flooding where average depths are less than 1 foot, areas of 100-year stream flooding where the contributing drainage area is less than 1 square mile, or areas protected from the 100-year flood by levees. No Base Flood Elevations or depths are shown within this zone.

Tsunamis or "tidal waves" are seismic waves created when displacement of a large volume of seawater occurs as a result of movement on seafloor faults. The project site has an elevation of approximately 217 to 233 ft. above mean sea level (msl) and would not be affected by a tsunami.

The Federal Clean Water Act regulates discharges into U.S. waters through a NPDES permit, administered through the SWRCB and the RWQCB in California. The State and Central Coast RWQCB oversee a statewide General Permit regarding management of stormwater runoff from construction sites over one acre in size. Provisions of the Statewide Permit indicate that discharges of material other than stormwater into waters of the U.S. are prohibited; that stormwater discharges shall not cause or threaten to cause pollution, contamination, or nuisance; and that storm water discharges do not contain hazardous substances. The Statewide Permit also requires implementation of BMPs to achieve compliance with water quality standards. A BMP is defined as any program, technology, process, siting criteria, operating method, measure or device which controls, prevents, removes or reduces discharge of pollutants into bodies of water.

Any project that will disturb over one acre (including the proposed project and any future site-specific projects) is required to file a "Notice of Intent" with the RWQCB with submittal of a SWPPP prior to project construction. The SWPPP is the foundation of the required documentation for a NPDES General Storm Water Permit for construction activities. In addition to regulations administered by the RWQCB, the project will be required to adhere to stormwater control measure sizing calculations set by the San Benito County Code of Ordinances, Article III, Storm Drain Design Standards. The Storm Water Control Plan for the proposed project is included in **Appendix F**.

San Benito County Code, Chapter 19.17, Grading, Drainage and Erosion Control. Chapter 19.17 of the San Benito County Code regulates excavation, grading, drainage and erosion control measures and activities. The purpose of these regulations is to minimize erosion, protect fish and wildlife, and to otherwise protect public health, property, and the environment. A grading permit is required for all activities that would exceed 50 cubic yards of grading.

Grading activity is also prohibited within 50 ft. from the top of the bank of a stream, creek, or river, or within 50 ft. of a wetland or body of water in order to protect riparian areas. All proposed developments are required to submit an erosion control plan and drainage plan prior to issuance of a grading permit, per Chapter 19.17 of the San Benito County Code.

4.9.2 Environmental Impacts

Environmental Impacts	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
HYDROLOGY AND WATER QUALITY. Would the project:				
a) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j) Inundation by seiche, tsunami, or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

4.9.3 Explanation

- a) **Less than significant Impact.** Temporary soil disturbance would occur during construction of the proposed project as a result of earth-moving activities, such as excavation and trenching for foundations and utilities, soil compaction and moving, cut and fill activities, and grading. If not managed properly, disturbed soils would be susceptible to high rates of erosion from wind and rain, resulting in sediment transport via stormwater runoff from the project site. The types of pollutants contained in runoff from construction sites would be typical of urban areas, and may include sediments and contaminants such as oils, fuels, paints, and solvents. Additionally, other pollutants, such as nutrients, trace metals, and hydrocarbons, can attach to sediment and be transported to downstream drainages and ultimately into collecting waterways, contributing to degradation of water quality.

The proposed project would disturb more than one acre of soil, and as stated above, is required to obtain coverage under the RWQCB NPDES General Storm Water Permit. The Permit would require a SWPPP which contains BMPs for construction and post construction runoff. BMPs that are typically specified within the SWPPP may include, but would not be limited to the following:

- The use of sandbags, straw bales, and temporary de-silting basins during project grading and construction during the rainy season to prevent discharge of sediment-laden runoff into storm water facilities.
- Revegetation as soon as practicable after completion of grading to reduce sediment transport during storms.
- Installation of straw bales, wattles, or silt fencing at the base of bare slopes before the onset of the rainy season (October 15th through April 15th).
- Installation of straw bales, wattles, or silt fencing at the project perimeter and in front of storm drains before the onset of the rainy season (October 15th through April 15th).

In addition, Chapter 19.17 of the San Benito County Code regulates grading, drainage and erosion and contains requirements regarding discharge and construction site stormwater runoff control. Compliance with existing laws and regulations would limit erosion, which would reduce temporary impacts to surface water quality.

As such, with implementation of all applicable laws and regulations, the proposed project would not violate water quality standards or contribute additional sources of polluted runoff. Construction impacts to water quality would be less than significant. Please refer to Impact Explanation c) below for more information. (1, 2, 14, 22, 23)

- b) **Less than Significant Impact.** As stated above, two water supply wells are located on the property and supply water for irrigation and domestic use. The existing wells would be used for irrigation and fire suppression water. A new domestic water well would be constructed to serve the 50-person occupant-load at full buildout and will support restrooms and break room facilities. Central Valley Water Project (non-potable “blue valve” water or CVP water) is also available at the site. Per the prior director and sales manager of the previous operation on the parcel, irrigation water was supplied by both CVP water and water pumped from the onsite wells and previous water use was estimated at up to 13.86 acre-ft. per day for agricultural operations (M. Hennequin & M. Reyes, personal communication, June 21, 2018). The new nursery operations project is anticipated to require up to 1.28 acre-ft. per day at full buildout and during high growing season, for a total demand of 273 acre-ft. of water per year over the site. Water use would be available from existing and proposed wells onsite and

from the CVP for irrigation water. CVP water use would reduce groundwater use as it would not entail use of groundwater extraction from the onsite wells. The project site is within the Hollister subbasin which, as explained above, is designated by DWR as medium priority, and has a designated GSA which is developing a GSP for the area. (Todd Groundwater 2017).

The project could potentially affect groundwater recharge by increasing impervious surface (net increase of 22 acres). However, this increase would not substantially effect groundwater recharge as most recharge to the subbasin is derived from rainfall and streamflow from creeks entering the basin. Upstream of the site, the reservoir is operated to supply groundwater recharge to the basin. The project includes SCMs and drainage improvements to control runoff. Most of the site would be left open for growing areas. Impervious areas are limited to select building and pavement locations.

The proposed project would include on-site drainage infrastructure including construction of stormwater detention basins and vegetated basins. Stormwater detention basins would be designed to manage on-site surficial drainage and would be sized in accordance with applicable standards and requirements of the County ordinances and permit requirements (further outlined below). Stormwater would be collected in the detention basin which may allow some collected drainage water to infiltrate into the groundwater. (1, 2, 3, 14, 23, 24, 25)

- c) The proposed project would not significantly deplete groundwater, as groundwater is shown to be well-managed in this area; stormwater runoff from the site would be captured in an on-site detention basin, which would allow for some groundwater recharge. The Annual Groundwater Report (December 2017) identifies available groundwater and recharge; the project site also has CVP water available for agricultural irrigation. Based on the most recent Annual Groundwater Report (December 2017) the water balance identifies recovery of the Gilroy-Hollister basin over the past three years estimated water balance for year 2017 show an increase in water level at the Hollister subbasin (Todd Groundwater 2017). The proposed project would not substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or lowering of the local groundwater table level at the site. Impacts would be less than significant. (1, 2, 3, 22, 23, 24, 25)
- d) **Less than Significant Impact.** The proposed project would not require alteration of a stream or river. The site would be developed with a minimum 50-foot setback to Pacheco Creek and would not direct runoff into the creek. However, construction of the proposed project would require grading and other ground-disturbing activities, which may result in erosion and/or siltation on- or off-site (please also refer to **Section 4.6 Geology and Soils**). Two new vegetated basins totaling 15.2 acre-ft. and a 1,500 ft. long vegetated swale to retain and clean stormwater would be strategically located to intercept runoff before there is any discharge from the site. Although site percolation was measured to be very small, the two basins proposed for the project have been designed to collect and mitigate the runoff from their respective tributary areas to the north and east.

Basin 2, at the center of the project, would temporarily detain runoff and release it at pre-project rates to a vegetated swale along the south edge of the property, which gently flows towards Basin 1. Basin 1, at the southwest corner of the property would be adequately sized to retain the 85th and 95th percentile storm events, detain the 2-year and 10-year storm events to pre-project levels, and detain the 100-year storm event to the pre-project 10-year flow rate (satisfying the San Benito County Code of Ordinances) before discharging towards an offsite ditch along Highway 156 (Whitson, 2018).

Site design and runoff reduction measures are outlined for implementation as required by the San Benito County Code of Ordinance and the Regional Water Quality Control Board. These SCMs would be implemented to the maximum extent practical within the property in accordance with specific site opportunities and constraints to address impacts associated with erosion, hydrology and sediment control. In addition, adherence to County Ordinance 541 requires repayment of an HCP fee to addresses potential impacts to adjacent riparian habitat. Avoidance of the adjacent creek as well as the combination of implementation of the SCMs, compliance with the San Benito County Code and HCP Fee, as well as NPDES permitting address potential issues associated with erosion, sedimentation, and siltation and serve to avoid and reduce these potential impacts. **Mitigation Measure 4.6-1** incorporates erosion and drainage control recommendations into final plans and specifications; see Geotechnical Report prepared by Grice Engineering, Inc. (June 2018) (**Appendix D**). This impact is considered a less than significant. (1, 2, 3, 14, 22, 23)

- c) **Less than Significant Impact.** The proposed project would not require alteration of a stream or river; however, the proposed project would require modification of the existing drainage pattern at the site, which may result in flooding on- or off-site. As described in impact c) above, the proposed project would comply with NPDES permit standards, BMPs, and County ordinances. This is considered less than significant impact. (1, 2, 22, 23)
- f) **Less than Significant Impact.** The proposed project would not create or contribute runoff that would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff. The proposed project was designed to limit the site's post-project peak runoff rates to the pre-project runoff rates, during the 100-year storm events. Additionally, the proposed Stormwater Control Plan (Whitson, 2018) documents that stormwater runoff would be directed and contained onsite and avoid any runoff to Pacheco Creek. The Plan provides measures to reduce erosion and maintain sediment control and proposes new SCMs to mitigate impacts in conformance with regulatory requirements. The design of the stormwater detention facility would be reviewed by San Benito County to confirm the Plan is in accordance with the San Benito County Code of Ordinances, Article III Storm Drain Design Standards and the Regional Water Quality Control Board Performance requirements. This is considered a less than significant impact. (1, 2, 4, 9, 14, 22, 23)
- f) **Less than Significant Impact.** Implementation of the proposed project would not otherwise substantially degrade water quality, as described in Impact Explanations c) and e) above. This is considered a less than significant impact. (1, 2, 22, 23)
- g) **No Impact.** No housing is proposed as part of the project. As a result, no housing is proposed within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map. There would be no impact in connection with the proposed project. (2, 3, 19)
- h) **No Impact.** No structures would be placed within a 100-year flood hazard area, as the project site is located outside of any flood hazard areas. There would be no flood impact in connection with the proposed project. (1, 2, 14, 19)
- i) **No Impact.** The project site is not located near any dam or levee structures. As a result, the project would not be exposed to flooding hazards due to the failure of a levee or dam. There would be no impact in connection with the proposed project. (2, 3, 14)
- j) **No Impact.** The proposed project site is not located in an area subject to significant seiche, tsunami, or mudflow risk. There would be no impact in connection with the proposed project. (1, 2, 14)

4.10 LAND USE AND PLANNING

4.10.1 Environmental Setting

The project site is located in a rural area of unincorporated San Benito County, California, near (but outside of the municipal boundaries) the City of Hollister. According to the Phase I ESA, the project site has been used for agriculture from at least 1939 until the past decade. Until the 1970s, the Property consisted of agricultural fields with a small group of buildings on the southern parcel (possibly a house or barn with outbuildings). In the 1970s, the nursery was constructed on the northern portion of the property with greenhouses and outbuildings. The structures on the southern portion of the property were removed and the area was used as a growing field for plants. Surrounding land uses are primarily agricultural uses, with some residential and light industrial.

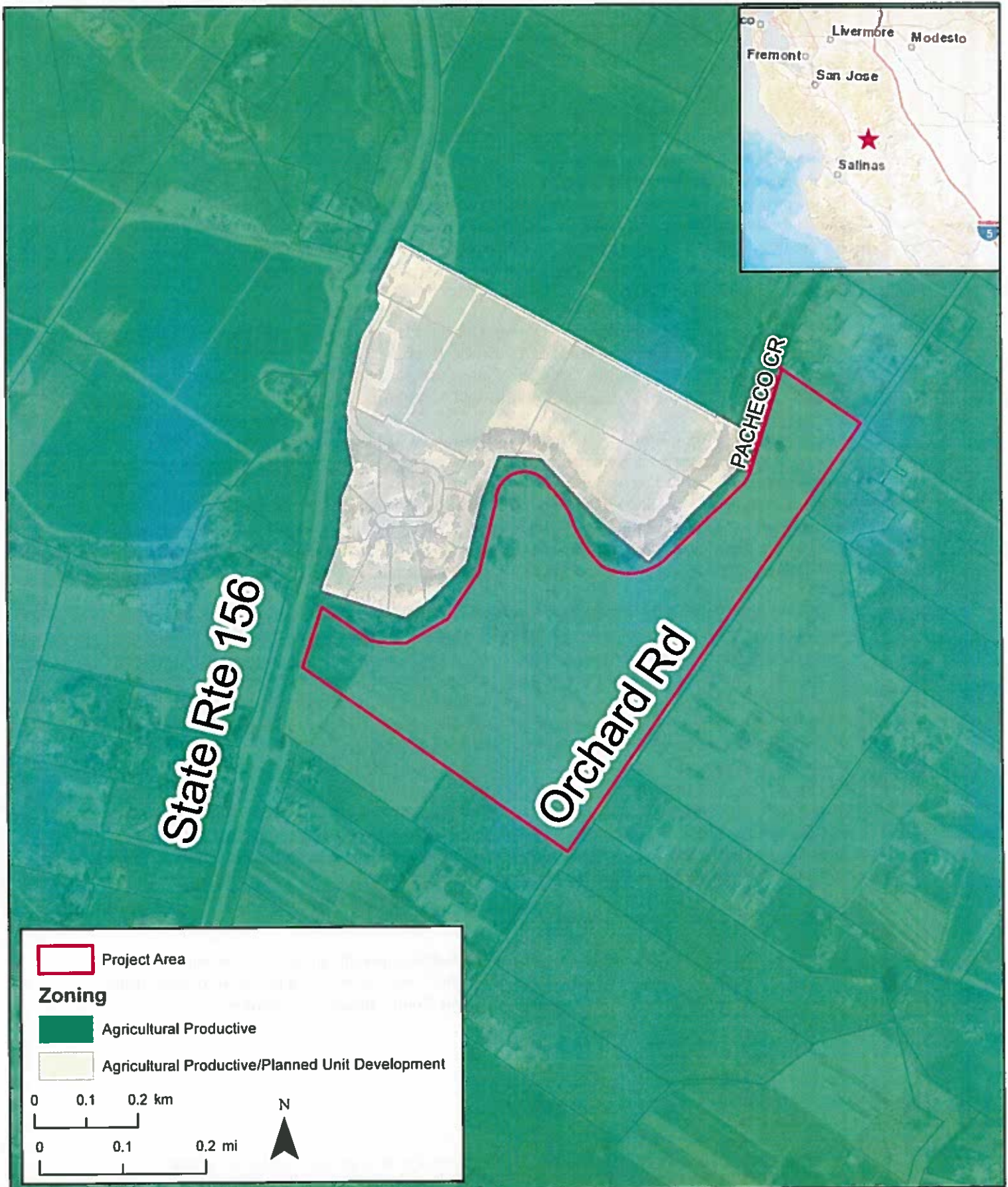
The San Benito County 2035 General Plan is the planning document that guides development within the County. The proposed project site is bounded on the north by one light industrial parcel, and to the north, west, and south by undeveloped agricultural land, and by low density residential to the east. The proposed project site is within General Plan Agriculture (A) land use designation and zoned Agriculture Productive (AP), as shown in **Figure 4.10-1 Zoning Designations**. Surrounding land uses are primarily agricultural land uses with scattered residential to the northwest, west, east, and southeast of the project site.

4.10.2 Environmental Impacts

Environmental Impacts	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
LAND USE AND PLANNING. Would the project:				
a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4.10.3 Explanation

- a) **No Impact.** The project would not physically divide an established community. There would be no impact in connection with the proposed project. (1, 2, 3)



Title:
Zoning Designation

Date: 09/04/2018
 Scale: 1 inch = 0.15 miles
 Project: 2018-32



Monterey | San Jose
Denise Duffy and Associates, Inc.
 Environmental Consultants Resource Planners
 947 Casa Street, Suite 5
 Monterey, CA 93940
 (831) 373-4341

Figure
4.10-1

- b) **Less than Significant.** A significant impact would occur if the project would conflict with “any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect”. The applicable County’s General Plan and Code provisions, including the Zoning Ordinance, were reviewed to determine if there are any conflicts with any of these measures/plans which were adopted for the purpose of avoiding or mitigating an environmental effect. Applicable General Plan policies are compiled in **Appendix G: 2035 San Benito County Relevant General Plan Policies.**

The project is consistent with the site’s existing General Plan policies and also consistent with the Agriculture land use designation. Pursuant to Article II of the County’s Code of Ordinances, the proposed project’s use is consistent with the County’s Agriculture Productive zoning designation. Conditional uses in the AP zone include Commercial Greenhouses.

Additionally, as stated in **Section 4.4 Biological Resources**, San Benito County’s Code of Ordinance Chapter 19.33.005 requires a discretionary tree removal permit to remove trees. Woodland trees are also considered protected as defined by the County of San Benito, Chapter 19.33.001 Code of Ordinance. Review of whether a Tree Removal Permit would be required for the project is determined by the County. Approval of the Use Permit and consistency with the General Plan is a determination made by the Planning Commission. The project would not conflict with applicable land use plans and regulations, and associated impacts would be less than significant (1, 2, 3, 9, 10)

- c) **Less than Significant with Mitigation.** San Benito County has not adopted a habitat conservation plan, and the proposed project would not be within the boundaries of a Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan or conservation agreement; accordingly, the project would not conflict with any such plan. San Benito County adopted Ordinance 541 in 1988 to set and collect fees for financing the HCP and for San Joaquin kit fox protection measures⁵. The stated purpose of Ordinance No. 541 was “to provide a method for financing development and implementation of a Habitat Conservation Plan and a Section 10(a) permit under the Endangered Species Act of 1973 for the County HCP plan study area.” As stated in Ordinance No. 541, mitigation fees are to be held in a trust for future use in payment of HCP development costs and habitat mitigation as identified in an HCP, once developed”. These fees are to be paid by the applicant as a condition of the issuance of a building permit according to County of San Benito. Accordingly, the County will require fees for habitat conservation in accordance with County Ordinance 541 per Mitigation Measure 4.6-1, below. (1, 2, 3, 4, 9)

Mitigation/Required County Condition

LU 4.10-1 Per the County, prior to issuance of building permit, in accordance with County Ordinance 541, the project applicant shall contribute a habitat conservation plan mitigation fee in the amount required by the County Planning Department.

⁵ County Code Chapter 19.19 pursuant to Ordinance No. 541 was adopted to allow for the collection of “interim mitigation fees” from development projects and rangeland conversion occurring in the unincorporated areas of the County.

4.11 NOISE

4.11.1 Environmental Setting

The policies in the San Benito County 2035 General Plan identify noise standards to avoid conflicts between noise-sensitive uses and noise source contributors. The project site is located in an agricultural area with residential communities to the west. The primary source of noise in the project vicinity is traffic noise associated with SR-156. Sensitive noise receptors in the vicinity of the project consist of existing residences located on the opposite side of Pacheco Creek to the west, these nearest residences are located approximately 250 ft. from the proposed project.

Health and Safety Policy #8.11 of the San Benito County 2035 General Plan identifies noise and land use compatibility guidelines. The noise guidelines generally utilize an exterior noise limit of 70 decibels Ldn (day/night level)⁶ at residential properties. Existing noise levels on the site were not measured, but given the site's location in a rural area, they are expected to be low, in the range of 45 – 55 Ldn.

4.11.2 Environmental Impacts

Environmental Impacts	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
NOISE. Would the project:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

⁶ The Ldn represents the average sound level over a 24-hour period, accounting for greater noise sensitivity during night hours by adding five (5) decibels to noise between 7-10 p.m. and 10 decibels to noise between 10 p.m.-7 a.m.

Environmental Impacts	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
NOISE. Would the project:				
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

4.11.3 Explanation

- a) **Less than Significant Impact.** The proposed development is located in a rural agricultural setting and is consistent with the previous use of project site as well as surrounding agricultural uses. Therefore, long term operational impacts would be less than significant. Construction of the project would result in short-term noise increases in the project vicinity. Noise impacts from construction activities depend on the type of construction equipment used, the timing and length of activities, the distance between the noise generating construction activities and receptors and shielding. Construction activities would occur over 175 calendar days, including site preparation, grading, construction, paving, and architectural coating. Construction equipment would include, but would not be limited to, graders, tractors/loaders/backhoes, cement and mortar mixers, pavers, rollers, saws, dozers, cranes, forklifts, and air compressors. Typical hourly average construction noise levels could be as loud as 75 - 80 decibels at a distance of ± 100 ft. from the construction area during active construction periods. Although noise from construction of the project would be temporary and intermittent, it would at times exceed the San Benito County 2035 General Plan noise level guideline of 70 Ldn at the nearest residences, the closest of which are located just over 250 ft. from the proposed project.

Construction activities would be limited to weekdays between the hours of 7:00 a.m. and 5:00 p.m. and no night-time construction is required, which would limit noise impacts to neighboring residences. The project proponent shall prepare and implement a Construction Noise Control Plan consistent with the County's Health and Safety Policy #8.12 Construction Noise Control Plan (County of San Benito 2015). This policy requires all construction projects within 500 ft. of sensitive receptors to develop and implement construction noise control plans that consider available abatement measures to reduce construction noise levels as low as practical. Applicable measures to be considered would include (at a minimum) the following:

- Utilize 'quiet' models of air compressors and other stationary noise sources where technology exists;
- Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment;
- Locate all stationary noise-generating equipment, such as air compressors and portable power generators, as far away as possible from adjacent land uses;
- Locate staging areas and construction material areas as far away as possible from adjacent land uses;
- Prohibit all unnecessary idling of internal combustion engines;
- Notify all abutting land uses of the construction schedule in writing; and

- Designate a "disturbance coordinator" (e.g., contractor foreman or authorized representative) who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and would require that reasonable measures warranted to correct the problem be implemented. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule. (1, 2)
- b) **Less than Significant Impact.** Construction of the project would generate temporary groundborne vibration. A vibration impact could occur where noise-sensitive land uses are exposed to excessive vibration levels. Residences, which are considered sensitive receptors, are located within 250 ft. of the site. People residing in these areas could potentially be exposed to temporary groundborne vibration or groundborne noise levels.

Vibratory compactors or rollers and pavement breakers can generate perceptible vibration. Heavy trucks can also generate groundborne vibration, which varies depending on vehicle type, weight, and pavement conditions. The Federal Transit Authority has published standard vibration levels and peak particle velocities for construction equipment. Construction vibration impacts on building structure are generally assessed in terms of peak particle velocity or root mean square velocity. The root mean square velocity level and peak particle velocities for typical construction equipment are listed in Table 4.11-1 below. Table 4.11-1 also identifies anticipated Peak Particle Velocities for each type of equipment at a distance of 50 and 400 ft.⁷

Equipment	Approximate Velocity Level at 25 ft. (VdB)	Approximate Peak Particle Velocity at 25 ft. (inches/second)	Approximate Peak Particle Velocity at 50 ft. (inches/second)	Approximate Peak Particle Velocity at 400 ft. (inches/second)
Pile Driving (sonic)	104	0.644	N/A ¹	0.006
Pile Driver (impact)	112	1.518	N/A ¹	0.015
Large Bulldozers	87	0.089	0.031	0.001
Small Bulldozer	58	0.003	0.001	0.000
Loaded Trucks	86	0.076	0.027	0.001
Jackhammer	79	0.035	N/A ¹	0.000

Note: Data reflects typical vibration level. Source: (U.S. Department of Transportation, May 2006)

⁷ Vibration amplitudes are usually expressed as peak particle velocity or the velocity of a parcel (real or imaged) in a medium as it transmits a wave.

For purposes of this analysis, excessive groundborne vibration would be 0.2 inches per second (as derived from the U.S. Department of Transportation, Earthborne Vibrations Technical Advisory equation for attenuation of vibration) which is the level at which vibration would cause damage to masonry and wood timber buildings. Vibration levels from construction equipment attenuate as they radiate from the source (U.S. Department of Transportation, May 2006). Sensitive receptors in the area could be exposed to groundborne vibrations of varying magnitudes depending on the type of equipment and proximity to construction activities, as shown in Table 4.11-1. Ground disturbing activities associated with project grading could involve the operation of large and small bulldozers and loaded trucks. These activities could impact sensitive receptors in the area. The vibration level associated with these types of equipment would attenuate to a maximum of approximately 0.003 inches per second at 25 ft., which would be well under the threshold of 0.2 inches per second. Moreover, the nearest sensitive receptor is located approximately 250 ft. from the site. At that distance, vibration levels due to construction activities would be even less. Vibration associated with the construction of the proposed project would be below levels that could cause damage to structures, would not result in prolonged interference for sensitive receptors, and would barely be perceptible. For these reasons, this represents a less than significant impact. (2)

- c) **Less than Significant Impact.** The ongoing operation of the proposed project may result in a potentially substantial permanent increase in ambient noise levels in the project vicinity above existing levels without the proposed project. Potential noise impacts associated with the operations of the proposed project would primarily be from project generated vehicular traffic on the project vicinity and roadways. However, Highway 156 borders the site to the west, vehicle noise generated by the project would be consistent with noise generated by the highway and is consistent the surrounding land uses. The operational noise associated with trucks along Orchard Road and within the site could increase noise into this rural and agricultural environment. Operations would be from 5 a.m. to 6 p.m., with truck pickup and delivery extending to 10 p.m. The nearest sensitive receptors are the single-family homes located approximately 250 ft. from the project. Agricultural uses currently surround the site near these receptors and nearby homes are also subject to the traffic noise from Highway 156. Due to distance from the operations, proximity of homes to Highway 156, the level of truck trips anticipated and the nature of the agricultural use in the area, increased noise levels generated by the project would not result in a permanent increase in ambient noise levels in the project vicinity above levels existing without the project and operational noise levels at the nursery site would not exceed the County's 70 L_{dn} noise standard. This represents a less than significant impact. (2)
- d) **Less than Significant Impact.** Noise would be generated on the site during construction. This would temporarily elevate noise levels in the immediate project area from use of various construction equipment. This issue is addressed under item 4.11.3 a) above. Additionally, night time deliveries would intermittently increase noise in the project vicinity. The project is already within the 65dBA L_{dn} existing noise contour due to its proximity to Highway 156 as reported in the 2035 San Benito County General Plan RDEIR. The project is estimated to generate 133 daily trips, with 20 trips (15 in, 5 out) during the a.m. peak hour and 18 trips (7 in, 11 out) during the p.m. peak hour. The additional trips created by the project would be minimal as compared to the noise already created on Highway 156. This represents a less than significant impact. (1, 2)
- e) **No Impact.** The project is not located within an airport land use plan or near any public airports. There would be no impact in connection with the proposed project. (1)
- f) **No Impact.** The project is not located near any private airstrips. There would be no impact in connection with the proposed project. (1)

4.12 POPULATION AND HOUSING

4.12.1 Environmental Setting

The most recent census for the County was in 2017, with an estimated 60,310 residents living in the County. The 2012 to 2016 5-year average total amount of housing units was 18,876 homes in the County⁸.

The 2035 General Plan EIR notes that employment for 2010 in unincorporated areas of the County was approximately 4,530 jobs. The 2035 General Plan EIR notes that there will be an increase at an estimated 6.44 percentage per year, and an estimated 94,731 total residents living in the County between 2010 and 2035.

Concerning employment, a large number of San Benito County residents commute to other counties for work. Employment in the unincorporated areas of the County are projected to increase approximately 10 percent per year to an estimated 12,030 and 13,130 total jobs between 2010 and 2035. It is anticipated that there will be approximately 14,844 dwelling units located in unincorporated areas of the County, and 5,425 located within the City of Hollister's sphere of influence, for a total of 20,269 homes. There is an estimated ratio of 2.85 persons per household in the unincorporated county, reflecting the past 50 years of declining persons per dwelling with a 2-percent decline from the 2010 ratio of persons per dwelling.

The County anticipates in the 2035 General Plan EIR that it would provide 182 new residential units for very low-income households, 282 residential units for low-income households, 331 new residential units for moderate income households, and 678 new residential units for above moderate households for a total of 1,655 new residential units located in the unincorporated County by the year 2035. Various General Plan goals and policies and the County Code reflect the County's planning vision to accommodate the future growth projections.

4.12.2 Environmental Impacts

Environmental Impacts	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
POPULATION AND HOUSING. Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

⁸ United States Census Bureau Website: <https://www.census.gov/quickfacts/fact/table/sanbenitocountycalifornia#viewtop>. Accessed September 6, 2018.

4.12.3 Explanation

- a) **Less than significant impact.** The project has the potential for impacts to population associated with job growth. As noted above, the proposed project would add 50 jobs, however these jobs would be phased over a six (6) year period, please see Table 4.12-1 below. As shown in Table 4.12-1 below, the initial build-out of the facility would require 17 new hire employees. The current business plan is to have the existing employees working for T&A at the Shore Road & Fairview Road facility in the City of Hollister, move to the new transplant nursery. As a result, for at least the initial phase of operation at least, no new employees would be brought into the County, this represents a less than significant impact to population growth.

Employees	2026	2026	2023	2022	2021	2020
Manager	1	1	1	1	1	1
Grower	1	1	1	1	1	1
Pest	1	1	1	1	1	1
Fertilizer	1	1	1	1	0	0
2 Employees/4 Ranges	13	10	8	7	4	2
Maintenance	1	1	1	1	1	1
Office	1	1	1	1	0	0
Sowing Lead	1	1	1	0	0	0
Sowing Lines	12	8	6	4	4	4
Forklift Drivers	4	3	3	2	1	1
Truck Drivers	3	2	2	2	2	2
Sanitation/Custodial	1	1	1	0	0	0
Tray Loading/Cleaning	10	10	10	8	8	4
Total	50	41	37	29	23	17

Source: Email communication with Jeffery Nohr, September 10, 2018 as updated November, 2018

At full project buildout, the transplant nursery would employ 50 workers. Compared to the estimated 60,310 people residing in the County as of 2017, this would not be considered a substantial increase in population growth. The County General Plan accounts for a 9.44 percent increase in jobs each year. Based on the 2017 population estimates, a 9.44 percent increase in jobs would equate to an additional 5,693 jobs. The increase in jobs proposed by the project would represent only 0.09 percent of the projected job growth. In addition, the project does not propose any off-site improvements that would result in population growth. As such, the population increase resulting from the Project would not constitute substantial unplanned population growth. Impacts would be less than significant. (1, 2, 3)

- b - c) **No Impact.** As stated above, the anticipated job growth associated for the proposed project is already accounted for in the County General Plan. The proposed use is agricultural, consistent with the current AP zoning. In addition, the project does not include displacement of housing, and thus would not necessitate the construction of replacement housing elsewhere. In addition, the current project site does not include housing and, thus, would not displace a substantial number of people, necessitating construction of housing elsewhere. As such, there would not be an impact associated with displacing housing or people, necessitating the construction of replacement housing elsewhere. (1, 2, 3)

4.13 PUBLIC SERVICES

4.13.1 Environmental Setting

Fire protection services in unincorporated San Benito County (including the project site), as well as the Cities of Hollister and San Juan Bautista, are provided primarily by the City of Hollister Fire Department, which absorbed the San Benito County Fire Department in 2013. The closest station to the proposed project site is Station 3 located at 110 5th Street in the City of Hollister, which is located 6.5 miles from the proposed project. Other agencies provide fire protection services as well, including; Aromas Tri-County Fire Department; San Juan Bautista Volunteer Fire Department; and CAL FIRE. The City of Hollister Fire Department has two agreements with CAL FIRE: the automatic aid agreement provides automatic fire protection services, and the mutual aid agreement provides fire protection service upon radio request by the City of Hollister Fire Department.

In addition, the proposed project area is served by the San Benito County Sheriff's Office. The San Benito County Sheriff's Department coverage area encompasses the entire unincorporated areas of the County (including the project site). The San Benito County Sheriff's Department is located at 2301 Technology Parkway in the City of Hollister, which is located approximately four miles from the project site, respectively. The General Plan RDEIR notes that there are 16 units and divisions in the San Benito County Sheriff's Department, and 21 sworn deputy allocations whom serve the unincorporated areas of the County, which does not include sworn officers for incorporated cities.

The Department mainly receives funding from the County's General Fund, which is derived from property taxes, sales tax revenue, and user fees. In addition, San Benito County Code Title 5 (Finance), Chapter 5.01 (County Fees), Article IX (Capital Improvement Impact Fees) (Sections 5.01.310.325) establishes development impact fees requiring that new development provide a fair share contribution toward the provision of capital improvements, including buildings, facilities, personnel, and/or equipment needed in order to provide effective police protection services.

4.13.2 Environmental Impacts

Environmental Impacts	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
PUBLIC SERVICES. Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities or need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the public services:				
a) Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

4.13.3 Explanation

- a-b) **Less than significant impact.** Construction and implementation of the proposed project would require fire and police protection services. This increase in service population would not require additional police staff and vehicles such that new or expanded police facilities would need to be constructed. Construction of the proposed project would result in 50 full time employees, as stated above in **Section 4.12 Population and Housing**. This increase in jobs is accounted for in the County General Plan and does not represent a significant increase in service population. The City of Hollister Fire Department and San Benito County Sheriff already serve adjacent properties, demonstrating that based on distance between the project site and existing stations the proposed project would not trigger the need to construct new stations or expand existing services. This represents a less than significant impact. (1, 2, 3)
- c-e) **No Impact.** The proposed project would not require any additional public services, such as schools, parks, or other public services. The project does not include new or physically altered school, park or other public services or facilities. In addition, the proposed project would not require new schools, parks or other facilities, as it includes a new transplant nursery consistent with the zoning for the surrounding area as well as population projections. There would be no impact to schools, parks, or other public services. (1, 2, 3)

4.14 TRAFFIC/TRANSPORTATION

4.14.1 Environmental Setting

The following discussion is based on a Traffic Impact Analysis (TIA) prepared by Keith Higgins, Traffic Engineer (July 6, 2018). This report is presented in **Appendix H**. The report summarizes the potential transportation impacts associated with the proposed project. Vehicular, pedestrian, bicycle and transit circulation issues were evaluated at the project site and the immediately surrounding street network. The locations of the project site and study area are indicated on **Figure 4.14-1, TIA Study Area**.

Study Intersections

The a.m. and p.m. peak periods were analyzed at the following intersections:

1. SR 156 / Fairview Road
2. Pacheco Highway / Fairview Road
3. Orchard Road / Fairview Road

In addition, the project driveway on Orchard Road was also analyzed.⁹ Exhibit 3 of the TIA shows the existing traffic control and lane configurations at the study intersections.

⁹ As shown on the Project site plan (**Figure 1.5**), there will be three gated access points into the project from Orchard Road. To be conservative, all three driveways have been consolidated into one project driveway for analysis purposes.

Methodology

Traffic Operation Evaluation Methodologies

Intersection traffic operations were evaluated based upon the level of service (LOS) concept. LOS is a qualitative description of an intersection's operations, ranging from LOS A to LOS F. Level of Service "A" represents free flow uncongested traffic conditions. Level of Service "F" represents highly congested traffic conditions with unacceptable delay to vehicles at intersections. The intermediate levels of service represent incremental levels of congestion and delay between these two extremes. The analysis was performed using the 2010 Highway Capacity Manual (HCM) methodologies. LOS descriptions for each type of existing traffic control at the study intersections (i.e., signal and one-way stop) are included as Appendix A of the TIA.

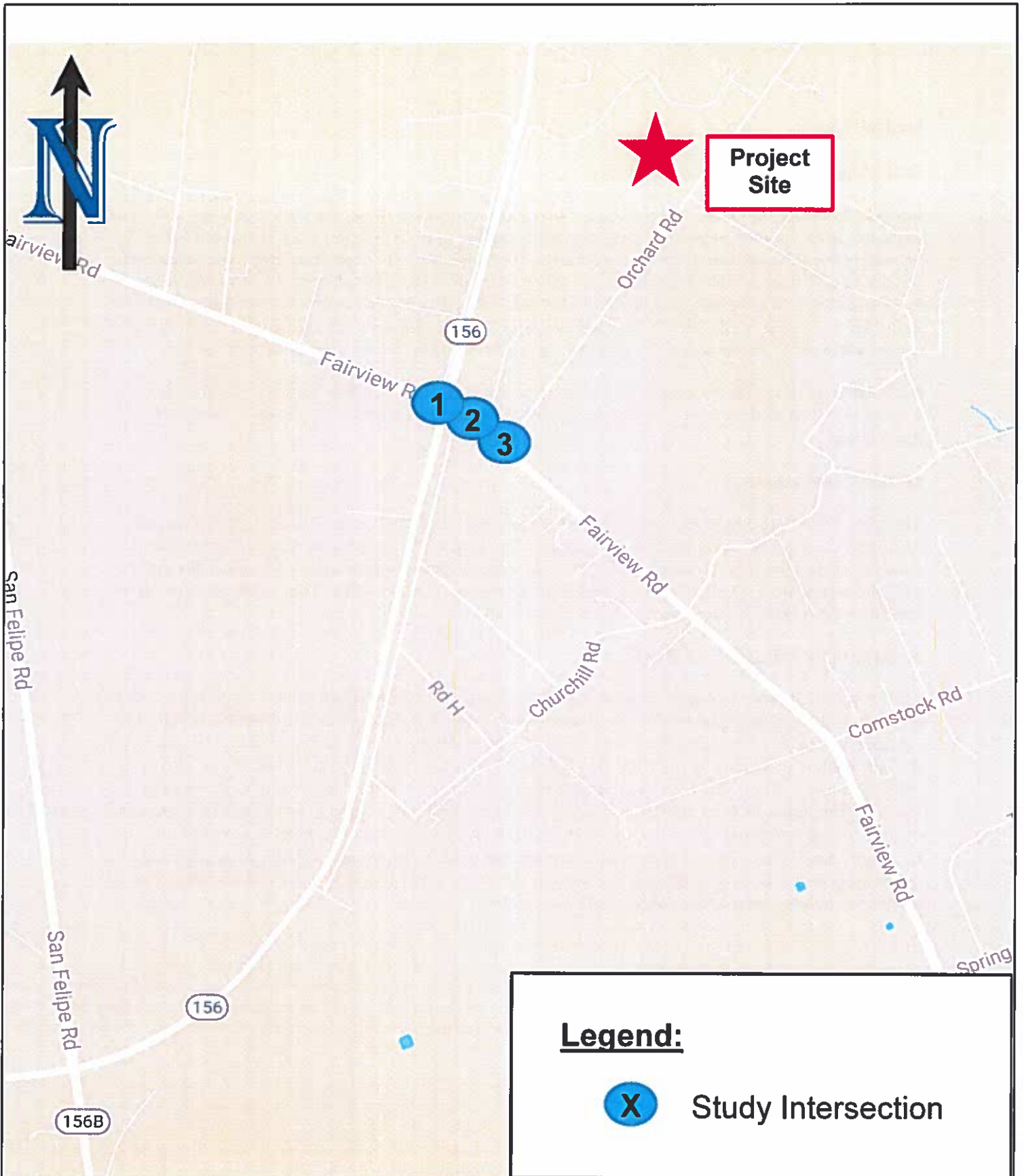
Intersection traffic operations were evaluated using the Synchro© traffic analysis software (Version 10) which is based on HCM methodologies. Please see the TIA for more information on the analysis software and/or methodology.

Level of Service Standards


The study area covers the jurisdictions of multiple public agencies, including the County of San Benito and the California Department of Transportation (Caltrans). The Caltrans level of service standard is the transition from LOS C to LOS D (abbreviated as "C/D" in this report) applies to Intersection #1 only. The remaining study intersections in the study area are under the jurisdiction of the County. The County level of service standard is LOS D, which applies to Intersections #2 and #3.

Modeling of Right Turn on Red (RTOR)

All the signalized study intersections allow right turns on red (RTOR), which generally reduce the overall intersection delay, thus improving the overall intersection level of service and affecting the intersection LOS calculations. There are several options to model RTOR with different traffic analysis software packages, but the only method prescribed by the HCM for modeling RTOR is to reduce the input volumes to account for vehicles turning right on red. Where an exclusive right turn lane movement runs concurrent with a protected left turn phase from the cross street, the HCM allows for the right turn volume to be reduced by the number of simultaneous left turners. However, the length of the right turn lane affects the number of vehicles that can turn right on red. This is because a short right turn lane can result in right turning vehicles being trapped in the queue with vehicles in the through lane. For the purposes of this analysis, it is assumed that no vehicles would be able to turn right on red at any of the study intersections.



Legend:

 Study Intersection

Source: Keith Higgins, Traffic Engineer, July 25, 2018

Title
**Traffic Impact Analysis
 and Study Area**

Date 8/1/2018
 Scale N/A
 Project 2018-32

Monterey | San Jose
 **Denise Duffy and Associates, Inc.**
 Environmental Consultants Resource Planners
 947 Casa Street, Suite 5
 Monterey, CA 93940
 (831) 373-4341

Figure
4.14-1

Regional Transportation Impact Mitigation Fee

The Council of San Benito County Governments (COG) administers the San Benito County Regional Transportation Impact Mitigation Fee (TIMF). This fee funds construction of traffic improvements across San Benito County, including at the nearby SR 156 / Fairview Road intersection. The TIMF is assessed based upon the square footage of the proposed building to be occupied by the project. The actual amount owed by the project towards the TIMF will be determined by San Benito County, based upon the project definition and the fee rates established in Regional Transportation Impact Mitigation Fee Nexus Study (Michael Baker International, January 2016).

Existing Traffic Conditions

Existing Traffic Network

The site would be accessed via Orchard Road. Regional access to the project site is provided by State Route 156 and Fairview Road. Another roadway serving the study area is the Pacheco Highway (SR 152). A brief description of each roadway can be found in the TIA.

Existing Pedestrian and Bicycle Network

There are no sidewalks along any of the study roadways, including Orchard Road near the project site. According to the San Benito County Bicycle and Pedestrian Master Plan prepared by Alta Planning + Design, dated December 2009, there are currently no bicycle facilities of any kind near the project site, although the paved shoulders on SR 156 are of sufficient width to accommodate bicycles. No bicycle improvements are proposed in the study area.

Existing Transit Service

San Benito County Local Transportation Authority (LTA) provides fixed-route bus service in San Benito County. Operating as County Express, it provides three lines in Hollister, plus intra-county service to Gilroy via San Juan Bautista, Dial-a-Ride and Paratransit services. There is no bus service to the study area. The nearest bus stop is located near the intersection of San Felipe Road and Fallon Road, nearly 4 miles from the project site.

Existing Vehicle Circulation

As shown in **Table 4.14-1** below, all of the study intersections currently operate at or better than their respective level of service standards. No improvements are recommended for existing conditions. Please see the TIA for more information on peak turning movement volumes and LOS calculations for existing conditions.

**Table 4.14-1
Intersection Levels of Service for the Project**

N-S Street	E-W Street	Existing Intersection Control	LOS Standard	Peak Hour	Existing Conditions		Existing Plus Project Conditions		Background Without Project Conditions		Background Plus Project Conditions		Cumulative Without Project Conditions		Cumulative Plus Project Conditions	
					Delay	LOS	Delay	LOS	Delay	LOS	Delay	LOS	Delay	LOS	Delay	LOS
1. SR 156 Road	Fairview Road	Signal	C/D	a.m.	23.0	C	23.4	C	29.7	C	30.5	C	46.6	D	48.0	D
				p.m.	25.7	C	26.0	C	77.8	F	79.0	E	195.2	F	196.5	F
2. Pacheco Highway	Fairview Road	One-Way Stop	D/D	a.m.	9.9	A	10.0	B	10.1	B	10.2	B	10.5	B	10.5	B
				p.m.	10.6	B	11.0	B	13.9	B	14.0	B	18.5	C	18.7	C
3. Orchard Road	Fairview Road	One-Way Stop	D/D	a.m.	11.9	B	12.1	B	15.9	C	16.4	C	24.0	C	25.3	D
				p.m.	11.1	B	11.2	B	13.0	B	13.1	B	16.3	C	16.6	C
4. Orchard Road	Project Driveway	N/A	D/D	a.m.	N/A		8.5	A	N/A		8.5	A	N/A		8.6	A
				p.m.			8.6	A			8.6	A			8.6	A

Notes:

1. L, T, R = Left, Through, Right
2. NB, SB, EB, WB = Northbound, Southbound, Eastbound, Westbound
3. Overall Caltrans level of service standard is the transition between LOS C and LOS D, abbreviated as "LOS C/D". San Benito County overall level of service is LOS D. Side-street standard is assumed as LOS D.
4. For signalized intersection analysis, delay is average overall delay in seconds per vehicle (sec/veh). For one- and two-way stop intersections, delays are side-street operations, also in seconds per vehicle (sec/veh).
5. Analysis performed using 2010 Highway Capacity Manual methodologies.
6. N/A = Not Applicable. This Intersection does not exist under this scenario.
7. Level of service calculations can be found in Appendices C through H.
8. LOS highlighted in gray indicates intersection operating below level of service standard.
9. LOS with a thick black border represents a significant impact. Resulting levels of service with recommended improvements noted under "With Improvements".

Existing Pedestrian and Bicycle Circulation

There is no pedestrian or bicycle traffic at any of the study intersections. As discussed above, there are no sidewalks or bicycle facilities provided in the study area.

Background Without Project Conditions

Background Without Conditions represents traffic conditions with the additional traffic from land development that is approved but not yet built. Thus, Background Without Project volumes are approximately 8 - 10 years beyond Existing conditions. This scenario does not include trips from the proposed project.

Background Traffic Volumes

Background traffic growth on the study street network was estimated using the following methods:

1. Traffic Growth Predictions from *San Benito County General Plan Revised Draft Environmental Impact Report*. First, the net traffic growth predicted at the SR 156 / Fairview intersection between Existing and General Plan conditions, as documented in the San Benito County General Plan Revised Draft Environmental Impact Report, prepared by EMC Planning Group, dated March 16, 2015, was derived. Then, approximately 50% of this growth was applied to the SR 156 and Fairview Road corridors at the study intersections to estimate Background traffic growth.
2. Potential Traffic Growth on Orchard Road: Background traffic growth on Orchard Road was estimated based upon the potential development of half of the agricultural or vacant properties that connect to Orchard Road. Per the 2035 San Benito County General Plan, all of these parcels are zoned as Agricultural, which allows residential development at a rate of one unit per 5 acres. A maximum of

approximately 160 units could be built on Orchard Road; half of which is 80 units. Hence, trip activity for 80 units was applied to Orchard Road. Note that the largest concentration of future homes on Orchard Road could be built at the vacant parcels on either side of Orchard Road near Fairview Road.

This background traffic growth was distributed through the study intersections and added to the Existing traffic volumes to create the Background Without Project conditions traffic volumes depicted in Exhibit 9 of the TIA.

Vehicle Circulation

Background Without Project condition intersection levels of service are summarized in Table 4.12-1, above. The LOS calculation sheets for Background Without Project conditions can be found in Appendix E of the TIA.

Most of the study intersections would continue to operate at or better than their respective level of service standards under Background Without Project conditions. However, the following intersection would operate below its respective level of service standards:

1. SR 156 / Fairview Road – LOS C (a.m.), LOS E (p.m.)

Cumulative Without Project Conditions

The Cumulative Without Project traffic condition is defined as traffic conditions roughly eighteen years beyond existing conditions (i.e., the Year 2035).

Derivation of Cumulative Without Project Condition Traffic Volumes

The traffic volume growth under the Cumulative Without Project conditions were derived similar to the Background growth described previously. The remaining 50% of the projected traffic growth from both the 2035 San Benito General Plan and the Orchard Road residential growth was added to the Background Without Project volumes to create the Cumulative Without Project traffic volumes. Exhibit 11 in the TIA contains the Cumulative Without traffic volumes at the study intersections.

Vehicle Circulation – Intersections

Cumulative Without Project conditions a.m. and p.m. intersection levels of service are summarized on Exhibit 5A of the TIA. The LOS calculation sheets for Cumulative Without Project traffic conditions can be found in Appendix G of the TIA.

Most of the study intersections under Cumulative Without Project conditions would operate at or better than their respective level of service standards. However, the following intersection would operate below its respective level of service standard:

1. SR 156 / Fairview Road – LOS D (a.m.), LOS F (p.m.) – The San Benito County General Plan recommends widening SR 156 to four lanes by General Plan Buildout. In addition, it recommends adding a northbound SR 156 right turn lane. The intersection improvements will be primarily funded by the San Benito County Regional Transportation Impact Fee administered by the COG. About 26.7% of the traffic growth is attributable to through traffic that neither begins nor ends in the County. State and federal funding sources will be used for the through traffic component.

Pedestrian and Bicycle Circulation

There are no planned pedestrian network or bicycle facility improvements in the study area.

Site Access and Internal Circulation

Site Access

As shown on Exhibit 2 of the TIA, the project site would have three gated driveways onto Orchard Road. For analysis purposes, these driveways were consolidated into one driveway. This driveway is projected to operate acceptably through Cumulative Plus Project conditions. No improvements are necessary at the project driveways based on projected operations.

Appendix I of the TIA contains a northbound left turn warrant¹⁰ evaluated at the consolidated project driveway. The warrant was not found to be met for any of the analysis scenarios. Hence, a northbound left turn lane on Orchard Lane at the project driveways is not necessary. As there would not be any traffic to the project site coming from the north on Orchard Road, a southbound Orchard Road right turn lane is also not necessary at the project driveways.

Internal Circulation

Most of the project traffic is anticipated to use the central driveway, as it provides the most direct access to the on-site parking area at the center of the project site. Each of the driveways would be paved at Orchard Road and would become gravel roads as one progresses into the project site. The driveways connect to various gravel roadways located between the greenhouses, all of which are 40 ft. in width; this width is more than adequate to allow to vehicles to pass one another while still a comfortable distance from the greenhouse structures.

4.14.2 Environmental Impacts

Environmental Impacts	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
TRANSPORTATION/TRAFFIC. Would the project:				
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

¹⁰ Warrants are developed by agencies and provide volume guidelines for the installation of left turn lanes.

Environmental Impacts	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
TRANSPORTATION/TRAFFIC. Would the project:				
b) Conflict with an applicable congestion management program, including but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially increase hazards due to a design feature (for example, sharp curves or dangerous intersections) or incompatible uses (for example, farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

4.14.3 Explanation

Significance Criteria

According to the CEQA guidelines, a project may have a significant effect on the environment if it would cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system. Neither Caltrans nor the County of San Benito have established formal significance criteria for roadways under their jurisdiction. The following significance criteria have been used within this study, based upon the jurisdiction of each study intersection:

Caltrans

For the purposes of this analysis, a significant impact would occur in either of the following two conditions at a Caltrans facility:

- A significant impact would occur if an intersection operating at LOS A, B or C degrades to LOS D, E or F; or
- For intersections and roadway segments already operating at LOS D, E or F, a significant impact would occur if the addition of project trips causes the overall intersection delay to increase by more than 5.0 seconds.

County of San Benito

For the purposes of this analysis, a significant impact would occur in either of the following two conditions at County of San Benito facilities:

- A significant impact would occur if an intersection operating at LOS A, B, C or D degrades to LOS D, E or F; or
 - For intersections and roadway segments already operating at LOS E or F, a significant impact would occur if the addition of project trips causes the intersection delay to increase by more than 5.0 seconds.
- a) **Less than Significant with Mitigation Incorporated.** The project is estimated to generate a net 133 daily trips, with 20 trips (15 in, 5 out) during the a.m. peak hour and 18 trips (7 in, 11 out) during the p.m. peak hour. **Figure 4.14-2** depicts the trip distribution for the project.

Vehicle Circulation

All of the study intersections under Existing Plus Project conditions continue to operate at or better than their respective level of service standards. No improvements are required.

Most of the study intersections under Background Plus Project conditions would operate at or better than their respective level of service standards. However, the intersection at SR 156 / Fairview Road – LOS C (a.m.), LOS E (p.m.) would operate below its level of service standard. Overall operation at this intersection under Background Plus Project conditions would operate at a deficient LOS E during the p.m. peak hour, the same level of service as for Background Without Project conditions. Trips from the study project would increase overall intersection delay by 1.2 seconds above Background Without project conditions, which is less than the 5.0 seconds threshold that would be considered significant. Per the Caltrans significance criteria presented above, the project would not represent a significant impact at this intersection. No improvements are required.

Most of the study intersections under Cumulative Plus Project conditions would operate at or better than their respective level of service standards. However, the intersection at SR 156 / Fairview Road – LOS D (a.m.), LOS F (p.m.) would operate below its level of service standard. Overall operation at this intersection under Cumulative Plus Project condition would operate at a deficient LOS D during the a.m. peak hour and a deficient LOS F during the p.m. peak hour; these are the same level of service as for Cumulative Without Project conditions. Trips from the study project would increase overall intersection delay by 1.4 seconds (a.m.) and 1.3 seconds (p.m.) above Cumulative Without Project conditions, which are both less than 5.0 seconds. Per the Caltrans significance criteria presented above, the project would not represent a significant impact at this intersection. No improvements are required. However, the project would add incrementally to cumulative traffic growth. It would be required to pay the San Benito County Regional Transportation Impact Fee administered by the Council of San Benito County Governments that is discussed in **Mitigation Measure 4.14-1**, below.

Pedestrian & Bicycle Circulation

The project is anticipated to generate little to no pedestrian or bicycle traffic, due to the relative isolation of the project site from population areas and the lack of pedestrian facilities in the area. The project would not represent a significant impact to pedestrian or bicycle circulation.

Transit Circulation

The project is anticipated to generate no increase in transit usage by employees or visitors to the project site. The project would not represent a significant demand for, or impact to transit service.

Although the project would not have a significant impact on vehicle, pedestrian & bicycle, and transit circulation, the project would still be required to be responsible for payment of the San Benito County Regional TIMF administered by the Council of San Benito County Governments. General Plan Policy C-1.5 allows the County to assess fees on all new development to ensure new development pays its fair share of costs for new and expanded transportation facilities. Pursuant to this policy, the County requires payment of a TIMF from new development to fund that development project's fair share of new transportation infrastructure projects if these are included in a capital improvement program and/or the TIMF Program. This is considered a potentially significant impact that can be reduced to a less than significant level with the implementation of **Mitigation Measure TRA 4.14-1** described below. (1, 2, 3, 4, 14, 20)

Mitigation

TRA 4.14-1 Prior to construction, the project applicant would be responsible for payment of the San Benito County Regional Transportation Impact Mitigation Fee (TIMF), which would represent the project's contribution towards countywide roadway improvements funded by the fee program. San Benito County will determine the exact fee amount attributable to this project.

The structural integrity of a roadway is rooted in the ability to withstand repeated truck traffic. While passenger car traffic has a negligible impact on pavement lifespan, truck traffic affects a roadway's usable lifespan in a disproportionate manner. An insufficient pavement thickness can lead to rutting and potholes with repeated truck traffic, requiring repaving more frequently than would otherwise be anticipated. Therefore, it is important that a roadway be designed such that it can accommodate anticipated truck traffic demands. Caltrans uses two concepts to determine the correct pavement thickness – Equivalent Single Axle Load (ESAL) and Traffic Index (TI) (see the TIA for more information on these concepts).

Exhibit 13 in the TIA summarizes the TI calculations for two sections of Orchard Road – 1) north of Fairview Road; and 2) along the project frontage. As shown on Exhibit 13 in the TIA, the TIA determined the existing TI for both sections of Orchard Road is 8.0. However, upon review from the County Public Works further testing is required to adequately determine the TI of Orchard Road. To determine the adequacy of the existing pavement thickness of Orchard Road to accommodate the existing and future pavement loading, a pavement analysis was performed by Grice Engineering. It is documented in a letter entitled, "Evaluation of Existing Pavement of Orchard Road along frontage of site", June 29, 2018. The evaluation was performed to determine whether the existing pavement is adequate to accommodate existing pavement loading as well as future pavement loading from the Tanimura & Antle project as well as residential buildout of lands served by Orchard Lane. The report is included as Appendix K of the TIA. This is considered a less than significant impact. Preliminary information from the report indicated pavement impacts would be adequate to meet County requirements. However, updated analysis is currently being conducted by Grice Engineering based upon review by the County of San Benito Public Works Department. The County requested further testing to determine if the existing pavement is adequate or whether additional pavement improvements would be necessary to serve the project and area residents on Orchard Road. The results

of the testing would determine if additional pavement improvements would need to be made a condition of project buildout. This is considered a potentially significant impact that can be reduced to a less than significant level with the implementation of **Mitigation Measure TRA 4.14-2** described below. (1, 2, 3, 4, 14, 20)

Mitigation

TRA 4.14-2 Prior to construction, the project applicant shall complete all testing and analysis required to determine the pavement thickness of Orchard Road needed to comply with applicable County requirements for pavement loading, subject to review and approval by the County Public Works Department.

If after review by Public Works, testing indicates pavement thickness would be adequate to meet County requirements, no further action is required.

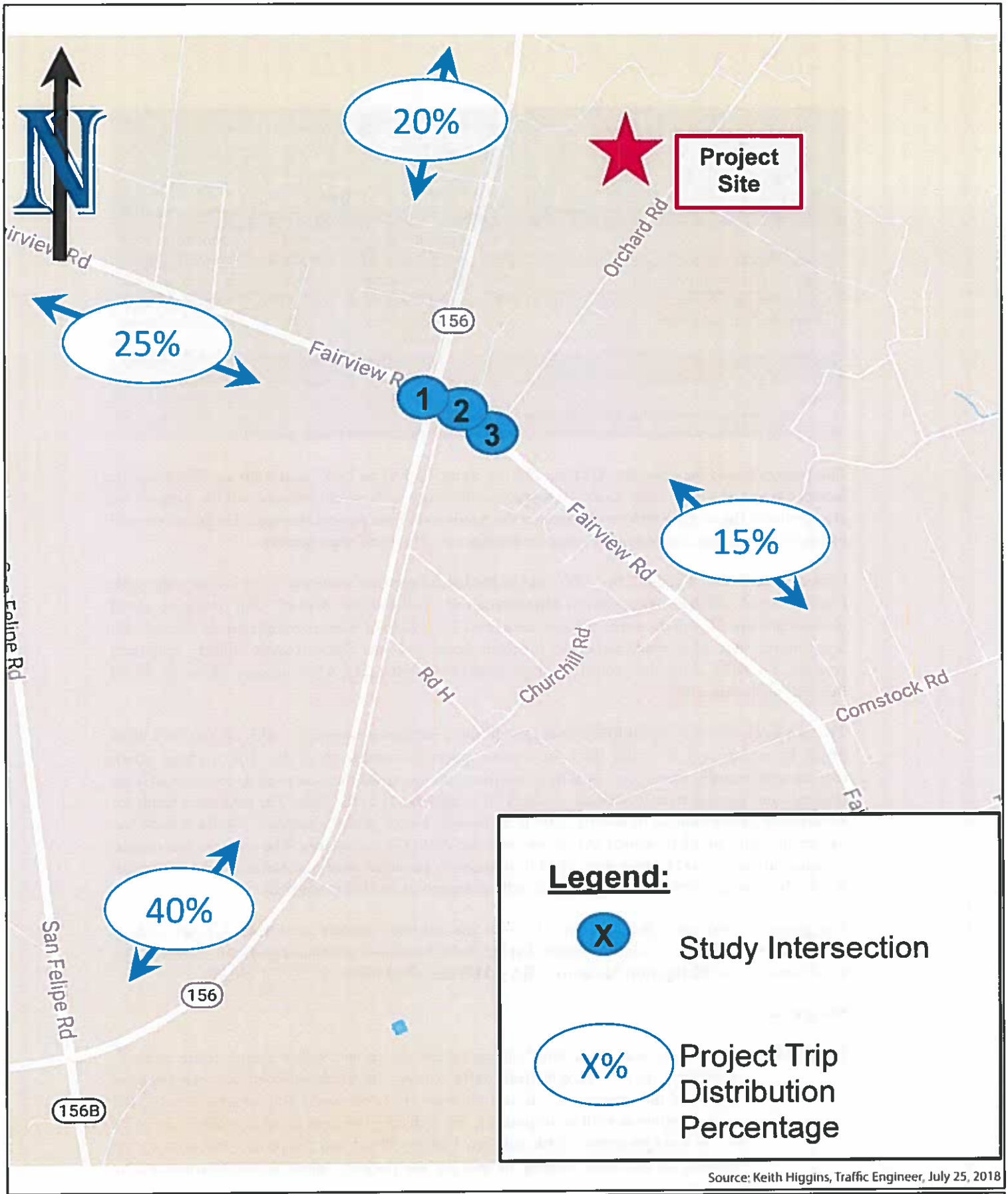
If testing and analysis indicate additional improvements would be necessary for full project buildout, the County shall inform the applicant of requirements for funding and improvements for the full buildout of the project and enter into an agreement for future timing and completion of construction improvements.

Additionally, San Benito County Ordinance 860, Section 4, included in Appendix K in the TIA establishes the classification of roadways in the county. Each classification has a corresponding roadway width and maximum Average Daily Traffic (ADT). Appendix K contains a table from Road Classification Ordinance that identified the vehicle classification and associated characteristics.

Recommended Classifications

Table 4.14-2 summarizes the roadway classifications for Orchard Road, based on the existing and projected ADT. As with the TI calculations, the roadway classifications were determined for two sections of Orchard Road – 1) north of Fairview Road; and 2) along the project frontage.

As shown on **Table 4.14-2**, the current ADT on Orchard Road is 924 vehicles per day near Fairview Road and 844 vehicles per day along the project site. This corresponds to a Local Residential (through) classification which corresponds with a range in ADT of 501 to 1,500.



Source: Keith Higgins, Traffic Engineer, July 25, 2018

Title:
Trip Distribution

Date: 8/1/2018
 Scale: N/A
 Project: 2018-32



Monterey | San Jose
Denise Duffy and Associates, Inc.
 Environmental Consultants Resource Planners
 947 Cass Street, Suite 5
 Monterey, CA 93940
 (831) 373-4341

Figure
4.14-2

**Table 4.14-2
San Benito County Roadway Classifications for the Project**

Scenario	Roadway Orchard Road			
	North of Fairview Road		Along Project Frontage	
	ADT	Classification	ADT	Classification
Existing	924	Local Residential	844	Local Residential
Existing Plus Project	1,057	Local Residential	844-977	Local Residential
Background Without Project	1,242	Local Residential	972	Local Residential
Background Plus Project	1,357	Local Residential	977-1105	Local Residential
Cumulative Without Project	1,560	Collector no access	1,100	Local Residential
Cumulative Plus Project	1,693	Collector no access	1,100-1233	Local Residential

Notes:
1. ADT = Average Delay Traffic (Two-Way), in vehicles per day.
2. County roadway classification per San Benito County Ordinance 860, Section 4, adopted in 2010.

The project would increase the ADT by 133 (or about 12.5%) to 1,057 near Fairview Road and by between 0 and 133 to 977 just south of the project driveway at the south boundary of the project. No change above the existing 844 would occur at the north end of the project frontage. The project would increase traffic along the project frontage an average of 7.9%, or 67 trips per day.

Under General Plan Buildout, the ADT on Orchard Road increase to nearly 1,700 vehicles/day near Fairview Road, which corresponds to a classification of “Collector No Access”. This condition would not be experienced until the entire tributary area served by Orchard Road is completely developed with 5-acre home sites. This would not occur for many decades. Under this extremely unlikely, long term scenario, the ADT along the project frontage would be about 1,233, which remain within the Local Residential classification.

The San Benito County Local Residential classification requires a pavement width on Orchard Road of 28 ft., which is 4 ft. wider than the current pavement width of 24 ft.. The roadway width requirements actually exceed the Local Road width requirements for the American Association of State Highway and Transportation Officials (AASHTO) (Appendix M of the TIA). The pavement width for a road with a daily volume of 400 to 1,500 is 20 ft. with 5-foot graded shoulders. Orchard Road has pavement width of 24 ft., which already exceeds the AASHTO standards. The total graded section indicated in the AASHTO guidelines of 30 ft. is generally provided along the entire length of Orchard Road. The existing Orchard Road complies with or exceeds AASHTO standards.

The project would only add 7.9% to 12.5% to the existing volumes on Orchard Road. This is considered a potentially significant impact that can be reduced to a less than significant level with the implementation of **Mitigation Measure TRA 4.14-3** described below. (1, 2, 3, 4, 14, 20)

Mitigation

TRA 4.14-3 Prior to the issuance of final building permit, the project will perform a traffic study to determine the then-current daily traffic volume on Orchard Road between Fairview Road and the project site. If said volumes are at or over 1,500 vehicles per day, the project applicant shall be responsible for widening Orchard Road to a minimum of 28 feet in total pavement width between Fairview Road and the project site prior to the issuance of the final building permit for the project, unless already constructed by

others. This roadway widening shall conform to the standards and requirements of the County of San Benito.

In conclusion, the proposed project would have potentially significant impacts conflicting with applicable plans, ordinances or policies establishing measures of effectiveness for the performance of the circulation system. The implementation of **Mitigation Measure TRA 4.14-1** and **Mitigation Measure TRA 4.14-2** would ensure that these potential impacts effects due would be reduced to a less-than-significant level.

- b) **Less than Significant with Mitigation Incorporated.** See a) above. The project would result in potentially significant impacts conflicting with applicable congestion management program, including but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways. The implementation of **Mitigation Measure TRA 4.14-1** and **Mitigation Measure TRA 4.14-2** would ensure that these potential impacts effects due would be reduced to a less-than-significant level. (1, 2, 20)
- c) **No Impact.** Implementation of the proposed project would not result in any change to air traffic patterns. (1, 2, 3, 20)
- d) **No Impact.** The proposed project would not involve a hazardous design feature or incompatible uses. (1, 2, 20)
- e) **No Impact.** The proposed project would not result in inadequate emergency access. (1, 2, 3, 20)
- f) **No Impact.** As stated above the proposed project is anticipated to generate little to no pedestrian traffic and bicycle traffic, due to the relative isolation of the project site from population areas and the lack of pedestrian facilities in the area. In addition, the project is anticipated to generate no increase in transit usage by employees or visitors to the project site. As a result, the project would not conflict with adopted policies, plans, or programs supporting alternative transportation. (1, 2, 20)

4.15 TRIBAL CULTURAL RESOURCES

4.15.1 Environmental Setting

Holman & Associates contacted the NAHC to request a search of the Sacred Lands File and the current list of Native American contacts for the project location in order to initiate consultation under California AB 52 Amendment to CEQA.

The NAHC responded that the search of the Sacred Lands File for the project vicinity found one tribal resource associated with the Amah Mutsun Tribal Band within the project area. The list obtained from the NAHC included five Native American contacts. Each of the contacts was contacted in a letter sent via email on May 26, 2018. Information in the letter included the project description, results of the Sacred Lands File search, results of the records search, results of the site reconnaissance and subsurface testing, a project location map, and the project master plan.

The parties contacted were asked to consider the letter and project information as notification of a proposed project as required under CEQA, specifically Public Resources Code 21080.3.1 and Chapter 532 Statutes of 2014 (AB 52). Comments were requested in writing within 30 days. Return contact information was provided to facilitate multiple options for responses by letter, fax, email, or phone. The following contacts were sent consultation letters:

- Valentin Lopez, Chairperson, Amah Mutsun Tribal Band
- Irenne Zwierlein, Chairperson, Amah Mutsun Tribal Band of Mission San Juan Bautista
- Karen White, Council Chairperson, Xolon-Salinan Tribe
- Ann Marie Sayers, Chairperson, Indian Canyon Mutsun Band of Costanoan
- Donna Haro, Tribal Headwoman, Xolon-Salinan Tribe

The consultation process resulted in direct contact with four of the five Native American contacts (80 percent) on the list provided by NAHC. A record of the consultation process is attached to the cultural resources report¹¹. There has been no formal request for consultation under AB 52 to this point in the consultation process.

4.15.2 Environmental Impacts

Environmental Impacts	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
TRIBAL CULTURAL RESOURCES. Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:				
a) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native America Tribe.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4.15.3 Explanation

- a) **No Impact.** As described above in Section 4.5 Cultural Resources the results of the Cultural Resources Report indicate there are no historical resources within the project area. As a result, the proposed project would not cause a substantial adverse change in the significance of a tribal cultural resources as defined in Public Resources Code Section 21074. (2, 3, 13)
- b) **Less than Significant Impact with Mitigation Incorporated.** Both the site reconnaissance and subsurface testing were negative for prehistoric archaeological materials within the project area and the site has been significantly disturbed with a lengthy history of agricultural practices on the property.

¹¹ For a copy of the Cultural Resources Report please contact the Lead Agency, the Cultural Resources Report is not attached to the document for privacy.

However, one prehistoric archaeological resource, CA-SBN-49/H, has been recorded in the north portion of the project area between Pacheco Creek and Orchard Road (however, not found in the recorded location during site analysis), and pursuant to California AB 52 tribal consultation was initiated. The consultation process resulted in direct contact with four of the five Native American contacts on the list provided by NAHC. The results of this investigation suggest the project area should be treated as very sensitive for prehistoric archaeological resources. This is considered a potentially significant impact that can be mitigated to less than significant with incorporating of **Mitigation Measures 4.5-1, 4.5-2, and 4.5-3** outlined above in **Section 4.5 Cultural Resources** above. (2, 3, 13)

4.16 UTILITIES AND SERVICE SYSTEMS

4.16.1 Environmental Setting

Water Supply and Delivery

According to the San Benito County General Plan RDEIR, the three primary sources of water supply in the County include water purchased and imported from the CVP by the SMCWD, local surface water stored in and released from SBCWD owned and operated Hernandez and Paicines reservoirs, and local groundwater pumped from wells. While the SBCWD is the CVP wholesaler for municipal and industrial use and has jurisdiction over water management throughout the County, much of the population is served by other water purveyors, including the City of Hollister, Sunnyslope County Water District (SSCWD), and other small local purveyors. Some communities within the County are not served by water districts or do not have water systems that provide water service. These communities and rural residents must rely on private wells and groundwater.

SBCWD has a San Felipe CVP contract for up to 43,800 AF from San Luis Reservoir (Contract No. 8-07-20-W0130). The majority of CVP water is delivered for agricultural purposes but some is also delivered for municipal and industrial (M&I) purposes. SBCWD operates and maintains both the Hollister Conduit and San Justo Reservoir and participates in the operation and maintenance of pumping and conveyance facilities from San Luis Reservoir through a joint operating agreement with Santa Clara. CVP water is delivered into Zone 6 of San Benito through a pressurized distribution system that extends from San Justo Reservoir to the district distribution system. Zone 6 is the only portion of San Benito that is authorized to receive CVP water. (Dept. of Interior 2017); CVP water is available to the project site.

For the last decade (2000-2010) total water use, including CVP water and groundwater, has ranged from between 35,000 and 47,000-acre-feet per year (AFY) in the CVP delivery area (termed Zone 6), depending on weather conditions, the economy, and water conservation measures. Total water use in Zone 6 generally declined over the period from 2000 to 2010, with year-to-year fluctuations most likely caused by variable weather conditions. Long term trends may be due to the economy and water conservation. Agricultural, municipal, and industrial use has generally declined during this same time frame, mostly due to conservation and the economic downturn.

Water will be supplied by two water supply wells that are located on the property already and supply water for irrigation and domestic water. New water tanks will be installed northeast of the drive near the existing well located adjacent to the creek and will be approved by San Benito County Health Department.

Wastewater System

According to the San Benito County General Plan RDEIR, most of the unincorporated areas of San Benito County lack public sewer infrastructure and instead are serviced by either community septic systems or individual septic systems and leachfield disposal. The incorporated areas, including Hollister and San Juan

Bautista, are serviced by each city's wastewater and sewer services. Unincorporated areas in the County that have public wastewater service are served by the Sunnyslope County Water District, the Tres Pinos Water and Sewer District, or by one of four County Service Areas (CSAs). The four CSAs with sewer collection and treatment facilities in the county include: CSA #22 Cielo Vista, CSA #51 Comstock Estates, CSA #54 Pacheco Creek Estates, and CSA #45 Rancho Larios. The majority of the sewer districts that provide wastewater service in the unincorporated County have service areas that also cover the cities of Hollister and San Juan Bautista, and planned developments within several subdivisions outside city limits. Communities south of Hollister, near Tres Pinos and in the far western and southern portion of the County, are on septic systems.

A new septic tank and leach field sewer system will be designed to support the office space at the center building. Sizing requirements will be based on the 50-person occupant-load anticipated at full buildout and will support restrooms, break rooms and domestic needs.

Storm Drainage

According to the San Benito County 2035 General Plan the San Benito River, Pajaro River, and the Santa Ana Creek tributary (north of the project site) are the three natural channels that receive storm water from the County. Stormwater drainage systems serve very few areas of the county and are operated by five service providers and several County Services Areas that also provide water and/or wastewater service. Most residents and businesses in the unincorporated county rely on individual drainage solutions or small-scale drainage systems. Stormwater quality measures are advocated and required by the County as part of the development review process. Because of the low intensity of development in unincorporated areas, the construction of large stormwater drainage systems is not necessary. A preferred method to decrease stormwater runoff volumes water and quality is the use of Low Impact Development (LID) techniques. The purpose of LID is to reduce impervious surfaces and provide more opportunities for runoff to soak into the ground onsite or to unlined ditches and swales or to be used for irrigation and other uses.

The site will be developed with a minimum 50-foot setback to Pacheco Creek and all runoff will be directed away from the creek. Additionally, two new vegetated basins totaling 15.2 acre-ft. (located in the middle of the project side and on the southwest corner, see Figure 1.5) and a 1,500-foot long vegetated swale (located along the southern boundary of the project site, see Figure 1.5) to retain and clean stormwater will be strategically located to intercept runoff before there is any discharge from the site. As the disturbed area exceeds one (1) acre, the project applicant will also be responsible for obtaining Construction Activities Storm Water General Permit (General Permit), file a complete Notice of Intent (NOI) package, and develop a SWPPP per SWRCB requirement. The project will be conditioned to require a Waste Discharger identification (WDID) number or Erosivity Waiver to be provided to County Public Works prior to start of any construction activities as part of this project. Additionally, project conditions will require compliance with County Drainage Standards, provision of final drainage and erosion control details for the project and that all drainage improvements be installed prior to issuance of occupancy permit, per County Public Works (RMA correspondence, August 29, 2018).

Solid Waste

The current solid waste disposal and recycling service provider for the City of Hollister, the City of San Juan Bautista, and most parts of unincorporated San Benito County is Recology San Benito County. Recology transports solid waste to the John Smith Road Landfill (JSRL), which is owned by the San Benito County Integrated Waste Management Department (IWMD) and operated by Waste Connections, Inc. The JSRL is the only operating active solid waste landfill in San Benito County.

The JSRL is located at 2650 John Smith Road, approximately five miles southeast of downtown Hollister, in the unincorporated County. It has a maximum permitted throughput of 1,000 tons per day and, as of March

31, 2018 has a remaining capacity of approximately 3,499,000 cubic yards (CalRecycle, 2018). According to available information from the Central Coast RWQCB regarding the JSRL, based on current waste disposal rates, the estimated closure date (when capacity is expected to be reached) is 2032 (CalRecycle, 2018).

Electric and Gas

Gas and electric service for the proposed project would be provided by PG&E. In 2016, PG&E’s power mix consists of approximately 33 percent renewable energy sources, with a goal of being 50 percent renewable by the end of 2030 (PG&E, 2017).

4.16.2 Environmental Impacts

Environmental Impacts	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
UTILITIES AND SERVICE SYSTEMS. Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project’s projected demand in addition to the provider’s existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Be served by a landfill with sufficient permitted capacity to accommodate the project’s solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Comply with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

4.16.3 Explanation

a-b) **Less than Significant Impact.** The proposed project would require construction of new wastewater treatment facilities. However, construction and implementation of the project would not exceed

applicable wastewater treatment requirements of the Regional Board. The project proposes a new septic tank and leach field sewer system designed to support the office space at the Center Building. Sizing requirements would be based on the 50-person occupant-load at full buildout and would support restrooms, break rooms and domestic needs. Additionally, the project would be required to receive approval from the San Benito County Health Department. The project would not exceed wastewater treatment requirements of the Regional Board. This represents a less than significant impact. (1, 2, 4, 9, 14, 23)

- c) **Less than Significant Impact.** As discussed in Section 4.9 Hydrology and Water Quality above, the proposed project would include two new vegetated basins totaling 15.2 acre-ft. and a 1,500-foot long vegetated swale to retain and clean stormwater would be strategically located to intercept runoff before there is any discharge from the site. However, construction of the basins would not result in an adverse environmental impact. Site design and runoff reduction measures are outlined for implementation during construction as required by the San Benito County Code of Ordinance and a stormwater control plan would be implemented as part of the NPDES permit. Compliance with the San Benito County Code and the NPDES permit would address potential impacts during construction of new stormwater facilities. This impact is considered a less than significant impact. (1, 2, 3, 4, 9, 14, 23)
- d) **Less than Significant Impact.** As discussed in Section 4.9 Hydrology and Water Quality above, two water supply wells are located on the Property and supply water for irrigation and domestic water. The existing wells would be used for irrigation and fire suppression water. A new domestic water well would be constructed to serve domestic requirements of the project. Full project buildout proposes a 50-person occupant load, including restrooms and break room facilities. In addition to the existing wells, Central Valley Water Project (non-potable “Blue valve”) water is also available onsite for irrigation.

The new project is anticipated to require an average daily demand of 0.11 acre-ft. per day during Phase 1 and 0.48 acre-ft. per day at full buildout during non-peak growing season. Water usage would be higher from July through October, as these are peak growing periods and higher water demand is anticipated. During these four months, anticipated peak daily use would be 0.31 acre-ft. per day during Phase 1 and a total of 1.28 acre-ft. per day at full buildout (during peak months). Total water use during peak and non-peak operation is outline in Table 4.16-1 below.

	Average Annual Daily Use (Acre-ft./Day) November through June	Peak Daily Use (Acre- ft./Day) July through October
Phase 1	0.11	0.31
Full Build-Out	0.48	1.28

Source: Email communication with Jeffery Nohr and Anthony Duttie, Tanimura & Antle, November 5, 2018. Note: Water demand volumes are based on 8 hour run time, with 100% occupancy for the specified phase.

The above provides estimated daily volumes of water usage during periods of peak demand. Periods of peak nursery occupancy also coincide with periods of peak evapotranspiration (Email communication from Anthony Duttie, Director of Agronomic Services for Tanimura & Antle, November 5, 2018). The table also provides estimates of the annual average of daily water usage adjusted to projected daily occupancy. The project will use an estimated 273 AFY of water at full

buildout, assuming 242 days of average daily or non-peak use (242 x 0.48 acre-ft./day = 116 AFY) and 123 days of peak use (123 x 1.28 acre-ft./day = 157 AFY).

Water will be supplied by groundwater and Central Valley Water Project for irrigation. Sufficient water supplies are available to serve the project from existing entitlements and resources, including groundwater resources and CVP water as described above and in Section 4.9, Hydrology and Water Quality and SBCWD Annual Report prepared by Todd Groundwater (2017); this is considered a less than significant impact. (1, 2, 3, 4, 9, 23, 24, 25)

- e) **No Impact.** Wastewater treatment would be through a septic system on-site; therefore, the project would not affect existing treatment capacity of a wastewater treatment provider. There would be no impact in connection with the proposed project. (1, 2, 3, 4, 9, 23, 24, 25)
- f) **No Impact.** The project would generate a minimal amount of solid waste. This would be disposed of at the landfill or other approved location and is not expected to exceed landfill capacity. There would be no impact in connection with the proposed project. (2, 3, 21)
- g) **Less than Significant Impact.** The project would comply with all federal, state, and local statutes and regulations related to solid waste. All waste generated in connection with the project would be handled in accordance with all applicable federal, state, and local statutes and regulations to the extent they are applicable to the project. This represents a less than significant impact. (1, 2, 3, 4, 9, 15)

4.17 MANDATORY FINDINGS OF SIGNIFICANCE

4.17.1 Environmental Impacts

Environmental Impacts	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
Does the project:				
a) Have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

4.17.2 Explanation

- a) **Less than Significant Impact with Mitigation.** The proposed project would involve the development of greenhouses and related improvements on a vacant lot on a former nursery warehouse site and former disturbed agricultural land. The proposed project would not 1) degrade the quality of environment, 2) substantially reduce the habitat of a fish or wildlife species, 3) cause a fish or wildlife population to drop below self-sustaining levels, 4) threaten to eliminate a plant or animal community, 5) reduce the number or restrict the range of a rare or endangered plant or animal, or 6) eliminate important examples of major periods of California history or prehistory.

The area proposed for development contains heavily disturbed, ruderal vegetation and no special-status plant or wildlife species were observed or considered likely to be found on the project site. Aesthetic impacts are considered less than significant with mitigation proposed to introduce landscaping along project boundaries and reduce impacts from light and glare (See Mitigation Measures AES 4.1-1 and 4.1-2). Mitigation for biological resources such as pre-construction surveys and construction activities avoiding nesting season are proposed to reduce impacts related to sensitive species to less than significant (Mitigation Measures BIO 4.4-1). In addition, mitigation, standard BMPs, as well as payment of the HCP fee would be employed to reduce or avoid impacts to the riparian area of Pacheco Creek. The proposed project proposes tree removal, Mitigation Measures BIO 4.4-2 through BIO 4.4-4 would reduce impacts to avian species associated with tree removal to a less than significant level.

The proposed project would not adversely impact a cultural or historic resource that is an important example of a major period in California history with mitigation proposed in this IS/MND. Mitigation would reduce potential impacts to cultural resources resulting from ground disturbing construction activity (Mitigation Measures CUL 4.5-1 through CUL 4.5-4) to less than significant. The proposed project would not 1) degrade the quality of environment, 2) substantially reduce the habitat of a fish or wildlife species, 3) cause a fish or wildlife population to drop below self-sustaining levels, 4) threaten to eliminate a plant or animal community, 5) reduce the number or restrict the range of a rare or endangered plant or animal, or 6) eliminate important examples of major periods of California history or prehistory. With implementation of these measures, as described in this IS/MND, the project would not have the potential to degrade the quality of the environment and, overall, impacts would be less than significant impact. No additional mitigation is necessary beyond mitigation identified in each of the respective topical CEQA sections contained in this IS/MND. (1, 2, 3, 8, 9, 10, 13, 14, 15, 20, 23, 25).

- b) **Less than Significant Impact.** The proposed project would not result in a cumulatively considerable adverse environmental effect. The proposed project's aesthetic, biological, cultural, geology & soils, land use, and traffic/transportation are specific to the project site, are less than significant with mitigation and would not contribute to cumulative impacts elsewhere. This IS/MND contains mitigation to ensure that all impacts would be minimized to a less than significant level. The proposed project would result in temporary construction-related impacts that would be mitigated to a less than significant level through the incorporation of mitigation measures identified in this IS/MND (Mitigation Measure GEO 4.6-1). All operational impacts associated with the project would also be reduced to a less than significant level through the incorporation of mitigation (Mitigation Measures AES-4.1-1 & AES-4.1-2; LU-4.10-1, TRA 4.12-1 & TRA 4.12-2). Compliance with the mitigation measures contained in this document would ensure that all impacts are less than significant. The project would have temporary air quality impacts, and GHG emissions that would contribute to the overall regional and global GHG emissions. However, air quality impacts and GHG emissions would not exceed the MBARD's thresholds of significance. In addition, the proposed project would not induce

potential population growth beyond existing levels. As a result, the project would not conflict with and/or obstruct the implementation of the MBARD 2012-2015 AQMP, or any other plans to address exceedance of State air quality standards. For these reasons, the project would have a less than significant cumulative impact on the air quality and GHG. Overall, based on the analysis provided in this IS/MND, the proposed project would not significantly contribute to cumulative impacts.

Additionally, the EIR prepared for the County's 2035 General Plan identified several significant unavoidable impacts that would potentially occur with buildout of the General Plan, including loss of prime farmland, light and glare, effects to sensitive species and habitats, exposure to flood hazards, noise, population growth, and transportation level of service impacts. This project is consistent with the General Plan land use designation; thus, the effects of the project were already considered programmatically as part of the General Plan EIR. A list of relevant General Plan policies considered during review of this project are contained in Appendix G: 2035 San Benito County Relevant General Plan Policies. As stated above and in topical sections of this IS/MND, in many cases, this project would have no effect on impacts cited. Overall, the project would not result in impacts that are individually limited, but cumulatively considerable. (1, 2, 3, 8, 9, 10, 11, 12, 13, 14, 15, 20, 23, 25)

- c) **Less than Significant Impact.** The proposed project would not cause any adverse effects on human beings. Temporary construction impacts would be temporary in nature and mitigated to a less than significant extent. In addition, temporary construction impacts would be limited since potential construction-related air quality impacts and GHG emissions would not exceed the MBARD's significance thresholds and compliance with applicable MBARD regulations would minimize potential nuisance impacts to occupants of nearby land uses. The project would not result in environmental effects that would cause substantial adverse effects on human beings, either directly or indirectly as documented in this IS/MND. (1, 2, 3, 8, 9, 10, 13, 14, 15, 20, 23)

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Chapter 5. References

LEAD AGENCY

San Benito County – Resource Management Agency

Taven Kinison Brown Senior Planner/Lead Planner

Richard D. Felsing Assistant Planner

PROJECT LEAD

Avila Construction

Michael Avila Co-Owner

Jeffery Nohr Project Manager

IS/MND REPORT PREPARATION

Denise Duffy & Associates, Inc.

Denise Duffy Principal

Josh Harwayne Senior Environmental Scientist

Ashley Quackenbush Associate Planner/Graphics

Liz Camilo Assistant Environmental Scientist

Robyn Simpson Administration/Editing

Holman & Associates

John Schlagheck Associate Archaeologist

TECHNCIAL REPORTS

Frank Ono – Certified Arborist

Frank Ono ISA Certified Arborist #536

Grice Engineering

Sam Grice Principal

Keith Higgins – Traffic Engineer

Keith Higgins Traffic Engineer

Lee & Pierce Inc.

Frank D. Pierce Registered Professional Engineer AG 138

Paul Davis Partnership

Paul W. Davis Principal Architect

Whitson Engineers

Andrew Hunter, P.E. Principal

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CHECKLIST SOURCES

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12. California Department of Fish and Wildlife. 2017. California Natural Diversity Database Rare Find 5 Report. Available online at: <https://www.wildlife.ca.gov/Data/CNDDDB/Maps-and-Data>.
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Notice of Determination

Appendix D

To:
[] Office of Planning and Research
U.S. Mail: P.O. Box 3044
Sacramento, CA 95812-3044
[] County Clerk
County of: San Benito
Address: 440 Fourth Street, #206
Hollister, CA 95023

From:
Public Agency: County of San Benito RMA
Address: 2301 Technology Parkway
Hollister, CA 95023
Contact: Richard Felsing
Phone: 831-902-2289
Lead Agency (if different from above):
Address:
Contact:
Phone:

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

State Clearinghouse Number (if submitted to State Clearinghouse): SCH #2018111047
Project Title: Vegetable Transplant Nursery Project
Project Applicant: Tanimura & Antle / Avila Construction
Project Location (include county): 1298 Orchard Road, Hollister, CA 95023

Project Description:
This project would construct a mechanized vegetable transplant nursery, in six separate phases over six years, consisting of greenhouses and related facilities with about 100,000 square feet of office, storage & maintenance areas, 700,000 square feet of greenhouses, and 500,000 square feet of outdoor growing and work areas. The proposed project site is a 96.52-acre parcel that hosted greenhouses for several decades during the 1970s and 1980s, and was intensively cultivated as early as the 1930s. The facility will use a mechanized transplanting method known as 'planttape' technology to reduce time, labor, and costs from germination to field.

This is to advise that the Planning Commission of San Benito County has approved the above ([X] Lead Agency or [] Responsible Agency)

described project on February 20, 2018 and has made the following determinations regarding the above (date) described project.

- 1. The project [] will [X] will not have a significant effect on the environment.
2. [] An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA. [X] A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [X] were [] were not made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [X] was [] was not adopted for this project.
5. A statement of Overriding Considerations [] was [X] was not adopted for this project.
6. Findings [X] were [] were not made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval, or the negative Declaration, is available to the General Public at:

RMA of San Benito County, 2301 Technology Parkway, Hollister, CA 95023

Signature (Public Agency): [Handwritten Signature] Title: Project Planner

Date: February 21, 2019 Date Received for filing at OPR:

**Final
INITIAL STUDY/
MITIGATED NEGATIVE DECLARATION**

for the

**TANIMURA & ANTLE
1298 ORCHARD ROAD
VEGETABLE TRANSPLANT NURSERY PROJECT**

SCH #2018111047

Prepared for the County of San Benito, California
Resource Management Agency

January 2019

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Chapter 1. Introduction

1.1 BACKGROUND

This document, together with the Draft Initial Study/Mitigated Negative Declaration (Draft IS/MND), constitutes the Final Initial Study/Mitigated Negative Declaration (Final IS/MND) for the Tanimura & Antle 1298 Orchard Road Vegetable Transplant Nursery Project (project or proposed project). The San Benito County Resource Management Agency (County - RMA) is the lead agency for the Project. The Final IS/MND consists of an introduction, comment letters received during the 30-day public review period, responses to comments, and revisions to the Draft IS/MND, if deemed applicable.

The Draft IS/MND was prepared to inform the public of the potential environmental effects of the project and identify possible ways to minimize project-related impacts.

1.2 PUBLIC PARTICIPATION

Pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15073(a), the Draft IS/MND was circulated for a 30-day review period during which comments could be submitted. In accordance with CEQA, this document is included in the official public record for the Initial Study. On November 21, 2018, the Draft IS/MND was distributed for the public review period to responsible and trustee agencies, interested groups, and individuals. The review period ended on December 20, 2018. A San Benito County Planning Commission meeting is scheduled for January 16, 2019 to consider the adoption of the Final IS/ND and approval of the project.

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Chapter 2. Response to Comments

2.1 INTRODUCTION

This chapter includes comments received from the public and public agencies during the circulation of the Draft IS/MND. This section contains all information available in the public record related to the Draft IS/MND as of January 9, 2019. Section 2.3 below responds to comments received during and after the review period.

2.2 LIST OF COMMENT LETTERS

The following is a list of comment letters/email comments received on the Draft IS/MND and the dates these letters were received:

Agency Comment Letters

- | | |
|--|-------------------|
| A. State Clearinghouse, Office of Planning and Research (OPR) | December 21, 2018 |
| B. Native American Heritage Commission (NAHC) letter and email | November 29, 2018 |
| C. Monterey Bay Air Resources District (MBARD) email | December 21, 2018 |

2.3 RESPONSE TO COMMENTS

Each letter received on the Draft IS/MND is presented in this chapter, as identified in **Section 2.2** above. Attachments to each letter are included as well and are contained in Appendix A. Individual comments in each letter are numbered. Correspondingly numbered responses to each comment are provided in the discussion following the comment letter.

If comments raised environmental issues that required additions or deletions to the text, tables, or figures in the Draft IS/MND, a brief description of the change is provided, and the reader is directed to **Chapter 3, Revisions** to the Draft IS/MND.

The comments received on the Draft IS/MND did not result in a "substantial revision" of the IS/MND, as defined by CEQA Guidelines Section 15073.5, and the new information added to the IS/MND merely clarifies, amplifies, or makes insignificant modifications to the Draft IS/MND. No new, avoidable significant effects were identified since the commencement of the public review period that would require mitigation measures or project revisions to be added in order to reduce the effects to insignificant.

While responses to comments on a proposed IS/MND are not required by CEQA (Pub. Resources Code, § 21000 et seq.), this Response to Comments document is provided to demonstrate the County - RMA's careful consideration of the comments in compliance with CEQA. These responses provide the County - RMA's good faith, reasoned analysis on the major environmental issues raised in the comments.

Letter A



EDMUND G. BROWN JR.
GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND RESEARCH

RECEIVED
SBC PUBLIC WORKS

JAN 02 2019



KEN ALEX
DIRECTOR

December 21, 2018

2301 TECHNOLOGY PKWY
HOLLISTER, CA 95023

Richard Felsing
San Benito County Resource Management Agency
2301 Technology Parkway
Hollister, CA 95023

Subject: Tanimura & Antle 1298 Orchard Road Vegetable Transplant Nursery Project
SCH#: 2018111047

Dear Richard Felsing:

The State Clearinghouse submitted the above named Mitigated Negative Declaration to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on December 20, 2018, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Scott Morgan
Director, State Clearinghouse

Enclosures

cc: Resources Agency

A-1

**Document Details Report
State Clearinghouse Data Base**

SCH# 2018111047
Project Title Tanimura & Antle 1298 Orchard Road Vegetable Transplant Nursery Project
Lead Agency San Benito County

Type MND Mitigated Negative Declaration

Description The 1298 Orchard Road Vegetable Transplant Nursery Project is proposed by applicants Tanimura & Antle; the San Benito County Resource Management Agency is acting as the lead agency. The project is located at 1298 Orchard Road, Hollister in an unincorporated area of San Benito County, CA near Highway 156 and Fairview Rd. The project will be constructed in 6 separate phases over a six-year period. Upon completion, the project will include a vegetable transplant nursery consisting of greenhouses and related facilities with about 100,000 sf of office area and maintenance buildings, 700,000 sf of greenhouses, and 500,000 sf of outdoor growing and work area benches/tables holding plantings w/no overhead cover. There is no direct access on Highway 156 and the project will access via Orchard Road.

Lead Agency Contact

Name Richard Felsing
Agency San Benito County Resource Management Agency
Phone (831) 902-2289 **Fax**
email
Address 2301 Technology Parkway
City Hollister **State** CA **Zip** 95023

Project Location

County San Benito
City Hollister
Region
Lat / Long 36° 56' 36" N / 121° 22' 45" W
Cross Streets Orchard Rd & Fairview Rd near hwy 156
Parcel No. 016-090-018-000
Township **Range** **Section** **Base**

Proximity to:

Highways hwy 156
Airports
Railways
Waterways Pacheco Creek
Schools
Land Use LU: Vacant (former Ag use); San Benito County 2035 GP: A; Z: AP

Project Issues Aesthetic/Visual; Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Cumulative Effects; Drainage/Absorption; Flood Plain/Flooding; Forest Land/Fire Hazard; Geologic/Seismic; Landuse; Noise; Population/Housing Balance; Public Services; Schools/Universities; Septic System; Soil Erosion/Compaction/Grading; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian

Reviewing Agencies Resources Agency; Department of Fish and Wildlife, Region 4; Office of Historic Preservation; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 5; Native American Heritage Commission; State Water Resources Control Board, Division of Water Quality; State Water Resources Control Board, Division of Water Rights; Regional Water Quality Control Board, Region 3; Department of Toxic Substances Control

Date Received 11/21/2018 **Start of Review** 11/21/2018 **End of Review** 12/20/2018

Letter A: State Clearinghouse, Office of Planning and Research (OPR)

Comment A-1: The letter states that the State Clearinghouse submitted the Draft IS/MND to selected state agencies for review, and identified that no state agencies submitted comments to the State Clearinghouse during the public review period.

Response A-1: No further response is required.

Letter B

STATE OF CALIFORNIA

Edmund G. Brown Jr., Governor

NATIVE AMERICAN HERITAGE COMMISSION

Environmental and Cultural Department
1550 Harbor Blvd., Suite 100
West Sacramento, CA 95691
Phone (916) 373-3710

*clear
12/20/18
E*



November 29, 2018

Governor's Office of Planning & Research

Richard Felsing
San Benito County Resource Management Agency
2301 Technology Parkway
Hollister CA 95023

DEC 03 2018

STATE CLEARINGHOUSE

Also send via e-mail rfelsing@cosd.us

Re: SCH# 2018111047 Tanimura & Antle 1298 Orchard Road Vegetable Transplant Nursery Project, City of Hollister San Benito County California

Dear Mr. Felsing:

The Native American Heritage Commission (NAHC) has reviewed the Mitigated Negative Declaration (MND) prepared for the project referenced above. The review included the Introduction and Project Description; and the Initial Study Environmental Checklist, section 4.5 Cultural Resources and section 5.15 Tribal Cultural Resources, prepared by Denise Duffy & Associates/Holman & Associates for the San Benito County Resource Management Agency. We have the following concerns.

1. There is no documentation of government-to-government consultation by the lead agency under AB-52 with Native American tribes traditionally and culturally affiliated to the project area as required by statute or that mitigation measures were developed in consultation with the tribes.

B-1

Please contact me at gayle.totton@nahc.ca.gov or call (916) 373-3714 if you have any questions.

Sincerely,

Gayle Totton

Gayle Totton, B.S., M.A., Ph.D.
Associate Governmental Project Analyst

Attachment

cc: State Clearinghouse

ADDITIONAL INFORMATION

The California Environmental Quality Act (CEQA)¹, specifically Public Resources Code section 21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource is a project that may have a significant effect on the environment.² If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an environmental impact report (EIR) shall be prepared.³ In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources with the area of project effect (APE).

CEQA was amended in 2014 by Assembly Bill 52. (AB 52).⁴ AB 52 applies to any project for which a notice of preparation or a notice of negative declaration or mitigated negative declaration is filed on or after July 1, 2015. AB 52 created a separate category for "tribal cultural resources"⁵, that now includes "a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment."⁶ Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource.⁷ Your project may also be subject to Senate Bill 18 (SB 18) (Burton, Chapter 905, Statutes of 2004), Government Code 65352.3, if it also involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space. Both SB 18 and AB 52 have tribal consultation requirements. Additionally, if your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966⁸ may also apply.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

Agencies should be aware that AB 52 does not preclude agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52. For that reason, we urge you to continue to request Native American Tribal Consultation Lists and Sacred Lands File searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>. Additional information regarding AB 52 can be found online at http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf, entitled "Tribal Consultation Under AB 52: Requirements and Best Practices".

The NAHC recommends lead agencies consult with all California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources.

A brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments is also attached.

Pertinent Statutory Information:

Under AB 52:

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact or, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice.

A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project,⁹ and prior to the release of a negative declaration, mitigated negative declaration or environmental impact report. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code § 65352.4 (SB 18)."¹⁰

The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

- a. Alternatives to the project.
- b. Recommended mitigation measures.
- c. Significant effects.¹¹

1. The following topics are discretionary topics of consultation:

- a. Type of environmental review necessary.
- b. Significance of the tribal cultural resources.

¹ Pub. Resources Code § 21000 et seq.

² Pub. Resources Code § 21084.1, Cal. Code Regs., tit. 14, § 15064.5 (b); CEQA Guidelines Section 15064.5 (b)

³ Pub. Resources Code § 21080 (d); Cal. Code Regs., tit. 14, § 15084 subd.(a)(1); CEQA Guidelines § 15084 (a)(1)

⁴ Government Code 65352.3

⁵ Pub. Resources Code § 21074

⁶ Pub. Resources Code § 21084.2

⁷ Pub. Resources Code § 21084.3 (a)

⁸ 154 U.S.C. 300101, 36 C.F.R. § 800 et seq.

⁹ Pub. Resources Code § 21080.3.1, subds. (d) and (e)

¹⁰ Pub. Resources Code § 21080.3.1 (b)

¹¹ Pub. Resources Code § 21080.3.2 (a)

c. Significance of the project's impacts on tribal cultural resources.

If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency.¹²

With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code sections 6254 (r) and 6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public.¹³

If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

- a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
- b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code section 21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource.¹⁴

Consultation with a tribe shall be considered concluded when either of the following occurs:

- a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
- b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.¹⁵

Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code section 21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code section 21082.3, subdivision (b), paragraph 2, and shall be fully enforceable.¹⁶

If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code section 21084.3 (b).¹⁷

An environmental impact report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:

- a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code sections 21080.3.1 and 21080.3.2 and concluded pursuant to Public Resources Code section 21080.3.2.
- b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
- c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code section 21080.3.1 (d) and the tribe failed to request consultation within 30 days.¹⁸

This process should be documented in the Tribal Cultural Resources section of your environmental document.

Under SB 18:

Government Code § 65352.3 (a) (1) requires consultation with Native Americans on general plan proposals for the purposes of "preserving or mitigating impacts to places, features, and objects described § 5097.9 and § 5097.993 of the Public Resources Code that are located within the city or county's jurisdiction. Government Code § 65560 (a), (b), and (c) provides for consultation with Native American tribes on the open-space element of a county or city general plan for the purposes of protecting places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code.

- SB 18 applies to local governments and requires them to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf
- **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.¹⁹
- There is no Statutory Time Limit on Tribal Consultation under the law.

¹² Pub. Resources Code § 21080.3.2 (a)

¹³ Pub. Resources Code § 21082.3 (c)(1)

¹⁴ Pub. Resources Code § 21082.3 (b)

¹⁵ Pub. Resources Code § 21080.3.2 (b)

¹⁶ Pub. Resources Code § 21082.3 (a)

¹⁷ Pub. Resources Code § 21082.3 (e)

¹⁸ Pub. Resources Code § 21082.3 (d)

¹⁹ (Gov. Code § 65352.3 (a)(2)).

- **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research,²⁰ the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code sections 5097.9 and 5097.993 that are within the city's or county's jurisdiction.²¹
- **Conclusion Tribal Consultation:** Consultation should be concluded at the point in which:
 - The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation.²²

NAHC Recommendations for Cultural Resources Assessments:

- Contact the NAHC for:
 - A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - A Native American Tribal Contact List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
 - The request form can be found at <http://nahc.ca.gov/resources/forms/>.
- Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - If part or the entire APE has been previously surveyed for cultural resources.
 - If any known cultural resources have been already recorded on or adjacent to the APE.
 - If the probability is low, moderate, or high that cultural resources are located in the APE.
 - If a survey is required to determine whether previously unrecorded cultural resources are present.
- If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

Examples of Mitigation Measures That May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:

- Avoidance and preservation of the resources in place, including, but not limited to:
 - Planning and construction to avoid the resources and protect the cultural and natural context.
 - Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
- Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - Protecting the cultural character and integrity of the resource.
 - Protecting the traditional use of the resource.
 - Protecting the confidentiality of the resource.
- Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
- Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed.²³
- Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated.²⁴

The lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.

- Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources.²⁵ In areas of identified

²⁰ pursuant to Gov. Code section 85040.2,

²¹ (Gov. Code § 85352.3 (b)).

²² (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

²³ (Civ. Code § 815.3 (c)).

²⁴ (Pub. Resources Code § 5097.991).

²⁵ per Cal. Code Regs., tit. 14, section 15064.5(f) (CEQA Guidelines section 15064.5(f)).

archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.

- Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
- Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code section 7050.5, Public Resources Code section 5097.98, and Cal. Code Regs., tit. 14, section 15064.5, subdivisions (d) and (e) (CEQA Guidelines section 15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

From: Totton, Gayle@NAHC <Gayle.Totton@nahc.ca.gov>

Sent: Monday, January 7, 2019 12:59 PM

To: John Schlagheck <jps_indoj@hotmail.com>; rfelsing@cosb.us

Cc: Denise Duffy <Dduffy@ddaplanning.com>

Subject: Re: Tanimura and Antle Project MND Comments via State Clearinghouse_San Benito County

Good afternoon all,

Thank you John for providing the documents. After our phone conversation today, I believe that you have done your due diligence for cultural resources on this project. No further action is requested at this time.

Thank you for the good work.

Sincerely,

Gayle Totton, M.A., Ph.D.
Associate Governmental Program Analyst
Native American Heritage Commission
(916) 373-3714

Letter B: Native American Heritage Commission (NAHC)

Comment B-1: The commenter requests documentation of government-to-government consultation by the lead agency as required by Assembly Bill 52 (AB-52) and provides information under AB-52 on consultation.

Response B-1: The letter from the NAHC was sent without the benefit of the NAHC having reviewed the Cultural Report or having seen the consultation letter that was sent. The County - RMA provided the full report to the NAHC and followed-up separately to further outline the consultation process.

Holman & Associates (H&A) conducted the project notification and conducted Native American consultation under AB-52, as documented in the Cultural Report. The results of the consultation were presented in detail in the Cultural Report and summarized in the Draft IS/MND. The results noted that none of the four contacts requested ongoing consultation under AB-52 beyond submitting their initial input as shown in the report.

The NAHC responded after reviewing the full report and confirmed the County had done the due diligence for cultural resources on this project. No further action is requested at this time. The NAHC response email is included above for the record.

Letter C

From: Hanna Muegge [<mailto:HMuegge@mbard.org>]
Sent: Friday, December 21, 2018 4:09 PM
To: rich.felsing@gmail.com; Richard Felsing
Cc: David Frisbey
Subject: Additional Questions

Hi Richard,

We ended up playing phone tag after all. My main question in regards to GHG emission is that it is stated as being insignificant (1,014 MT/yr CO₂e) in the report, but the CalEEMod results actually show the Overall Mitigated Operational GHG emissions 5,555.39 MT CO₂e. I don't see how the conclusion was drawn that the GHG contributions of this project is only 1,014 MT/yr CO₂e.

C-1

I will be back in the office next week Wednesday if you'd like to discuss or shoot me an email to explain.

Feel free to send me your questions about traffic impacts about this project.

Merry Christmas, Happy Holidays!

Hanna Muegge, Air Quality Planner



24580 Silver Cloud Court
Monterey, CA 93940
Office: 831-647-9411; Direct: 831-718-8021
www.mbard.org

Letter C: Monterey Bay Air Resources District (MBARD)

Comment C-1: The commenter noted a discrepancy with the air quality modeling results and asked that they be reviewed. The question raised was on the project's greenhouse gas emissions (GHG). The letter noted that they appear to be reported incorrectly.

Response C-1: The County RMA and DD&A conferred with the MBARD on the comment. After review, it was determined that the California Emissions Estimator Model (CalEEMod) modeling output included a calculation error. The CalEEMod is a modeling tool recommended by the California Air Resources Board and accepted by the MBARD which provides an estimate of the proposed project's existing and proposed criteria air pollutant and GHG emissions. A corrected model run was conducted, and the revised model results are attached to this Final IS/MND. The model was originally run in August 2018 and the updated model run also incorporates the Traffic Report assumptions into the model and further specifies project-level assumptions as discussed below. The updated modeling results do not affect the conclusions contained in the Draft IS/MND. All project-related impacts would remain less than significant with the incorporation of recommended mitigation. Significance conclusions from the Draft IS/MND are not changed with the updated model.

As stated in the Draft IS/MND, the project site is located within the jurisdiction of the MBARD, which, to date, has not adopted significance criteria or thresholds for land use projects. Additionally, neither the State nor San Benito County have adopted GHG emissions thresholds or a GHG emissions reduction plan that would apply to the project. Other air districts in the State have adopted a threshold of 1,100 to 1,150 MT CO_{2e} per year for land-use projects, including the Bay Area Air Quality Management District (BAAQMD) and San Luis Obispo County Air Pollution Control District (SLOCAPCD). In the past, the air district recommended that thresholds of significance adopted by SLOCAPCD may be used as a reference for assessing impacts of land use projects planned within the local air district. This reference was made due to the air district's belief that conditions within the SLOCAPCD were similar to those within the local air district.

Given that the MBARD has not adopted any recommended GHG significance thresholds, the threshold of 1,150 MT CO_{2e} per year for land use projects was utilized for the proposed project. For the purposes of this analysis, project-generated emissions in excess of 1,150 MT CO_{2e}/year would be considered to have a potentially significant impact. Construction and operational phase GHG emissions projections for the project were quantified and compared to the emissions threshold of 1,150 MT CO_{2e}/year. Projects whose sum of operational and construction emissions (construction emissions being amortized over a 30-year period to identify annual construction emissions) exceed this threshold would have a significant impact from generation of a significant volume of GHG emissions. The project's estimated GHG emissions would not exceed the significance threshold for development projects (see **Table 4.7-1** below).

Construction and operational GHG emissions for the project were modeled using CalEEMod (**Appendix A**). Unless otherwise noted, model inputs are based upon project information provided by the applicant regarding proposed construction and operational activities (model assumptions are provided below in **Section 3. Revisions to the Draft IS/MND**). **Table 4.7-1** below, shows the updated results of the CalEEMod modeling. As indicated in **Table 4.7-1** the project would have less than significant impacts, as net GHG emission would be below 1,150 MT CO_{2e}/year. See the updated text in **Chapter 3, Revisions to the Draft IS/MND**; updated air quality emissions are also shown below. As noted above, the revised GHG emissions would not result in an additional adverse environmental effect beyond those previously identified in the Draft IS/MND. All project impacts would remain less than significant.

Table 4.7-1 GHG Emissions From Project		
	Mitigated	Unmitigated
Construction Emissions	262.02 MT CO _{2e}	262.02 MT CO _{2e}
Amortized Emissions Over 30 Years	8.73 MT CO _{2e} /yr	8.73 MT CO _{2e} /yr
Operational Emissions	756.04 MT CO _{2e} /yr	1,121.21 MT CO _{2e} /yr
Project Emissions¹	764.77 MT CO_{2e}/yr	1,129.94 MT CO_{2e}/yr
Threshold	1,150 MT CO _{2e} /yr	
Exceed Threshold	No	
1. Project assumptions are outlined in the Final IS/MND Section 3. Revisions to the Draft IS/MND. Source: T&A Transplant Nursery CalEEMod Annual Emissions, January 10, 2019		

Chapter 3 Revisions to the Draft IS/MND

The following section includes revisions to the text of the Draft IS/MND, in amendment form. The revisions are listed numerically by page number. All additions to the text are shown underlined and all deletions from the text are shown ~~stricken~~.

Chapter 4. Initial Study Environmental Checklist

Page 34, Table 4.3-2 is edited as follows:

Pollutant	Construction (lbs/day)	Operation (lbs/day)	Exceed Threshold?
PM ₁₀	<u>22.49</u>	<u>0.43</u>	No
PM _{2.5}	<u>6.87</u>	<u>0.16</u>	No
CO	<u>32.24</u>	<u>2.47</u>	No
NO _x	<u>50.23</u>	<u>3.20</u>	No
SO ₂	<u>0.06</u>	<u>0.01</u>	No
Notes:			
Source: <u>Attachment A, Air Quality and GHG Calculations Spreadsheets, Winter, January 10, 2019</u>			
Significance Threshold Source: MBARD, 2016			

Page 53, Section 4.3.7 Explanation is edited as follows:

- a) **Less than Significant Impact.** As previously stated, the project is located in the NCCAB, where air quality is regulated by MBARD. Neither the State, MBARD, nor San Benito County have adopted GHG emissions thresholds or a GHG emissions reduction plan that would apply to the project. However, it is important to note that other air districts within the State of California have recently adopted recommended CEQA significance thresholds for GHG emissions. For instance, on March 28, 2012 the San Luis Obispo Air Pollution Control District (SLOAPCD) Board approved thresholds of significance for the evaluation of project-related increases of GHG emissions. The SLOAPCD's significance thresholds include both qualitative and quantitative threshold options, which include a bright-line threshold of 1,150 MTCO₂e/year. On October 23, 2014, the Sacramento Metropolitan Air Quality Management District (SMAQMD) adopted a similar significance threshold of 1,100 MTCO₂e/year. The GHG significance thresholds are based on AB 32 GHG emission reduction goals, which take into consideration the emission reduction strategies outlined in the ARB's Scoping Plan. Development projects located within these jurisdictions that would exceed these thresholds would be considered to have a potentially significant impact on the environment which could conflict with applicable GHG-reduction plans, policies and regulations. Projects with GHG emissions that do not exceed the applicable threshold would be considered to have a less than significant impact on the environment and would not be anticipated to conflict with AB 32 GHG emission reduction goals. Given that the MBARD has not yet adopted recommended GHG significance thresholds, the above thresholds were relied upon for evaluation of the proposed project. For purposes of this analysis, project-generated emissions in excess of 1,150 MTCO₂e/year would be considered to have a potentially significant impact.

Construction and operational GHG emissions for each project were modeled using CalEEMod (Appendix A). Unless otherwise noted, model inputs are based upon the information provided by the applicant regarding proposed construction and operational activities. Data inputs for the project model are based on the following primary assumptions:

1. The assumed operational date for the proposed project is 2021.
2. The model's default CO₂ intensity factor of 641 pounds/megawatt hour was reduced to 307 pounds/megawatt hour to reflect Pacific Gas & Electric energy projections for 2019 and the anticipated intensity factor for project's operational year. The intensity factor has been falling, in significant part due to the increasing percentage of Pacific Gas & Electric's energy portfolio obtained from renewable energy. Emissions intensity data was obtained from Pacific Gas & Electric's Greenhouse Gas Factors: Guidance for PG&E Customers, dated November 2015.
3. Emissions generated by greenhouses, agricultural processing, storage and related office uses are assumed to be generally less than emissions that would be generated by the CalEEMod default land use subtype "Warehouse", which consists of areas where the primary activity is the conversion of raw materials or parts into finished products. The office space was incorporated into the warehouse use. In addition, parking area is refined from original model run to more accurately reflect the smaller parking surface to serve the 50 employee-facility at buildout.
4. Project-specific data inputs such as construction schedule, construction workers and trips, construction equipment etc. are listed in the model results contained in **Appendix A**.
5. The default vehicle trip generation value for warehouse uses was adjusted using the Institute of Traffic Engineers 9th Edition employee-based trip generation for manufacturing uses, and applied to the proposed warehouse uses. This rate better reflects the nature of the project where much of the internal building space is planned for a passive activity (e.g. greenhouses) that is managed by a relatively small number of employees. Further, the updated vehicle trip rate is consistent with the trip count provided in the Traffic Impact Analysis provided for the project and found in **Appendix H** of the Draft IS/MND.
6. The covered greenhouse structures have automated environmental controls built into the structure to allow the control of the environment within the greenhouse. The automated control system allows you to adjust shades, fans, air vents, adjust humidity, and temperature settings. Each greenhouse has shade curtains, roof vents, side wall curtains which go up and down to let air in, air circulation fans, misting systems, and radiant heat systems to allow control of the interior environment. These environmental controls allow for more efficient energy usage. In addition, the greenhouse energy consumption is seasonal by nature, with reduced usage in the summer months.
7. Project emissions are based on the "Mitigated" CalEEMod outputs in order to incorporate the 2016 Title 24 standards (i.e., residences and commercial uses that comply with 2016 Title 24 are 28% and 5% more efficient than 2013 Title 24, respectively), high efficiency outdoor lighting, construction best management practices, water conservation strategies, and the 75% waste diversion consistent with State standards (Assembly Bill 341), even though compliance with these standards would not be considered actual mitigation.

Table 4.7-1 below, shows the updated results of the CalEEMod modeling. As indicated in **Table 4.7-1** the project would have less than significant impacts, as net GHG emissions would be below 1,150 MT CO₂e/year.

Table 4.7-1 GHG Emissions From Project		
	Mitigated	Unmitigated
<u>Construction Emissions</u>	262.02 MT CO ₂ e	262.02 MT CO ₂ e
<u>Amortized Emissions Over 30 Years</u>	8.73 MT CO ₂ e/yr	8.73 MT CO ₂ e/yr
<u>Operational Emissions</u>	756.04 MT CO ₂ e/yr	1,121.21 MT CO ₂ e/yr
Project Emissions	764.77 MT CO₂e/yr	1,129.94 MT CO₂e/yr
<u>Threshold</u>	1,150 MT CO ₂ e/yr	
Exceed Threshold	No	
Source: T&A Transplant Nursery CalEEMod Annual Emissions, January 10, 2019		

Appendix A CalEEMod Air Quality Modeling has been updated with the most recent CalEEMod output as attached.

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**Additional MBARD Letter on the Tanimura & Antle
1298 Orchard Road Vegetable Transplant Nursery Project IS/MND
Received on January 10, 2019**

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Additional MBARD Letter on the Tanimura & Antle 1298 Orchard Road Vegetable Transplant Nursery Project IS/MND Received on January 10, 2019

RE: MBARD Comments MND Tanimura & Antle 1298 Orchard Road Vegetable Transplant Nursery Project

After the completion and submittal of the Final IS/MND to the County - RMA, a formal letter of comment was provided on January 10, 2019 from the MBARD. This is in addition to the email comment provided in the Final IS/MND for the Project. County - RMA Staff and DD&A reviewed the letter for any additional substantive comments on the Draft IS/MND that were not already addressed in the Final IS/MND. In reference to the Air Quality Modeling comment, the letter references the discussions with the County – RMA and DD&A. The CalEEMod results in the Initial Study have been revised and updated to address this item. The Final IS/MND Response C adequately addresses the comment. Please refer to Comment and Response C in the Final IS/MND.

Regarding the additional comments in the attached letter, the County - RMA is independently reviewing the recommendations and will be addressing separately in the County Staff Report on this project. The additional comments are noted below:

Dust Control: The MBARD acknowledges that the Draft IS/MND identifies implementation of Best Management Practices (BMP) for dust control and requests that additional MBARD mitigation measures be added as fugitive dust control measures. As noted in **Table 4.3-2 Construction & Operational Air Quality Emission**, all construction-related emissions would be below the applicable MBARD thresholds of significance for temporary construction emissions. As a result, the proposed project would not exceed the MBARD's thresholds of significance and temporary construction-related emissions would be less than significant. The Draft IS/MND notes the project would also implement standard construction BMPs related to dust suppression, which would include: 1) watering active construction areas; 2) prohibiting grading activities during periods of high wind (over 15 mph); 3) covering trucks hauling soil; and, 4) covering exposed stockpiles. The implementation of additional BMPs would further ensure that potential construction-related emissions would be minimized.

Construction Equipment, Tree Removal, Use of Electric Pumps and Sensitive Receptors: MBARD recommends using cleaner than required construction and tree removal equipment that conforms to ARB's Tier 4 emission standards, and whenever feasible, construction equipment use alternative fuels such as compressed natural gas (CNG), propane, electricity or biodiesel. Further, MBARD recommends use of electric pumps for future agricultural irrigation and pump installation. In reference to the proposed removal of existing trees, the MBARD advises not to burn the wood. These recommendations are noted and referred to the County - RMA.

January 10, 2019

ATTN: Richard Felsing
San Benito County Resource Management Agency
2301 Technology Parkway
Hollister, CA 95023

Email: rfelsing@cosb.us

RE: Initial Study / MND Tanimura & Antle 1298 Orchard Road Vegetable Transplant Nursery Project

Dear Richard,

Thank you for providing the Monterey Bay Air Resources District (Air District) with the opportunity to comment on the above-referenced document.

The Air District has reviewed the document and has the following comments:

BIO 4.4.3 (e) (pg. 41): Tree Removal:

- The proposed site preparation would result in the removal of as many as 22 existing trees. The Air District advises not to burn the wood. In case the trees are disposed of via wood chipping, please make sure to contact the Air District's Engineering Division at (831) 647-9411 to discuss if a Portable Registration is necessary for the wood chipper being utilized for this project.

Air Quality:

- **GHG Emissions:** There are discrepancies in the report for anticipated operational GHG Emissions. Please revisit and re-run CalEEMod to make sure that the Overall Mitigated Operational GHG emissions are properly captured. Currently, the GHG Section on page 53 summarizes the GHG emissions as "less than significant" with Mitigated Emissions at 1,014 MT/CO₂e/yr. The CalEEMod results on page 6 of Appendix A list the Total Mitigated CO₂e at 5,555.39 MT/CO₂e/yr which exceeds GHG thresholds.

Based on discussions with the County and Denise Duffy & Associates, Inc. the CalEEMod results in the Initial Study contain inaccuracies and will be thoroughly reviewed.

- **Dust Control:** The Air District appreciates the implementation Best Management Practices (BMP) for dust control. To ensure that construction contractors properly implement the fugitive dust control measures, please add these additional Air District mitigation measures to substantially reduce fugitive dust ([http://mbard.org/pdf/CEQA_full%20\(1\).pdf](http://mbard.org/pdf/CEQA_full%20(1).pdf), pg. 78 (8-2)):
 - Water all active construction areas at least twice daily. Frequency should be based on the type of operation, soil, and wind exposure.
 - Apply chemical soil stabilizers on inactive construction areas (disturbed lands within construction projects that are unused for at least four consecutive days).
 - Apply non-toxic binders (e.g., latex acrylic copolymer) to exposed areas after cut and fill operations and hydro see area.
 - Haul trucs shall maintain at least 2'0" of freeboard
 - Cover all trucks hauling dirt, sand, or loose materials.
 - Plant tree windbreaks on the windward perimeter of construction projects if adjacent to open land.

- Plant vegetative ground cover in disturbed areas as soon as possible.
 - Install wheel washers at the entrance to construction sites for all exiting trucks.
 - Pave all roads on construction sites.
 - Sweep streets if visible soil material is carried out from the construction site.
 - Post a publicly visible sign which specifies the telephone number and person to contact regarding dust complaints. This person shall respond to complaints and take corrective action within 48 hours. The phone number of the Air District shall be visible to ensure compliance with Rule 402 (Nuisance).
- **Sensitive Receptors:** Given the nearby proximity of sensitive receptors (nearest being ~ 250 ft from the project site), the Air District recommends using cleaner than required construction and tree removal equipment that conforms to ARB's Tier 4 emission standards, and whenever feasible, construction equipment use alternative fuels such as compressed natural gas (CNG), propane, electricity or biodiesel. This would have the added benefit of reducing diesel exhaust emissions.
 - **pg. 35 (d):** For any future agricultural irrigation pump installation, the Air District recommends the use of electric pumps, due to benefits to air quality, reducing long-term maintenance costs, and improved efficiency.
 - **Permits Required:** Air District permits or registration with the California Air Resources Board (CARB) may be required for portable construction equipment with engines 50 Hp or greater. Please contact the Air District's Engineering Division at (831) 647-9411 if you have questions about permitting.
 - **Trenching Activities:** If old underground piping or other asbestos containing construction materials are encountered during trenching activities, *Rule 424* could apply. <https://www.arb.ca.gov/drdb/mbu/cur.htm>. Please contact Shawn Boyle in the Compliance Division at (831) 647-9411.

I appreciate the opportunity to comment on the Initial Study / MND for the Tanimura & Antle 1298 Orchard Road project. Please let me know if you have any questions. I can be reached at (831) 718-8021 or hmuegge@mbard.org.

Best Regards,



Hanna Muegge
Air Quality Planner

cc: David Frisbey, Planning & Air Monitoring Manager
Richard A. Stedman, Air Pollution Control Officer
Shawn Boyle, Air Quality Compliance Inspector

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Attachment 5: Project Phasing Plan

File # 3441-PHASING PLAN-24x36, Whitson Engineers/Avila Construction, May 22, 2018





**SAN BENITO COUNTY
AGENDA ITEM
TRANSMITTAL FORM**

Mark Tognazzini
District No. 1
Chair

Valerie Eglund
District No. 2

Pat Loe
District No. 3

Ray Pierce
District No. 4

Robert Rodriguez
District No. 5
Vice-Chair

Item Number: 4.

MEETING DATE: 2/20/2019

DEPARTMENT: RESOURCE MANAGEMENT AGENCY

DEPT HEAD/DIRECTOR: John P. Guertin

AGENDA ITEM PREPARER: Taven M. Kinison Brown

SBC DEPT FILE NUMBER:

SUBJECT:

- A. Updated Procedures for the Transaction of Business. Signed Resolution 2011- 07
- B. Planning Land Use 101 - Overview of Planning Regulations and Processes.
- C. Interactions with staff - Appointments are useful. Please contact Taven M. Kinison Brown @ 831-902-2294.

AGENDA SECTION:

DISCUSSION - REGULAR MEETING

BACKGROUND/SUMMARY:

BUDGETED:

SBC BUDGET LINE ITEM NUMBER:

CURRENT FY COST:

STAFF RECOMMENDATION:

For the Planning Commission to engage in discussion with staff and each other about the Procedures for the Transaction of Business and the document titled Land Use 101 Overview of Planning Regulations and Processes.

ADDITIONAL PERSONNEL:

ATTACHMENTS:

Description	Upload Date	Type
Planning Commission Adopted Procedures - Resolution 2011-07	2/14/2019	Resolution
Land Use 101 Field Guide	2/14/2019	Backup Material

**A RESOLUTION OF THE SAN BENITO COUNTY
PLANNING COMMISSION APPROVING THE
AMENDED PROCEDURES FOR THE TRANSACTION
OF BUSINESS FOR PLANNING COMMISSIONERS**

**RESOLUTION NO.
2011-07**

WHEREAS, the San Benito County Planning Commission has reviewed the existing guidelines for the Transaction of Business and hereby desires to amend those guidelines.

NOW, THEREFORE BE IT RESOLVED, that the San Benito County Planning Commission does hereby amend the "Procedures For The Transaction Of Business for Planning Commissioners" as set forth in Attachment "A"; and,

NOW THEREFORE BE IT FURTHER RESOLVED THAT the revised "Procedures for the Transaction of Business for Planning Commissioners" shall hereby replace the procedures adopted by Resolution No. 2009-09 and 2010-06.

PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE COUNTY OF SAN BENITO THIS 17th DAY OF AUGUST 2011, BY THE FOLLOWING VOTE:

AYES: CULLER, VASQUEZ, VELAZQUEZ

NOES: NONE

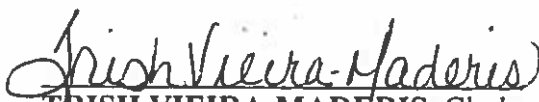
ABSENT: DEVRIES, PIERCE

ABSTAIN: NONE



JEFF CULLER, Chair
San Benito County Planning Commission

Attest:


IRISH VIEIRA-MADERIS, Clerk
San Benito County Planning Commission

ATTACHMENT A

SAN BENITO COUNTY

Procedures for the Transaction of Business

For

Planning Commissioners

Passed and Adopted By the
San Benito County Planning Commission
October 21, 2009
Resolution No. 2009-09

Amended and Adopted June 2, 2010
Resolution No. 2010-06

Amended June 15, 2011
Approved and Adopted August 17, 2011
Resolution No. 2011-07

SAN BENITO COUNTY

Procedures for the Transaction of Business

For

Planning Commissioners

Passed and Adopted By the
San Benito County Planning Commission
October 21, 2009
Resolution No. 2009-09

Amended and Adopted June 2, 2010
Resolution No. 2010-06

Amended June 15, 2011
Approved and Adopted August 17, 2011
Resolution No. 2011-07

Procedures for the Transaction of Business

San Benito County Planning Commission

The Planning Commission is a quasi-judicial body composed of five members appointed by the Board of Supervisors. The Planning Commission advises the County on policies and legislation relating to the regulation of growth, development and environmental conditions of various geographical areas and the commercial, industrial, and agricultural interests affecting San Benito County. The Commission reviews and acts on matters related to planning and land use development and makes recommendations to the Board of Supervisors on various land use matters. The Commission is compensated for meeting attendance. This Commission is subject to the Conflict of Interest Code, California Form 700.

- No. 1:** The Commission shall consist of five (5) appointed members and three (3) shall constitute a quorum.
- No. 2:** As long as all new Planning Commissioners have been appointed by the Board of Supervisors by the first meeting in January, the Chair and the Vice-Chair shall be elected annually at the first meeting in January of each calendar year. If all new Planning Commissioners have not yet been appointed and sworn in by the first meeting in January, the election for the Chair and Vice-Chair shall occur during the first meeting in February of each calendar year. In the absence or inability of either to act, the members present shall select a member to act as Chair Pro-Tem for that meeting. However, if the Chair or Vice-Chair later arrives, the Chair or Vice Chair shall then assume responsibility for the meeting upon arrival.
- No. 3:** The Director of Planning and Building Inspection Services or his or her designee shall act as the Secretary without any voting rights. In the Director of Planning's absence, the Chair shall appoint an acting Secretary.
- No. 4:** Meetings of the San Benito County Planning Commission shall begin at **6:00 PM** and be held in the San Benito County Board of Supervisor's Chambers, 481 Fourth Street, Hollister; or such other place as may from time to time be determined by the Commission. At least one regular meeting shall be held each month in accordance with San Benito County Code, Article III; Section 3.05.051. (A). Meetings shall be held per adopted meeting calendar except as otherwise determined and noticed by the Secretary. **The calendar for the following calendar year shall be adopted no later than the last meeting of the current year.**
- No. 5:** New agenda items shall not be considered later than **10:00 PM**, unless approved by majority decision of Planning Commissioners present. Special meetings and legal public notices may be called at the direction of the Chair, or a majority of Commissioners, at a regularly scheduled meeting.

No. 6: The Director of Planning and Building Inspection **or his or her designee** shall prepare and distribute to the Commission an Agenda for each meeting. The Agenda and all related materials shall be completed and distributed no later than the **Thursday** prior to the scheduled meeting.

No. 7: At the end of each regular agenda, the members of the Planning Commission may report or announce informational topics of interest to the general public and fellow Commissioners. Such reports will not be project or applicant specific or subject to any final action.

No. 8: The following procedures are adopted as Rules of Order for public hearings:

- a. Open Public Hearing
- b. Staff presentation
- c. Applicant presentation
- d. Take any testimony from the Public
- e. Rebuttal testimony as determined by Planning Commission
- f. Close Public Hearing
- g. Commission discussion
- h. Render a decision

No. 9: When the Commission alters or modifies an application, the appropriate finding(s), evidence and condition(s) or modification(s) to findings, evidence and conditions shall be clearly stated and noted in the record.

If a motion to approve **does not pass**, then the Chair shall:

- a. **Entertain a motion to deny if sufficient findings are fully articulated to support denial; or**
- b. **Entertain a motion of intent to deny if findings for denial are not fully articulated.**
- c. **If there is an unbreakable tie vote, the Chair shall solicit findings for both sides and state those findings in the record.**

No. 10: Approval of any legislative recommendation (for example, a General Plan adoption or amendment, specific plan adoption or amendment, or zone change) requires the affirmative vote of a majority of the Commission, *i.e.* at least three members. Approval of any other motion requires the affirmative vote of a majority of those members of the Commission present and voting. An abstention disqualifies the member as a voting member.

An application shall be deemed disapproved unless it is approved, or continued, by the required majority vote as provided above. In the event of a tie vote, the motion fails; unless another motion is thereafter approved by the required majority vote, the application is deemed denied. In the case of an appeal, if an affirmative vote does not occur, the decision appealed stands as decided by the decision-maker from which the appeal was taken.

No. 11:

The following section shall constitute the "Rules for Presenting Testimony and the Procedures of Conduct" for all Planning Commission matters:

Introduction: Planning Commission meetings often involve highly emotional issues. It is important that all participants conduct themselves with courtesy, dignity and respect. All persons must observe the following rules:

- a. When you come to the podium, first identify yourself. You may provide your place of residence, but are not required to do so. Since all meetings are tape recorded, please speak clearly and use the microphone provided.
- b. Be recognized by the Chair before speaking; acknowledge to the Chair when you are finished
- c. Address staff by name or by Department
- d. All remarks must be addressed to the Chair. Conversation or debate between a speaker at the podium and a member of the audience is not permitted.
- e. Applauding, catcalls, stamping of feet, whistles, yells or shouting, and/or similar demonstrations by the audience are unacceptable public behavior and will be prohibited by the Chair.
- f. Conversations between audience members are not allowed during any agenda items.
- g. Keep your testimony brief and to the point. It is encouraged that you talk about the proposal and not about individuals involved. It is also encouraged that you focus testimony on the most important parts of the proposal. Avoid duplicating testimony provided by others. The practice of civility and decorum by all is expected.
- h. Members of the public wishing to speak to the Planning Commission should complete and turn into the Clerk a "Speakers Card" prior to the agenda item being called indicating the agenda item that they wish to address.
- i. However, with the exception of applicants and appellants addressing the Planning Commission during a public hearing, public comment is limited to three (3) minutes per speaker. Any organized opposition shall be granted the same time given to an applicant/appellant to speak. An organized opposition will be recognized only upon written application to the Chair (through the Clerk) prior to the hearing. Such application should identify the speakers(s) for the opposition. Speakers may not concede any part of their allotted time to another speaker.
- j. The Chair may modify the time allocated for public comments per speaker **in a manner** consistent with the orderly conduct of the meeting and such modifications shall be fairly applied.
- k. Members of the public and staff must switch any electronic equipment such as pagers and cellular telephones to a silent or off mode during Planning Commission meetings.

1. Written testimony is acceptable. However, letters are most effective when presented at least a week in advance of the hearing. The Planning Commission strongly encourages written comments in advance so that material may be reviewed. Mail should be addressed to the Planning Department to the Planner responsible for a specific project.

No. 12: These procedures may be revised by vote of the Planning Commission.



Land Use 101

A Field Guide

(Thank you San Luis Obispo)



INTRODUCTION

This paper provides a general overview of the fundamental principles and legal concepts of Land Use and Planning Law. This paper will cover: the foundations of County land use authority through the constitutional police power; basis for challenging public agency decisions; the requirements for and relationships between general plans, specific plans, zoning and subdivision regulations and development agreements; basic environmental review requirements under CEQA; vested rights principles; an overview of design, conservation, and historic preservation tools; the general rules governing development fees, exactions and takings analyses; state and local affordable housing requirements; and the requirements for due process proceedings and administrative findings in the land use context. We hope you find the paper helpful and that it serves as an easy to use resource for municipal land use attorneys.

THE POLICE POWER

Virtually every reference guide on Municipal Law begins with the premise that a County has the police power to protect the public health, safety and welfare of its residents. *See Berman v. Parker*, (1954) 348 U.S. 26, 32-33. This right is set forth in the California Constitution, which states “A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” Cal. Const. at XI, section 7. The ability to enact ordinances to protect the health, safety and welfare is important in the land use context because it confers very broad rights to adopt regulations that implement local land use vision and values, so long as laws enacted by a County are not in conflict with state general laws. This concept is critical because new practitioners often look to cite to a specific statute as the legal authority to adopt an ordinance when, in fact, a city’s broad land use authority flows directly from the constitution in the absence of a statutory prohibition or preemption of the city’s otherwise regulatory authority.

Land use and zoning regulations are derivative of a City’s general police power. *See DeVita v. County of Napa*, (1995) 9 Cal. 4th 763, 782; *see also Big Creek Lumber Co. v. City of Santa Cruz*, (2006) 38 Cal. 4th 1139, 1159. This power allows cities to establish land use and zoning laws which govern the development and use of the community. In *Village of Belle Terre v. Boraas*, (1974) 416 U.S. 1, the U.S. Supreme Court addressed the scope of such power and stated: “The police power is not confined to

elimination of filth, stench and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.” *Id* at 9.

One seminal land use and zoning case underscoring a city’s police power was *Wal-Mart Stores Inc. v. The City of Turlock*, (2006) 138 Cal. App. 4th 273, 303 where, in response to concerns over the impacts of big box stores, particularly Wal-Mart, the City of Turlock adopted an ordinance prohibiting the development of discount superstores. Wal-Mart challenged the ordinance, stating the city had exceeded its police power, but the Court disagreed. The court found the police power allows cities to “control and organize development within their boundaries as a means of serving the general welfare.” *Id* at 303. The important issue to understand in that case was the language of the ordinance itself. The ordinance did not, and legally could not, target specific tenants which were perceived as causing the certain impacts. However, the city could control the use and development standards of property within its community which, in effect, prohibited only a handful of big box retailers, including Wal-Mart.

Another case that highlights the city’s police power, especially at the micro-level, is *Disney v. City of Concord*, (2011) 194 Cal.App.4th 1410. In that case, the City of Concord adopted an ordinance restricting the storage and parking of recreational vehicles in residential yards and driveways. Among other things, the City of Concord’s ordinance limited the number of RVs on any residential property to two, required RVs to be stored in side and rear yards behind a six foot high opaque fence, prohibited RVs from being stored on front yards and driveways (with some exceptions) and established maintenance standards for RVs within the public view. James Disney filed suit. His main argument was that the ordinance exceeded Concord’s police power. The Court determined that the City of Concord’s Ordinance was a valid exercise of the city’s police power, where the ordinance had an aesthetic purpose. Citing *Metromedia, Inc. v. City of San Diego* (1980) 26 Cal.3d 848, 858, the Court stated “It is within the power of the Legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled.” Again, as echoed by *Village of Belle, supra*, a city’s police power is not limited to regulating just stench and filth.

Preemption.

Although a city’s police power is broad, it is not absolute, and cannot conflict with the State’s general laws. A conflict exists between a local ordinance and state law if the ordinance “duplicates, contradicts or enters an area fully occupied by general law, either expressly or by legislative implication.” *Viacom Outdoor Inc. v. City of Arcata*, (2006)140 Cal. App. 4th 230, 236.

PRACTICE NOTE FOR CHARTER CITIES: Charter cities enjoy additional constitutional freedom to govern their “municipal affairs” even if a conflict with State law may exist. See Article XI, section 5 of the California Constitution. There is no exact definition of the term “municipal affair” other than those areas expressly stated in section 5. Whether a subject area is a municipal affair (over which a charter city has sovereignty) or one of “statewide concern” (over which the Legislature has authority) is an issue for the courts that depends on the facts and circumstances of each case. Land use and zoning decisions however, have been consistently classified as a municipal

affair and charter cities are exempt from various provisions of the Planning and Zoning Law unless the city's charter indicates otherwise. See e.g. Gov. Code sections 65803, 65860(d); *City of Irvine v. Irvine Citizens Against Overdevelopment*, (1994) 25 Cal. App. 4th 868, 874.

PRACTICE TIP: Sometimes, the State or federal government preempts a particular area of law because of potential discrimination or disparate impact concerns. For example, California Health and Safety Code section 1566.3 preempts local zoning with respect to residential facilities serving six or fewer mentally disabled or handicapped persons. Practitioners should be cautious about land use decisions that potentially involve a protected class, not only from an equal protection basis, but from a possible preemption basis as well.

WRIT OF MANDATE; HOW COUNTY LAND USE DECISIONS ARE JUDGED

One of the most important perspectives on Land Use and Planning Law is to understand the basis and procedures by which a county's decisions are challenged. By understanding "which hat" your agency is wearing (legislative or adjudicative/quasi-judicial), you will better navigate the contours of legally defensible decisions and how to develop the administrative record to support your agency's decision.

PRACTICE TIP: One way to explain the difference between a quasi-legislative decision and a quasi-judicial decision is to state something like: "This is a legislative decision. By taking legislative action, you are being asked to formulate general policies or rules that will apply to future projects, applications or factual circumstances of a given type. In contrast, a quasi-judicial/adjudicative decision is one in which a specific project, application or set of facts is being evaluated for compliance with the policy or rule that you have already developed (the development of law (legislative) versus the application of law to facts (adjudicative))."

Traditional Writ of Mandate – the Legislative or Quasi-legislative Hat.

Traditional Mandamus is the form of an action to challenge a ministerial or quasi-legislative act of a County. *California Water Impact Network v Newhall County Water Dist.* (2008) 161 CA4th 1464, 1483. The statutory authority for this type of action is Code of Civil Procedure sections 1085 *et seq.* A ministerial duty is imposed on a person in public office who, because of that position, is obligated to perform in a legally prescribed manner when a given state of facts exists. *County of Los Angeles v. City of Los Angeles* (2013) 214 CA 4th 643, 653. A ministerial duty is one that does not involve any independent judgment or discretion. *Id* at 653. Traditional Mandamus is only available if the person claiming such relief has a "substantial beneficial interest" and "there is not a plain, speedy, and adequate remedy, in the ordinary course of law." Code of Civ. Proc. section 1086. A "substantial beneficial interest" means "a clear, present and beneficial right" to the performance of a ministerial duty. *California Ass'n of Med. Prods. Suppliers v. Maxwell-Jolly* (2011) 199 CA4th 286, 302. This is similar to a standing requirement. Even for a discretionary decision, Traditional Mandamus is available to compel the exercise of that discretion. *Daily Journal Corp. v. County of Los Angeles* (2009) 172 CA 4th 1550, 1555. In other words, Traditional Mandamus may be used to require someone to make a decision. It cannot be used to shape or

otherwise challenge the decision unless that decision constitutes an abuse of discretion. *Saleeby v. State Bar* (1985) 39 C3d 547, 562.

Traditional Mandamus is also available to challenge quasi-legislative acts. *California Farm Bureau Fed'n v. State Water Resources Constrol Bd.* (2011) 51 C4th 421, 428. Judicial review of quasi-legislative acts is usually limited to determining whether the act was arbitrary or capricious; the act was entirely lacking in evidentiary support; or the city failed to follow the procedures required by law. *SN Sands Corp. v. City and County of San Francisco* (2008) 167 CA 4th 185, 191.

PRACTICE TIP: The standard of review for Traditional Mandamus is low¹, generally limited to a court's review of whether the County has abused its discretion in exercising its legislative authority, and a legislative body has fairly broad discretion in policy adoption subject to review. Still a record that reflects the agency's reasoning and the need and support for a given action will be a helpful defense no matter what the standard of review.

Administrative Writ of Mandate – the Quasi-judicial Hat.

An adjudicative or quasi-judicial administrative decision may be challenged by Administrative Mandamus when: a hearing in the underlying administrative proceeding is required by law in which evidence is taken and the decision maker is vested with the discretion to determine contested factual issues. Code of Civ. Proc. 1094.5. Review of these decisions is usually limited to the administrative record. Code of Civ. Proc. section 1094.5(a). The scope of review in Administrative Mandamus proceedings is limited to: whether the agency has proceeded without, or in excess of, jurisdiction; whether there was a fair hearing; or whether there was any prejudicial abuse of discretion. Code of Civ. Proc. section 1094.5(b). "Abuse of discretion" is established when: the agency has not proceeded in the manner required by law; the order or decision is not supported by the findings; or the findings are not supported by the evidence. *See Leal v. Gourley*, (2002) 100 CA 4th 963, 968.

The standard of review for Administrative Mandamus is usually the substantial evidence test, however, when the underlying decision substantially affects a fundamental vested right, the independent judgment test applies. Code of Civ. Proc. section CCP §1094.5(b)-(c); *Goat Hill Tavern v City of Costa Mesa* (1992) 6 CA4th 1519, 1525. Under the substantial evidence test, a court determines if there is substantial evidence to support the findings and if the findings support the decision. Under this test, the court accords significant deference to the administrative fact-finder. *Bedoe v. County of San Diego* (2013) 215 CA 4th 56, 61.

¹ Courts have consistently refused to substitute judicial judgment for the legislative judgment of the governing body of a local agency. So long as the legislative decision bears a reasonable relationship to the public welfare, it is upheld. See *Ass'n. Home Builders, Inc. v. City of Livermore*, (1976) 18 Cal. 3d 582, 604. *California Hotel & Motel Ass'n v. Indust Welfare Comm'n*, (1979) 25 Cal. 3d 200, 211-212 [judicial review is limited "out of deference to the separate of powers between the Legislature and the judiciary [and] and to the legislative delegation of administrative authority to the agency."] Of course, there is a caveat if some sort of heightened scrutiny is involved.

PRACTICE TIP: To the greatest extent possible, make sure your city’s resolutions and ordinances relating to entitlements include all necessary findings required by statute or ordinance to support an entitlement or approval and use your findings as an opportunity to “connect the dots” between each finding and the facts in the record supporting that finding. Though not specifically required in most cases, you may also want to consider including similar findings to support controversial legislative actions as a way to tell the City’s story. Although sometimes difficult, don’t let your resolutions become purely template documents with little connection to the underlying decision.

In contrast, under the Independent Judgment standard, the court affords no deference to the factual assessments of the administrative fact finder. *Welch v. State Teachers’ Retirement Sys*, (2012) 203 CA 4th 1, 5. In the land use context, when a development approval has been denied in the first instance, it is highly likely that the Substantial Evidence test will be applied. Even if a conditioned permit affects a “fundamental” right, the right may not be “vested” for Independent Judgment purposes. With a vested right, the substantial evidence test applies. *See Break-Zone Billiards v. City of Torrance* (2000) 81 CA 4th 1205. The Independent Judgment test usually applies in cases involving classic vested rights, such as the right to continued operation of one’s business. *Goat Hill Tavern, supra*.

RELEVANT LAWS

Now that we have introduced to you the overarching principles of the police power and discussed the way land use decisions are challenged, there are several statutory schemes with which every land use practitioner should be familiar. These statutes regulate, in one way or another, virtually every land use and planning issue. They include:

1. Planning and Zoning Law, Government Code sections 65000 – 66035;
2. Subdivision Map Act, Government Code sections 66410 – 66499.58;
3. Environmental Quality Act (CEQA), Public Resources Code sections 21000 – 21189.3, 14 CCR 15000 – 15387²;
4. Ralph M. Brown Act, Government Code sections 54950 – 54963 – although the Brown Act is not specifically a “land use law,” every practitioner counseling any public agency must be intimately familiar with these open meeting laws;
5. Mitigation Fee Act, Government Code sections 66000 – 66008.

PRACTICE TIP: Create a “meeting folder,” including the main provisions of each statute referenced above. We typically have provisions from and/or reference guides on these provisions at every meeting involving a land use issue. American Council of Engineering Companies provides good reference guides that are compact, succinct and easy to transport to meetings.

² These are also known as the CEQA Guidelines.

THE GENERAL PLAN, SPECIFIC PLANS AND ZONING REGULATIONS

The General Plan.

California Planning and Zoning Law requires each city to prepare and adopt “...a comprehensive, long term general plan for the physical development of the...city, and of any land outside its boundaries...” Gov. Code section 65300. Under Gov. Code Section 65302, each General Plan must include the following elements:

1. Land Use Element;
2. Circulation Element;
3. Housing Element;
4. Conservation Element;
5. Open Space Element;
6. Noise Element; and
7. Safety Element.

Gov. Code Section 65302 also sets forth particular requirements that must be included in each of the seven elements. One of the more scrutinized elements of a General Plan is the Housing Element which, among other things, must show that the agency’s land use and zoning designations contribute to the attainment of State housing goals regarding affordable, transitional and supportive housing.

PRACTICE TIP: Be cognizant of the various components that must be included in each of the elements of the General Plan and make sure that policy discussion at either the Planning Commission or Board of Supervisors respects State-mandated land use requirements such as affordable housing. These requirements can encounter tension with local objectives to limit growth or constrain development.

PRACTICE NOTE: For those public agencies that have an airport within or in immediate proximity to their jurisdiction, additional requirements and referrals for the review and comment by outside agencies are necessary to make sure that a General Plan and any updates are consistent with the jurisdiction’s Airport Land Use Plan. Pub. Util. Code section 21675.

Government Code section 65583(c) requires the Housing Element to establish a program setting forth a schedule of actions to implement the Housing Element’s policies. Over the course of the last ten years or so, we have seen a shift towards more specific program/schedule language required by Housing and Community Development (“HCD”) for each Housing Element update.

Adoption and amendment of a General Plan is a “project” under CEQA and therefore, environmental review must be performed. *City of Santa Ana v City of Garden Grove* (1979) 100 CA3d 521. Adopting or amending the General Plan must be done in accordance with Government Code section 35350 *et seq.* A general law city may not amend any of the seven mandatory elements of its General Plan more than four times per year. Gov. Code section 65358(b).

PRACTICE TIP: Most public agencies “group” General Plan amendments for various projects quarterly to comply with the amendment limitations of section 65358(b).

PRACTICE TIP: The social realities of development may outpace General Plan updates. Careful consideration must be given to make sure that enough flexibility is built into the General Plan to account for planning trends. For example, many cities across California are experiencing a social desire for multi-modal transportation design and development projects are being put forward that advance this method of design. Unfortunately, certain policies and planning frameworks may not be well suited to properly account for this change. For example, traffic impact analysis has historically been analyzed based on Level of Service and trip generation. New methodologies are being put forward, and in some ways mandated, to account for bimodal or multimodal transportation. Policies that too narrowly incorporate traditional or existing methodologies risk becoming quickly outdated, driving a need for frequent revision and undermining the utility of the General Plan as a forward-looking community vision document.

Because of the comprehensive nature of General Plan documents, they often take months, if not years, to adopt or significantly update and the legal issues surrounding the adequacy of a General Plan are certainly the subject of treatises beyond the scope of this paper. However, the “take away” is that the General Plan needs to be visionary, but also must give enough guidance and particularity to provide clear context for the subsequent planning decisions and approvals that will flow from and must be consistent with the General Plan (i.e., specific plans, zoning regulations, and map, project and permit approvals).

General Plan Consistency.

General Plan consistency is looked at in two ways – (1) internal consistency; and (2) vertical consistency.

Internal Consistency.

Government Code section 65300.5 requires a General Plan to be “integrated and internally consistent and compatible state of policies...” In *Concerned Citizens of Calaveras County v. Board of Supervisors of Calaveras County*, (1985) 166 Cal.App. 3d 90, the County’s General Plan was found internally inconsistent where one portion of the circulation element indicated that roads were sufficient for projected traffic increases, while another section of the same element described increased traffic congestion as a result of continued subdivision development. However, in *Friends of Aviara v. City of Carlsbad*, (2012) 210 Cal. App. 4th 1103 the court found that Housing Element Law’s requirement that a municipality set forth the means by which it will “achieve consistency” with other elements of its general plan manifests a clear legislative preference that municipalities promptly adopt housing plans which meet their numerical housing obligations even at the cost of creating temporary inconsistency in general plans.

Vertical Consistency.

As noted above, a General Plan must not only be internally consistent but vertically consistent with other land use and development approvals such as Specific Plans and the agency's zoning and development regulations. *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal. 3d, 553, 570. Similar to the horizontal consistency requirements discussed above, the requirement to be vertically consistent has been codified in Government Code section 65860(a), which states,

County or city zoning ordinances shall be consistent with the general plan of the county or city by January 1, 1974. A zoning ordinance shall be consistent with a city or county general plan only if both of the following conditions are met: (1) The city or county has officially adopted such a plan. (2) The various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in the plan.

In *Leshar Communications, Inc. v. City of Walnut Creek*, (1990) 52 Cal. 3d 531, 540, the California Supreme Court addressed the importance of vertical consistency in the context of a land use initiative measure. In that case, a "Traffic Control Initiative" was placed on the ballot to establish a building moratorium to combat traffic congestion. The measure passed. The problem the Court faced, however, was the fact that the measure created vertical inconsistency between Walnut Creek's General Plan and Zoning Regulations. After carefully looking at the language of the measure, the Court held that: (1) the initiative was not offered as, and could not be construed as, an amendment to the city's general plan, and (2) since the initiative was inconsistent with the general plan in effect when the initiative was adopted, the measure was invalid. In analyzing the effect of Government Code section 65860(c), the Court stated:

We cannot at once accept the function of a general plan as a "constitution," or perhaps more accurately a charter for future development, and the proposition that it can be amended without notice to the electorate that such amendment is the purpose of an initiative. Implied amendments or repeals by implication are disfavored in any case, and the doctrine may not be applied here. The Planning and Zoning Law itself precludes consideration of a zoning ordinance which conflicts with a general plan as a pro tanto repeal or implied amendment of the general plan. The general plan stands. A zoning ordinance that is inconsistent with the general plan is invalid when passed and one that was originally consistent but has become inconsistent must be brought into conformity with the general plan. The Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. **The tail does not wag the dog.** The general plan is the charter to which the ordinance must conform. (Citations omitted) Id at 540-41. (emphasis added)

Subdivision (c) of section 65860 does not permit a court to rescue a zoning ordinance that is invalid *ab initio*. As its language makes clear, the subdivision applies only to zoning ordinances which were valid when enacted, but are not consistent with a subsequently enacted or amended general plan. It mandates that such ordinances be

conformed to the new general plan, but does not permit adoption of ordinances which are inconsistent with the general plan. The obvious purpose of subdivision (c) is to ensure an orderly process of bringing the regulatory law into conformity with a new or amended general plan, not to permit development that is inconsistent with that plan. *Id* at 545-46.

The *Leshar Communications* case illustrates the clear hierarchy between a city's General Plan and Zoning Regulations and the ultimate supremacy of the General Plan as the guiding document. While most land use approvals are not initiative-based and do not run into the same complications as that which occurred in the *Leshar* case, the case underscores the importance of General Plan consistency requirements and highlights the peril of failing to understand or respect those requirements. Depending on the structure of a city's municipal code, it will most often be the Planning Director, Planning Commission and Board of Supervisors that will have the responsibility to determine whether a proposed land use development is consistent with its General Plan and virtually every planning consideration should begin with this threshold consistency consideration.

PRACTICE TIP: Although courts typically defer to a County's interpretation of its own general plan, you should not lean on deference alone in making sure you have a defensible record. Your land use approval records should reflect a consideration of the consistency requirements and include specific findings and evidence to support each of those findings, commensurate with the nature and scope of the approval being granted. Sometimes we see consistency findings that are more or less a regurgitation of the findings themselves, without any articulation of factual, project-specific support. Here is an example of how best to write such findings:

POLICY:

2.2.8 Natural Features: Residential developments should preserve and incorporate as amenities natural site features, such as land forms, views, creeks, wetlands, wildlife habitats, and plants.

AVOID WRITING FINDINGS LIKE THIS:

The project is consistent with Policy 2.2.8 of the General Plan because it preserves and incorporates natural features as amenities.

WRITE FINDINGS LIKE THIS WHICH SPECIFICALLY INCLUDES SUPPORTING FACTS:

The project is consistent with Policy 2.2.8 of the General Plan because it incorporates San Luis Creek into the common area and incorporates "greenbelt" designs into the project by permanently preserving open space buffers around the development site.

Specific Plans.

Specific Plans are hybrid documents that act as a bridge between the General Plan and Zoning Regulations for future development of a particular area. Government Code section 65450 states that a County may prepare a specific plan “for the systematic implementation of the general plan...” A Specific Plan is adopted in the same manner as a General Plan (Gov. Code section 65453) and is considered a legislative act.

PRACTICE TIP: Where a development application is covered by a Specific Plan, be cognizant of the continuing requirements of the Permit Streamlining Act especially for subsequent projects which are exempt from additional CEQA review, to avoid arguments that a subsequent project is deemed approved based on public review of the Specific Plan. See 81 Ops.Cal.Atty.Gen. 166 (1998).

So what is a Specific Plan and what is the point?

For some, the concept of a Specific Plan is far less familiar and its purpose is not entirely clear. There are no black and white rules governing when a Specific Plan is required. Instead, a Specific Plan is a tool that public agencies and developers use to achieve better specificity on the vision and development potential of a particular tract of land without having to go through extensive site specific land use analysis and entitlement proceedings. It is “programmatic” in nature and usually deals with major infrastructure, development and conservation standards and includes an implementation program. See Gov. Code section 65451. Often, a specific plan will establish the “look” and “feel” of what future development on the property will be and it can provide a more clear and refined definition of the parameters in which development will be allowed and the responsibilities for major infrastructure area developers will be expected to fulfill. Specific plans can be very useful to agencies in setting realistic development expectations and signaling important big picture limitations or constraints unique to a particular area; they can be very useful to developers in helping to size the potential and costs of development.

Development Agreements.

Development Agreements are a unique planning tool authorized by statute pursuant to Government Code section 65864 – 65869.5. A Development Agreement is an agreement between the County and a property owner in which the parties agree to “freeze” all rules, regulation, and policies that are in place as of the execution of the agreement. Gov. Code section 65866; *Santa Margarita Area Residents Together v San Luis Obispo County Bd. of Supervisors* (2000) 84 CA4th 221. The Development Agreement structure, because it is a voluntary, arm’s length negotiation process between a developer and County, may also allow a County to negotiate developer concessions or contributions that it could not otherwise obtain from a developer through normal exactions or conditions of approval. In some circumstances, development agreements can provide both greater flexibility and greater certainty in the development of large or complex projects. However, it should be noted that Development Agreements are legislative acts and subject to referendum, so the flexibility afforded by the tool is also limited by community values.

PRACTICE TIP: Because a Development Agreement is a legislative act and participation is voluntary between the parties, no findings are required to grant or deny such an application, although making findings is usually well advised from a community transparency standpoint. Because these types of arrangements are time and resource intensive, they are often reserved for unique circumstances where there is a specific purpose and underlying need for such an arrangement beyond developer convenience. For example, Development Agreements may be appropriate when a County desires redevelopment of a particular area in a manner that requires up front infrastructure investments beyond a particular developer's "fair share" and a developer desires longer term vesting rights than could be achieved through standard development entitlements so that the developer can obtain financing, among other things.

VESTED RIGHTS

Under the doctrine of vested rights, if a property owner has received a permit from a public agency to do something, such as a building permit or use permit, and then incurs substantial costs in reliance of that permit, then the property owner has the right to rely on that permit regardless of changes in the public agency's land use regulations. See *Avco Community Developers, Inc. v South Coast Reg'l Comm'n* (1976) 17 C3d 785, 793. In *Autopsy/Post Service, Inc. v. City of Los Angeles*, (2005) 129 Cal. App. 4th 521, the Court of Appeal held that a property owner did not have vested rights status despite the expenditure of approximately \$225,000 on the purchase of land and construction costs in reliance of the city's issuance of a building permit for an autopsy facility. Specifically, the Court found that substantial evidence supported the trial court's finding that the city's grant of a building permit and owner's reliance on it did not create a fundamental vested right to use building for performing autopsies -- a use prohibited by the zoning law. City staff were questioned and stated they had no knowledge, before the issuance of the permit, that the structure was intended for use as an autopsy facility, the plans approved made no reference to an autopsy facility, the building permit application did not reveal the corporate name as owner or tenant, instead naming an individual as the owner, and product approvals for autopsy tables were issued without reference to the applicant's name or the location where the product would be installed. *Id* at 527.

The Subdivision Map Act has a specific provision which allows a developer to obtain vested rights status with regard to an approved tentative map. Gov. Code section 66498.1(b). Essentially, by placing the word "vesting" on the draft tentative map, a developer obtains the vested right upon tentative map approval to proceed with development in substantial compliance with the ordinances, policies, and standards in place at the time the application for the map was complete (with some exceptions related to health, safety and welfare). Given the numerous statutory extensions (i.e. SB 1185, AB 333, AB 208 and AB 116) the vested status of a tentative map can be significant.

THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The California Environmental Quality Act ("CEQA") is a comprehensive statutory scheme that requires cities and other public agencies to consider the environmental consequences of their actions before

approving plans or policies or otherwise committing to a course of action on a project. Typically, the city acts as the lead agency for CEQA environmental review for its projects or projects which fall within its jurisdiction. While CEQA has come to be used as a weapon against development in some contexts, it is fundamentally a process and tool to facilitate environmentally informed decision making. In the big picture, the CEQA process forces public agencies and decision makers to ask and evaluate the answers to the following questions:

1. What is the current environmental condition in which the subject property is situated?
2. What environmental impacts are likely to result from the public agencies' approval or decision on a proposed project?
3. Are these potential impacts significant?
4. Are there any alternatives to the proposed project or ways to lessen (mitigate) those impacts of the project so they are not significant?
5. Do those alternatives or mitigation measures render the project infeasible?
6. If so, does the public agency nonetheless want to approve a project with significant environmental impacts because its other benefits outweigh those unavoidable environmental impacts?

PRACTICE TIP: Many CEQA determinations are as much art as science and CEQA analysis is very fact dependent, so there won't always be clear and unequivocal statutory language or case law to "answer" your environmental analysis question. However, try to keep in mind that CEQA is supposed to be a tool to guide good decision making and shed light on environmental impacts, not a fog laden maze with traps for the unwary.

Take the time to ensure: 1) that your environmental review documents address the questions above; 2) that the questions have actually been answered; 3) that the answers are reasonable and based on the facts and realities of the proposed project; 4) that all reasonable mitigations have been explored and that those that are reasonable and feasible are required; and 5) that there are clearly understandable and supported reasons for rejecting mitigations and/or proceeding with a project despite significant impacts. The CEQA review process should be a reasoning process and the result of the analysis should, therefore, be reasonable. If you are not convinced that is the case, it is unlikely a court will be. Keep these fundamental concepts in mind during any CEQA analysis as the underlying purpose and intent of CEQA will shed good light on the situation at hand, especially if your situation does not have any good case law or other authority to fall back on.

Step 1: Is this a project under CEQA?

CEQA defines a project as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: (a) An activity directly undertaken by any public agency; (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies; or (c) An activity that involves the issuance to a

person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.” Pub. Res. Code section 21065; CEQA Guidelines section 15378(a). A “project” under CEQA includes not only the more recognizable activities such as public works projects, grading, or other construction activities but the enactment and amendment of zoning ordinances, annexation, the adoption or amendment of a general plan or even the approval of a contract which has the ability to cause a direct physical change in the environment.

Step 2: Timing of CEQA compliance.

CEQA compliance must occur before the public agency approves a project. The term “approves” however, does not mean final approval. Instead, “approval” refers to “the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person.” Or for private projects, “approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project. CEQA Guidelines section 15352. The operative phrase in section 15352(a) is “commits the agency to a definite course of action” which can sometimes occur unexpectedly. For example, in *Save Tara v. City of West Hollywood (Waset, Inc.)* (2008) 45 Cal 4th 116, the California Supreme Court disapproved a line of cases and held that a lead agency has no discretion to define “approval” so as to make its commitment to a project before preparation of an EIR. *Id* at 194. Specifically, in that case, the city and two developers entered into an agreement for the development of affordable housing on city-owned land. The agreement was “subject to environmental review,” among other things. The court determined that, in light of all the surrounding circumstances, the city’s agreement with the developer and commitments made foreclosed potential mitigation measures or alternatives that would normally be considered part of the CEQA process. *Id* at 138 - 142. In other words, the city went “too far” and committed itself to a definite course of action notwithstanding the CEQA compliance condition it placed in the agreement with the property owner.

PRACTICE TIP: If a project is in the design phase or if a significant amount of money is being requested (or both), make sure that your County is not committing to a definite course of action without complying with CEQA. Ask yourself: by this approval, are we foreclosing any alternatives or mitigation measures?

Step 3. Is the project exempt?

If an action or approval is a project under CEQA, it may be statutorily or categorically exempt from CEQA review or may nevertheless fall under the “general rule” or “common sense” exemption. The list of statutory and categorical exemptions can be found under CEQA Guidelines sections 15260 – 15285 and 15300 – 15333, respectively. Some of the more commonly referenced exemptions that we see are:

<u>Statutory Exemptions</u>	<u>Categorical Exemptions</u>
15262 – Feasibility and Planning Studies 15268 – Ministerial Projects 15269 – Emergency Projects 15280 – Lower Income Housing Projects	15301 – Existing Facilities 15302 – Replacement or Reconstruction 15304 – Minor Alternations to Land Use 15305 – Minor Alternations to Land Use Limitations 15306 – Information Collection 15307 – Actions to Protect Natural Resources 15308 – Actions to protect the Environment 15315 – Minor Land Divisions 15317 – Open Space Contracts or Easements 15321 – Enforcement Activities 15332 – In-Fill Development Projects

PRACTICE TIP: Note that even if a project is categorically exempt, it may not be exempt if the exception in section 15300.2 applies which states, among other things that “A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances” (CEQA Guidelines section 15300.2(c)) or “...may cause a substantial adverse change in the significance of a historic resource” (CEQA Guidelines section 15300.2(f)). See also (CEQA Guidelines section 15300.2(a), (b), (d) and (e)). Compare with CEQA Guidelines section 15260, which states that the *statutory* exemptions “are complete exemptions from CEQA.” CEQA Guidelines section 15260.

The CEQA Guidelines provide an additional exemption which is commonly referred to as the “catch-all” or “common sense” exemption. Specifically, the CEQA Guidelines state: “[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

PRACTICE TIP: If staff is claiming an exemption on the “catch-all” rule under CEQA Guidelines section 15061(b)(3), ask staff what evidence they have to make this determination. The safest route is to prepare an Initial Study. Also make sure that staff is not overusing this exemption especially if a project is otherwise statutorily or categorically exempt from CEQA review, which will provide a more specific and supportable action.

PRACTICE TIP: If a project is utilizing a statutory or categorical exemption specify the precise facts which make the project exempt.

Step 4: It's a CEQA Project. Now what do I do? Study, study, study.

The Initial Study. An Initial Study is a preliminary environmental analysis for a project to determine if an Environmental Impact Report (EIR) or a Negative Declaration (ND) is needed. Note that if an EIR will clearly be needed for a project, an Initial Study is not technically required. CEQA Guidelines section 15063(a). However, an Initial Study may nevertheless be a good idea to help frame the scope of the EIR (see section below regarding scoping). The Initial Study must include a description of the project, environmental setting, potential environmental impacts, and mitigation measures for any significant environmental effects. CEQA Guidelines Section 15063(d). In describing the project, the Initial Study must look at "...all phases of project planning, implementation and operation..." CEQA Guidelines Section 15063(a).

PRACTICE TIP: Although there is no specific format required for an Initial Study, we recommend that public agencies use, at least as the baseline template, the Initial Study found in Appendix G of the CEQA Guidelines.

If the results of an Initial Study indicate that a project may have a potentially significant impact, an EIR must be prepared.

So do I need to prepare an EIR? The "Fair Argument" Standard.

CEQA's fair argument standard is the critical tipping point for many projects and is one of the areas of CEQA that generates a significant amount of litigation and controversy. EIRs are expensive (often well in excess of \$100,000) and take a significant amount of time to prepare, circulate and approve. As a result, an EIR can effectively kill a project, which is why the fair argument standard is welcomed by project opponents in CEQA litigation. The fair argument standard is set forth in Public Resources Code section 21080(d):

"If there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment, an environmental impact report shall be prepared." Pub. Res. Code section 21080(d)

"Substantial evidence" means "...fact, a reasonable assumption based upon fact, or expert opinion supported by fact. Pub. Res. Code section 21080(e)(1). "Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social economic impacts that do not contribute to, or are not caused by, physical impacts on the environment." The meaning of substantial evidence is probably one of the most critical aspects of any challenge to a ND of environmental impact or Mitigated Negative Declaration of environmental impact (MND). As with any controversial project, there are usually some project opponents who simply

voice their opposition to the project and who cite CEQA and raise various environmental concerns. However, their statements may not truly rise to the level of constituting “substantial evidence” within the meaning of CEQA.

PRACTICE TIP: Know verbatim the fair argument standard and be able to articulate the tests for any agency body considering an environmental determination. Inevitably, every land use practitioner will come across the situation where a Planning Commissioner asks: “Does this ND or MND violate CEQA?” We recommend that you respond by explaining the fair argument standard and what constitutes “substantial evidence,” and advise the body that it must determine whether that standard has been met in light of the underlying record of information before it. Conclusory statements or speculation do not generally constitute substantial evidence. For example, just because a concerned neighbor says it will be “too noisy” and “will have a significant impact on the environment” doesn’t necessarily make it so. However, the statement of several neighbors supported by a noise expert hired by the neighbors who has produced a study suggesting that the city’s methodology is flawed and it has underestimated the noise impacts should warrant further consideration.

The difficulty in analyzing what constitutes substantial evidence, even where “expert testimony” is invoked, was well illustrated in *Apartment Association of Greater Los Angeles v. City of Los Angeles*, (2001) 90 Cal. App. 4th 1162. In that case, the City of Los Angeles adopted a housing code enforcement program. Opponents retained an expert who stated in the administrative record that the enforcement program would require landlords to undertake construction or repair activities “in potentially tens of thousands of apartment and other buildings...use hazardous chemicals to control pests and rodents, and potentially disturb hazardous building materials...” The court found that such expert testimony did not constitute substantial evidence because such opinion was not expert opinion supported by fact and that such statements were simply “argument, speculation, unsubstantiated opinion or narrative.” *Id* at 1176.

PRACTICE TIP: In reviewing whether a statement constitutes substantial evidence, be mindful of words such as “may”, “could”, “potentially”, “might” and other similar adjectives and to what facts in the record are asserted to support the statements. Whether such statements constitute “substantial evidence” under CEQA will turn on the nexus between such language and whether the data supports the conclusion.

The fair argument standard should be understood in light of CEQA’s purpose (informed decision making) and preference for environmental protection, which manifests in this standard that created a “low threshold” for requiring an EIR. See *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal. App. 3d 748, 754; *Citizens of Lake Murray Area Assn. v. City Council* (1982) 129 Cal. App. 3d 436, 440; *Mejia v. City of Los Angeles*, (2005) 130 Cal. App. 4th 322, 332. This “low threshold” is sometimes difficult to accept for both city staff and developers considering the substantial costs and delays associated with the EIR process. However, keep in mind that nowhere in CEQA does the cost or delay play into the decision as to whether to prepare an EIR.

The ND, MND and NOD (A game of Acronym Soup).

If the Initial Study indicates that the project will not have a significant effect on the environment, then the County can prepare a ND. Pub. Res. Code section 21080(c); CEQA Guidelines section 15070 *et seq.* If the Initial Study indicates that there could be significant impacts, but those impacts can be mitigated to a point of insignificance, then a MND can be prepared. Most projects, especially those involving any sort of construction activity, will include conditions or mitigation measures within the negative declaration calculated to reduce any potential environmental impacts to be less than significant. However, conditions or mitigation measures in the MND will not preclude the need to prepare an EIR if information meeting the the fair argument standard discussed above is introduced into the record. See Pub. Res. Code section 21064.5; CEQA Guidelines section 15070(b)(2).

PRACTICE TIP: One recurring problem with MNDs are “deferred” mitigation measures which are generally impermissible under CEQA. For example, in *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, the court determined that a mitigation measure that required a developer to “prepare a hydrological study evaluating the project’s potential environmental effects” violated CEQA. That said, requirements for future implementation measures are allowed, provided there are adequate performance standards, timing of implementation, and contingency plans in place. CEQA Guidelines 15121.6.4(a). In short, a future requirement to study a potential environmental impact is not advisable, but a future requirement for specific mitigation of an identified impact is.

PRACTICE TIP: Land use approvals are often challenged either on the fair argument standard or under administrative writ of mandate grounds. Keep in mind who the real party in interest is. Although it is the city’s decision that is subject to challenge, it is the property owner’s entitlement that is at stake. Be sure to include in the conditions of approval for every discretionary permit a well-drafted indemnification, hold harmless and duty to defend provision to protect the County from challenge. If a lawsuit is filed, the County will be able to utilize this condition and tender the defense costs to the real party in interest. For subdivision projects, the Subdivision Map Act provides certain limitations on a property owner’s duty to indemnify – see Government Code section 66474.9.

If an ND or MND is prepared, the County must provide the public and specified agencies with a notice of intention. Pub. Res. Code section 21092; CEQA Guidelines section 15072. The public review period must be no less than 20 days. Pub. Res. Code section 21092. If the State Clearinghouse is used, the review period is at least 30 days. Pub. Res. Code section 21091(b).

PRACTICE TIP: Unless the project is time critical, the best practice is to use the State Clearinghouse to distribute environmental documentation.

PRACTICE NOTE: In addition to the lead agency designation, CEQA designates certain other public agencies involved in a project approval as “responsible agencies” and “trustee agencies.” Although participation by each type of agency is important, it is imperative that any trustee agency (e.g., California Fish and Wildlife) be provided notice before the County (as the lead agency) takes action on the project. Otherwise, the County may face a failure to follow procedure argument or the trustee agency can even “take over” the CEQA review.

Once a notice of intention is provided and the ND or MND is approved, the County needs to record a Notice of Determination (NOD). CEQA Guidelines section 15075.

PRACTICE TIP: Record the NOD *as soon as possible* in order to trigger the 30-day statute of limitations on the approval of the ND or MND.

STEP 5: The EIR.

There are several types of EIRs and which type is appropriate depends on the project being approved. For example, a General Plan update would not utilize a “project EIR”; instead, a General Plan update would utilize a Master EIR. Pub. Res. Code sections 21156 – 21158.5.

Scoping.

One of the most important initial steps of the EIR process is determining the scope of an EIR. CEQA Guidelines section 15083. This process is essentially a consultation between the County, the developer, responsible and trustee agencies, and sometimes the public, to decide what environmental issues an EIR will focus on. The result of the scoping process is usually two-fold – it (hopefully) removes unnecessary analysis of non-issues and focuses attention on real or legitimately perceived real issues.

PRACTICE NOTE: Scoping meetings are not always helpful. However, for projects where the concerns focus on specific and fairly narrow potentially significant environmental impacts, a scoping meeting can be very helpful in tailoring the EIR process to a limited set of issues.

Notice of Preparation.

Once an EIR is “scoped”, a County must prepare a Notice of Preparation (NOP) and send it to all responsible agencies, trustee agencies, Office of Planning and Research and any federal agencies who are providing funding or have any part of the approval process for the project. Pub. Res. Code section 21080.4; CEQA Guidelines section 15082(a). In addition, the NOP must be sent to any interested person who has requested written notice. Pub. Res. Code section 21092.2. If an agency chooses to respond, the response must contain specific details regarding how, in terms of scope and content, the EIR should treat environmental information related to the responsible or trustee agency’s area of statutory responsibility and must identify the “significant environmental issues and reasonable alternatives and mitigation measures that the responsible agency or trustee agency, or [OPR] will need to have explored in the draft EIR.” CEQA Guidelines section 15082(b). If you did your homework in the scoping meeting, responses to the NOP should come as no surprise.

Preparing the Draft EIR.

An environmental consultant will almost always prepare the EIR. Although the project applicant pays for the costs for preparation of an EIR, the EIR must “be prepared directly by, or under contract” with the lead agency. Pub. Res. Code section 21082.1(a); CEQA Guidelines section 15084(a).

The EIR must include the following components:

1. Table of Contents or Index; (CEQA Guidelines section 15122)
2. Summary of the proposed actions and their consequences; (CEQA Guidelines section 15123)
3. Project description; (CEQA Guidelines section 15124)
4. Environmental Setting; (CEQA Guidelines section 15125)
5. Evaluation of Environmental Impacts; (CEQA Guidelines section 15126)
6. Water supply assessment –for certain large projects (although there may be some movement in this area of the law and more projects may become subject to this analysis; (Pub. Res. Code section 21151.9; Water Code section 10911(b))
7. Significant Environmental Effects of the Proposed Project; (CEQA Guidelines section 15126.2)
8. Effects Not Found to Be Significant; (CEQA Guidelines section 15128)
9. Mitigation Measures; (CEQA Guidelines section 15126.4)
10. Cumulative Impacts; (CEQA Guidelines section 15130)

PRACTICE NOTE: One interesting concept that has arisen is “urban decay”. CEQA Guidelines section 15131 states that economic or social information may be included in an EIR or may be presented in whatever form the agency desires. Subsection (a) states “[e]conomic or social effects of a project shall not be treated as significant effects on the environment.” Subsection (b) however states “[e]conomic or social effects of a project may be used to determine the significance of physical changes caused by the project.” One situation where this analysis is commonly utilized is with projects involving big box retailers, most notably Wal-Mart. See *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App. 4th 1184. The idea behind the analysis is that there will be a physical manifestation of a project’s potential socioeconomic impact. In *Bakersfield Citizens for Local Control*, there were two proposed Wal-Mart projects less than 5 miles from each other. Economic experts warned that such land use decisions could cause a chain reaction of store closures and long term vacancies, thus destroying existing neighborhoods and leaving decaying shells in their wake.

11. Project Alternatives; (CEQA Guidelines section 15130);
12. Inconsistencies with Applicable Plans; (CEQA Guidelines section 15125(d))
13. Discussion on Growth Inducing Impacts; (CEQA Guidelines section 15126.2(d)) and
14. Organizations and Persons Consulted. (CEQA Guidelines section 15129).

The most robust and time consuming discussions usually revolve around items 4, 5, 7, 8, 9, and 10.

Recirculation Issues.

One issue that often comes up is if an EIR needs to be recirculated because the document has been changed or new issues have arisen during the public review process. You may find yourself on the receiving end of the following question: “Do we need to recirculate?” The effect of recirculation should not be taken lightly – it costs money, delays final approval of the environmental document, and opens the document up to additional comments and criticisms. On the other hand, failure to recirculate when necessary exposes the document and CEQA process to challenge.

Recirculation is required in four instances:

1. When there is new information that shows a new, substantial environmental impact;
2. When new information shows a feasible alternative or mitigation measure that clearly would lessen environmental impacts, but it is not adopted;
3. When new information shows a substantial increase in the severity of an environmental impact;
or
4. When the draft EIR was so fundamentally inadequate and conclusory that meaningful public review and comment were precluded.
(CEQA Guidelines section 15088.5(a))

PRACTICE TIP: When in doubt, recirculate the EIR.

Approval of an EIR.

After the final EIR is complete, the County must make certain findings before it can certify and approve the EIR. Specifically, the County must find that:

1. Changes or alterations have been required in, or incorporated into, the project that 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; or
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.

Pub. Res. Code section 21081; CEQA Guidelines sections 15091 – 15094. Item 3 is generally referred to as a “statement of overriding conditions.”

As with a ND or MND, the County should file a NOD in order to trigger the 30-day statute of limitations on the certification of the EIR. Pub. Res. Code sections 21152(a), (c); CEQA Guidelines section 15075(e).

TAKINGS, DEVELOPMENT FEES AND EXACTIONS

Takings.

Takings analysis begins with the constitutional premise that no private property shall be taken for public use without the payment of just compensation. U.S. Const. 5th Amend.; see also Cal. Const. art. I section 19. A taking can be in the form of a physical taking (i.e. physical invasion of property), *Loretto v. Teleprompter Manhattan CATV Corporation*, (1982) 458 U.S. 419 (State law required property owners to allow cable company to install cable facilities on apartment buildings); denials of all economically beneficial use, *Lucas v. South Carolina Coastal Council*, (1992) 505 U.S. 1003 (regulation barring development on beachfront lots was a taking); partial regulatory takings, *Penn Central Transportation Company v. City of New York*, (1978) 438 U.S. 104 (historic preservation ordinance was not a taking because it did not have any economic impact on the station or interfere with the developer's investment backed expectations as the railroad could continue to earn a reasonable rate of return; and land use exactions, *Nollan v. California Coastal Commission*, (1987) 483 U.S. 825 and *Dolan v. City of Tigard*, (1994) 512 U.S. 374. These last two cases are commonly referred to as *Nollan/Dolan* and were seminal in establishing the appropriate takings analysis for land use exactions. This paper will focus on this last takings analysis.

***Nollan/Dolan* and the Test of Reasonableness/Nexus Requirement.**

In California, property development is considered a privilege and not a right. *Associated Home Builders, Inc. v. City of Walnut Creek*, (1971) 4 Cal. 3d 633, 638. However, the *Nollan* and *Dolan* cases have limited the extent in which public agencies may condition development. Specifically, cities may impose conditions on development so long as the conditions are reasonable and there exists a sufficient nexus between the conditions imposed and the projected burden of the proposed development. *Nollan*, 483 U.S. at 834-835. Further, cities must prove that such conditions have a "rough proportionality" to the development's impact. *Dolan*, 512 U.S. at 391. In order to understand what is meant by these limitations, it is helpful to know the development and conditions in the underlying cases.

In *Nollan*, a property owner wanted to build a house within the Coastal Zone. The Coastal Commission imposed a condition on the permit, requiring dedication of a lateral access easement along the property owner's private beach. The rationale for the condition was to assist the public in viewing the beach and in overcoming a perceived "psychological barrier" to using the beach. *Id.* at 435. The *Nollan* court determined that there was no nexus between the identified impact of the project (obstruction of ocean view by the new house) and the easement condition (physical access across the beach).

Similarly, in *Bowman v. California Coastal Commission*, (2014) 230 Cal. App. 4th 1146, the Court of Appeal found no nexus between a request for a permit to rehabilitate a house and a condition imposed by the Coastal Commission for the property owner to dedicate to the public a lateral easement for public access along the shoreline of his property. Specifically, the Court stated: "We agree with appellants that under *Nollan* and *Dolan*, the easement lacks an "essential nexus" between the exaction and the construction. The work occurs within the existing "footprint" of the property." *Id.* at 1151.

In *Dolan*, a property owner applied for a permit to further develop his property. His plans were to increase the size of his plumbing store (by about double) and pave his 39-car parking lot. The permit was approved by the City of Tigard with the condition that the property owner dedicate a portion of his property within the 100 year flood plain for improvement of a drainage facility, and dedicate a 15-foot strip of land adjacent to the flood plain for a pedestrian/bicycle path. The city made numerous findings to support the nexus requirement. The Supreme Court held that even though a nexus between the project and the conditions existed, the degree of the takings was not roughly proportional to the development's impact. The City of Tigard asked for too much in relation to the impact that the development presented.

PRACTICE TIP: The *Nollan/Dolan* analysis can be difficult for County staff and the legislative bodies to understand and implement. If the question is asked if a particular condition constitutes a taking under *Nollan/Dolan*, we recommend that you walk the individual or individuals considering the issue through the following questions so the individual or individuals can articulate a response:

1. What is the impact that this project has on this issue?
2. Does the condition serve a legitimate public interest?
3. What is the relationship between the particular impact of the development and the condition? How do they relate to one another?
4. Are the impact and the condition on par with one another?

Development Fees (AB 1600).

AB 1600, otherwise known as the Mitigation Fee Act, was based on the rationale articulated in *Nollan* and *Dolan*, and sets forth certain requirements that must be followed by a California County in establishing or imposing a development impact fee. The Act is codified at Government Code section 66000 – 66025, and requires, among other things, a County to identify the purpose of the fee, identify how it will be used, demonstrate that a reasonable relationship exists between the purpose of the fee and the type of development project on which the fee is imposed, and demonstrate that there is a reasonable relationship between the need for the service or public facility and the type of development project on which the fee is imposed. Gov. Code section 66001(a)-(b).

PRACTICE TIP: For the most part, a city's AB 1600 fees will be established pursuant to fee study. However, it is critical that the public agency also perform the annual and five-year reporting requirements required by Gov. Code sections 66006 and 66001(d), respectively. Failure to report or make the necessary findings could render AB 1600 accounts subject to refund.

Note that these fees are different than other statutorily authorized fees, such as Quimby fees.

AFFORDABLE HOUSING

As noted above, State law requires each County to provide affordable housing to all economic segments. See e.g., Gov. Code section 65008. This paper will briefly touch on some of the various ways affordable housing programs are implemented by the State and at the local level.

PRACTICE NOTE: Remember that to further the development of affordable housing within the State, CEQA *statutorily* exempts certain affordable housing projects from environmental review.

Anti-NIMBY laws.

Government Code section 65589.5 requires a County to make certain findings before it can reject or impose certain conditions on an affordable housing project, including emergency shelters, transitional housing and supportive housing. This statute effectively “flips” the development process and creates a presumption in favor of affordable housing that puts the onus on the County to find that the project would have a specific adverse impact on the health, safety and welfare and that there is no feasible method to mitigate or avoid the impact other than by disapproving the project or imposing certain conditions. Gov. Code section 65589.5(j).

Second Units, AKA “Granny Units”.

Government Code sections 65852.1 – 65852.2 sets forth the State’s second units law. The purpose of the law was to promote the development of secondary units and to make sure that any requirements imposed by cities are not so onerous as to unreasonably restrict the creation of such units. Govt. Code section 65852.150. One important component of this statutory scheme is Government Code section 65852.2(a)(b)(3), which states:

This subdivision establishes the maximum standards that local agencies shall use to evaluate proposed second units on lots zoned for residential use which contain an existing single-family dwelling. No additional standards, other than those provided in this subdivision or subdivision (a), shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant.

As a result, most cities’ secondary unit regulations mimic the maximum standards set forth in Government Code section 65852.2(a).

Inclusionary Housing.

Many public agencies have enacted inclusionary housing ordinances which either encourage or require developers to include a certain percentage of affordable housing units within projects. Many inclusionary housing regulations include the ability to pay an “in-lieu” fee to account for fractional affordable housing requirements or as an alternative to a set-aside requirement. Although inclusionary housing programs have, for the most part, withstood judicial scrutiny (see *BIA of Central California v. City of Patterson*, (2009)171 Cal. App. 4th 886; *Home Builders Assoc.’n of Northern California v. City of*

Napa, (2001) 90 Cal. App. 4th 188), fairly recent case law has held that the Costa-Hawkins Act has preempted the field of rental restrictions. *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles*, (2009) 175 Cal. App. 4th 1396.

In *Sterling Park v. City of Palo Alto* (2013) 57 Cal.4th 1193, the California Supreme Court held that in-lieu fees were subject to challenge as exactions subject to the statute of limitations under the Mitigation Fee Act, disapproving *Trinity Park, L.P. v. City of Sunnyvale*, (2011) 193 Cal.App.4th 1014, which held the Mitigation Fee Act did not apply to a below market housing condition and that the Subdivision Map Act's 90-day statute of limitations applied. It also held that since Palo Alto required the developer to grant the city an option to purchase the units, the option was an interest in real property that could qualify as an 'exaction' as well and that the developer could use the Mitigation Fee Act's protest procedures to challenge the option as well. The Court did not reach the issue of whether a pure price control without an option would qualify as an 'exaction.'

PRACTICE NOTE: The California Supreme Court, in *California Building Industry Association v. City of San Jose*, (2013) 307 P. 3d 878, will decide whether inclusionary housing requirements need to be justified by a nexus study or can be adopted based on the police power. Given the uncertainty of the standard of review, many practitioners in this area are advising that it seems prudent to complete a nexus study so that the program can continue in the event of an adverse ruling.

Density Bonus Law.

Government Code sections 65915 – 65918 sets forth the State's Density Bonus Law, which, among other things, provides developers with a density bonus or other development-related concessions if a developer agrees to construct certain housing developments that provide either affordable housing or other similar housing. Gov. Code section 65915(a). This law specifically applies to charter cities. Gov. Code section 65918. The amount of the density bonus and the number of concessions depends on the percentage of units set aside for affordable housing.

PRACTICE NOTE: Government Code section 65915 does not set forth the type of concessions that are available under this law and instead states the applicant may submit a proposal for a specific concession and the County shall grant the concession requested unless it makes a written finding based on substantial evidence that the concession, among other things, would have a specific adverse impact (as defined in Government Code section 65589.5(d) (2)) upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

PRACTICE NOTE: It is important to understand that the State's Density Bonus Law is mandatory and that if a developer proposes a project that qualifies for a density bonus and/or

concession(s), the County and reviewing bodies have little ability to otherwise modify the impacts of those bonuses or concession(s).

PRACTICE NOTE: There still appear to be differing practices as to whether a developer's inclusionary housing triggers the density bonuses or concessions under Govt. Code sections 65915 *et seq.* If there is still any ambiguity in your county's ordinances, we recommend the County include inclusionary housing within density bonus calculations. See *Latinos Unidos Del Valle De Napa y Solano v. County of Napa*, (2013) 217 Cal. App. 4th 1160 (density bonus is mandatory even if the project only includes affordable housing "involuntarily" to comply with a local ordinance).

DUE PROCESS

The Due Process clause of the Fourteenth Amendment is inextricably intertwined with land use law. Due process requires reasonable notice and an opportunity to be heard by an impartial decision maker for administrative proceedings that affect liberty or property interests. See Gov. Code section 65905(a); *Fuchs v County of Los Angeles Civil Serv. Comm'n* (1973) 34 CA3d 709. Due process issues can be fairly apparent, for example in the case of an issuance or revocation of a conditional use permit.

One issue to be aware of is a due process claim arising out of the competing roles of the County attorney as advisor and advocate, for instance the attorney who advised the County on the underlying land use application also advises the body which acts as a later decision-maker in the administrative hearing on the application. See *Nightlife Partners, Ltd. V. City of Beverly Hills* (2003) 108 CA 4th 81 (city violated due process rights of the land use applicant when the lawyer advising the administrative hearing officer on appeal had also advised the City on the original denial of the permit being appealed); *Quintero v City of Santa Ana* (2003) 114 CA4th 810 (due process violated where Board's regular legal advisor appeared before the Board as an advocate, even where separate counsel to the Board was provided); see also *Howitt v Superior Court* (1992) 3 CA4th 1575 (county counsel's office must establish that its attorney who advised county's appeals board was completely segregated from attorney representing the department that terminated the employee, or else county counsel would be disqualified from advising county appeals board).

This line of cases obviously presents some difficult logistical problems for small, in-house municipal legal offices, which require careful thought and planning, and often the retention of outside counsel, where attorneys work closely with staff, as well as acting as advisors to planning commissions and boards of supervisors.

HISTORIC PRESERVATION

For many communities such as the City of San Juan Bautista, historic preservation is critical. At the federal level, there is the National Historic Preservation Act that sets forth federal authority for federal historic preservation programs. California has the California Register of Historic Resources, Pub. Res. Code sections 5020 *et seq.*, which is an authoritative listing and guide for cities to implement their respective historic preservation ordinances. There are four different criteria for designation, which are as follows:

1. The resource is associated with events that have made a significant contribution to the broad patterns of local or regional history or the cultural heritage of California or the United States;
2. The resource is associated with the lives of persons important to local, California or national history;
3. The resource embodies the distinctive characteristics of a type, period, region or method of construction or represents the work of a master or possesses high artistic values; or
4. The resource has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California or the nation.

Note that the resource is not always a structure but can be something as simple as a sign, wall or trail. The typical effects of historic designation are protection of the resource from alteration, neglect or impact, the ability to obtain building code alternatives, and potentially property tax reduction under the Mills Act.

CONCLUSION

The world of land use law and regulation is comprehensive and the sheer volume of legal concepts, statutes governing land use decisions, and procedural requirements can be daunting. However, land use regulation is at the heart of some of the most significant decisions local governments make and represents the single most powerful tool that communities have to define, establish, and maintain their “sense of place.” If each land use decision can be evaluated starting with the constitutional foundations of the authority to regulate and the various statutes and processes can be viewed as tools to help answer the important questions and order important land use decisions, the process starts to seem less overwhelming. Fundamentally, this paper is presented from the perspective that the law is supposed to make sense and that the objective of the law is good planning. It is our hope that the paper can be used as one of many tools to navigate the legal complexities through that lens. Attached to this paper is a brief “snapshot” of our “go-to” reference guides and websites, which we use in this important subject area.

