3.4
BIOLOGICAL RESOURCES

This section of the Draft EIR evaluates the project's potential impacts to biological resources. This evaluation is based on independent site investigation and analysis by EMC Planning Group, the site investigation and technical analysis set forth in the 2008 biological evaluation report prepared by Live Oak Associates (biological evaluation) attached as Appendix E to this Draft EIR, information found in the *County of San Benito General Plan* (1994), the *City of Hollister General Plan* (2005), the *Gavilan San Benito Campus and Fairview Corners Projects Final EIR* (Gavilan College 2008), comments received on the Notice of Preparation, biological resources peer review conducted by Impact Sciences, Inc.; and the project application materials.

A comment letter in response to the NOP was received from the California Department of Fish and Game (CDFG) which requested the EIR study the following species: California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana draytonii*), American badger (*Taxidea taxus*), western spadefoot toad (*Spea hamondii*), rare plants, and nesting birds. The comment letter is included in Appendix B.

The project site is within U.S. Fish and Wildlife Service (USFWS) designated "critical habitat" for the California tiger salamander, listed as "threatened" by both the federal government and the State of California. There are no regional Habitat Conservation Plans, Natural Community Conservation Plans, or other regional habitat planning efforts applicable to the project site (Live Oak Associates 2008, page 41). However, the applicant is in the process of preparing a draft Habitat Conservation Plan (HCP) for the proposed project, which would also cover the Gavilan College San Benito Campus project, in cooperation with the College District and in consultation with USFWS and CDFG. Consideration and potential adoption of the HCP by the resources agencies is anticipated in late 2012.

3.4.1 Environmental Setting

Project Region

The project site is located southeast of the City of Hollister in San Benito County, within the Central Coast range of California. The Diablo mountain range borders the County to the east and the Gabilan mountain range to the west. The two incorporated cities, San Juan Bautista and Hollister, are located on the nearly flat valley floor between these ranges, in the northern portion of the County. The valley floor is underlain by geologically young, unconsolidated stream deposits (San Benito County 1994). The region is generally characterized by rolling hills with annual grassland and oak woodland to the east, and flat, cultivated and developed land to the west (PMC 2008). The climate of the Hollister area is characterized by warm summers and cool, moist winters. The average temperatures for summer and winter are 73°F and 46°F, respectively. However, it is not unusual for temperatures to rise above 100°F occasionally in the spring and summer or to fall below 40°F occasionally in the winter. The average yearly rainfall is 13 inches, with most of this precipitation occurring from October to May.

On-Site Existing Uses and Topography

As described in Chapter 2.0, Project Description, the project site consists of approximately 60 acres of land located southeast of the City of Hollister, in unincorporated San Benito County. The site is undeveloped and used to cultivate barley. The land is annually disced and periodically grazed by cattle.

The project site's topography consists of undulating hills with an overall relative elevation change of about 45 feet from east to west. Slopes on the site vary from zero to about 10 percent, as illustrated by Figure 5, Site Photographs, and inferred from the information presented in Figure 6, Topography and Proposed Earthquake Fault Building Exclusion Zone. A former stock pond is located in a ground depression near the northeast corner of the site. The highest elevation is near the center of the site and the lowest points are in the southwest corner near Fairview Road and in the northeast corner in the vicinity of the former stock pond. The site rises from Fairview Road to the crest of a hill located approximately 1,100 feet east of Fairview Road. Existing drainage patterns on the site follow the topography and generally flow in three directions: west of the hill, the site drains toward Fairview Road; to the east, the site drains to a low point in the site's northwestern corner; along the site's southern boundary, the hill is interrupted by a saddle, which causes drainage to flow southward toward the adjacent property. The project site's existing drainage pattern is presented in Figure 7, Existing Drainage.

Project Site Vegetation Communities — Agricultural Land

Live Oak Associates conducted a reconnaissance-level field survey of the project site on October 23, 2007. Live Oak Associates conducted additional surveys on February 5, 2008 to evaluate aquatic features and in April and May 2008 to conduct botanical surveys. EMC Planning Group conducted reconnaissance-level surveys on April 30, 2009 and June 1, 2009 to verify site conditions. In addition, EMC Planning Group conducted site visits on December 12, 2009, January 14, 2010, and February 1, 2010 to provide further documentation of site conditions during seasonal changes. One vegetation community was identified during the surveys: Agricultural Field. This community is addressed in further detail below.

The land cover/habitat within the project site is agricultural in nature. The project site primarily consists of a field of cultivated barley (*Triticum aestivum*) that is annually disced and periodically grazed by cattle. Common grasses and forbs observed throughout the field include, but are not limited to, soft chess (*Bromus hordeaceus*), Mediterranean barley (*Hordeum marinum ssp. Gussoneanum*), yellow star thistle (*Centaurea solstitialis*), vinegarweed (*Trichostem lanceolatum*), and field bindweed (*Convolvulus arvensis*).

As reported in the Phase I Environmental Site Assessment (ESA) (Terrasearch 2007) discussed in Section 3.8 (Hazards and Hazardous Materials) and Section 3.9 (Hydrology and Water Quality), historically portions of the project site were periodically left fallow and devoted to grazing. However, the site has been cultivated for barley and annually disced for at least the past 10 years. Disced fields have little habitat value to wildlife. Although small mammals and their underground burrows may survive the discing, the lost vegetative cover makes them more likely to be preyed upon, reducing the habitat suitability. However, since the cultivated field supports California ground squirrels, it has the potential to support burrowing owl and other predatory species such as raptors and coyote.

Project Site Aquatic Communities

Remnants of a former stock pond are found within the northeast corner of the project site. The former stock pond is known to have held water up until 2000, but, there have been no observations of ponding there since that time, including during the 2010/2011 rain season, where rainfall was recorded as being higher than average. Current agricultural practices, including regular discing of the site, have likely broken the soil barrier that had previously allowed water to accumulate in this location. This former stock pond was dry during each of the site visits conducted by Terrasearch in 2007 for the ESA, Live Oak in 2007 and 2008 for the biotic surveys, and during field visits by EMC Planning Group in 2009, 2010, and 2011. Based on this evidence, it is reasonable to conclude that water no longer ponds in the former stock pond area. Vegetation in the former stock pond is similar to that of the upland portions of the project site, such as barley and soft chess, with the addition of two facultative species, poison hemlock (*Conium maculatum*) and spiny cocklebur (*Xanthium spinosum*).

In October 2007 and February 2008, surveys were conducted in order to determine if the former stock pond could qualify as a jurisdictional feature. Those surveys determined that the former stock pond does not support the three indicators (soils, vegetation, and hydrology) that define the presence of federally jurisdictional wetlands. Further, the United States Army Corps of Engineers (USACE) completed an analysis of the project site, including the former stock pond, in July 2008 and determined that no jurisdictional waters exist on-site. The pond is not hydrologically connected to any other water body. The USACE letter confirming the lack of jurisdictional features at the project site is included in Appendix E.

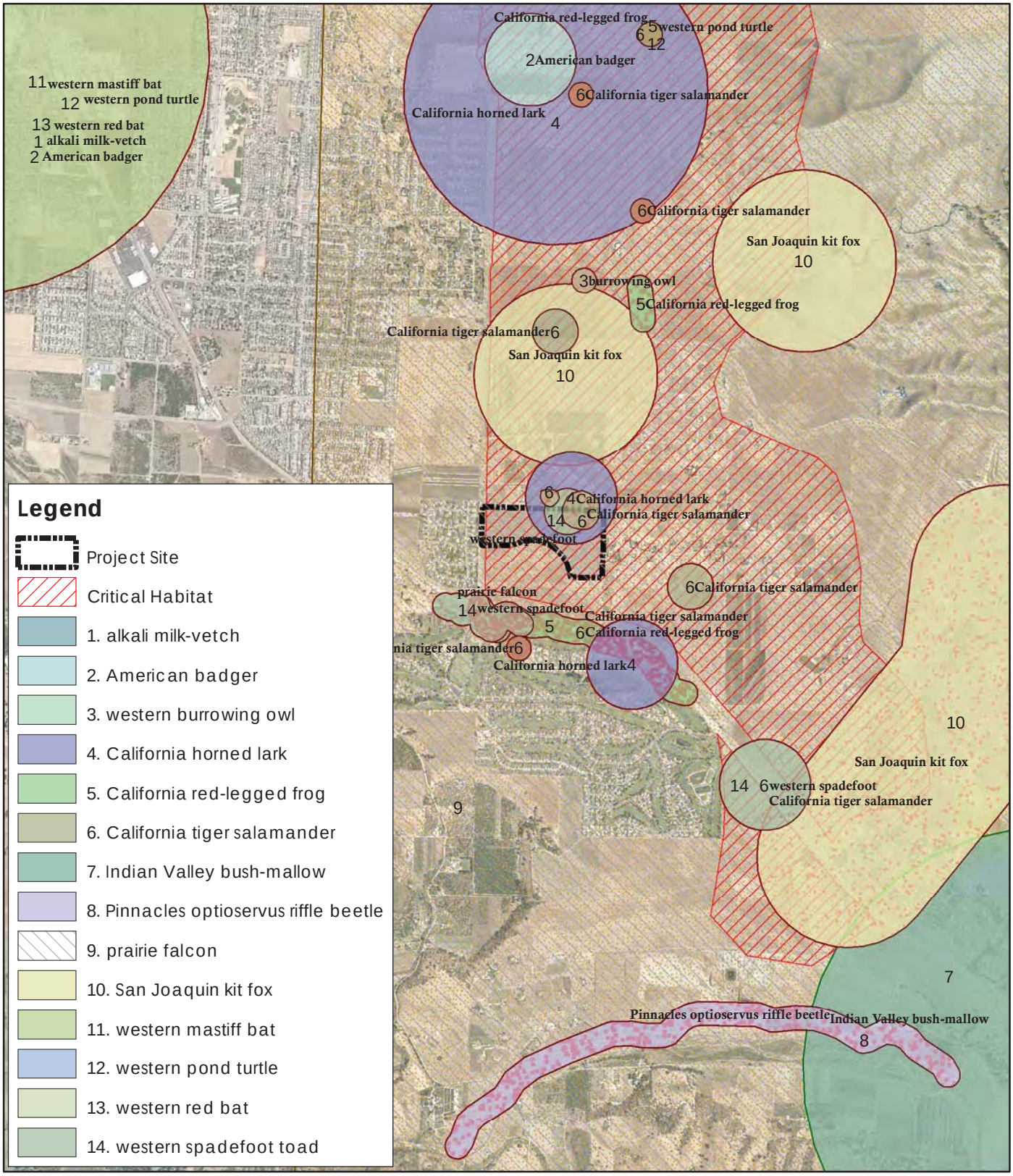
Special-Status Species

As explained below and more fully in the biological evaluation, the project site and adjacent areas were evaluated for the presence or potential presence of a variety of special-status species. Data from the United States Fish and Wildlife Service (USFWS) on-line species list, the California Department of Fish and Game's (CDFG) California Natural Diversity Database (CNDDB), and the California Native Plant Society (CNPS) on-line inventory were reviewed to determine the potential for special-status species to occur at the project site, within the Tres Pinos United States Geologic Survey (USGS) 7.5" quadrangle (in which the project site occurs), or within the eight surrounding USGS quadrangles (Cherry Peak, Hollister, Mariposa Peak, Mt. Harlan, Paicines, Quien Sabe Valley, San Felipe, and Three Sisters). Figure 28, Special-Status Species within the Project Vicinity, shows known locations of special-status species in the vicinity of the project site. Special-status species include species listed by the USFWS as threatened or endangered; the USFWS candidates for listing as threatened or endangered; species designated as "Species of Concern" by the USFWS; species listed by the CDFG as threatened, endangered, or designated as "Species of Special Concern"; and species included on the CNPS Lists 1A, 1B, 2, 3, or 4. The results of the CNDDB, CNPS, and USFWS queries are found in the Live Oak biological evaluation.

Special-status species from these database searches were selected for consideration in this analysis based on habitat suitability within the project site, previously recorded occurrences of these species within the Tres Pinos USGS quadrangle or surrounding eight quadrangles, species-specific surveys, and professional expertise. Figure 29, Special-Status Species Observed within Five Kilometers, identifies the nearest recorded observations of special-status species within five kilometers of the project site.

Special-Status Plant Species

Special-status plants generally occur in relatively undisturbed areas and are largely found within unique vegetation communities and/or habitats such as vernal pools or alkali flats.



Source: EMC Planning Group Inc. 2010, USFWS 2009, CDFG CNDDB 2010, USGS 100k DRG

Figure 28

Special Status Species Observed Within the Project Vicinity

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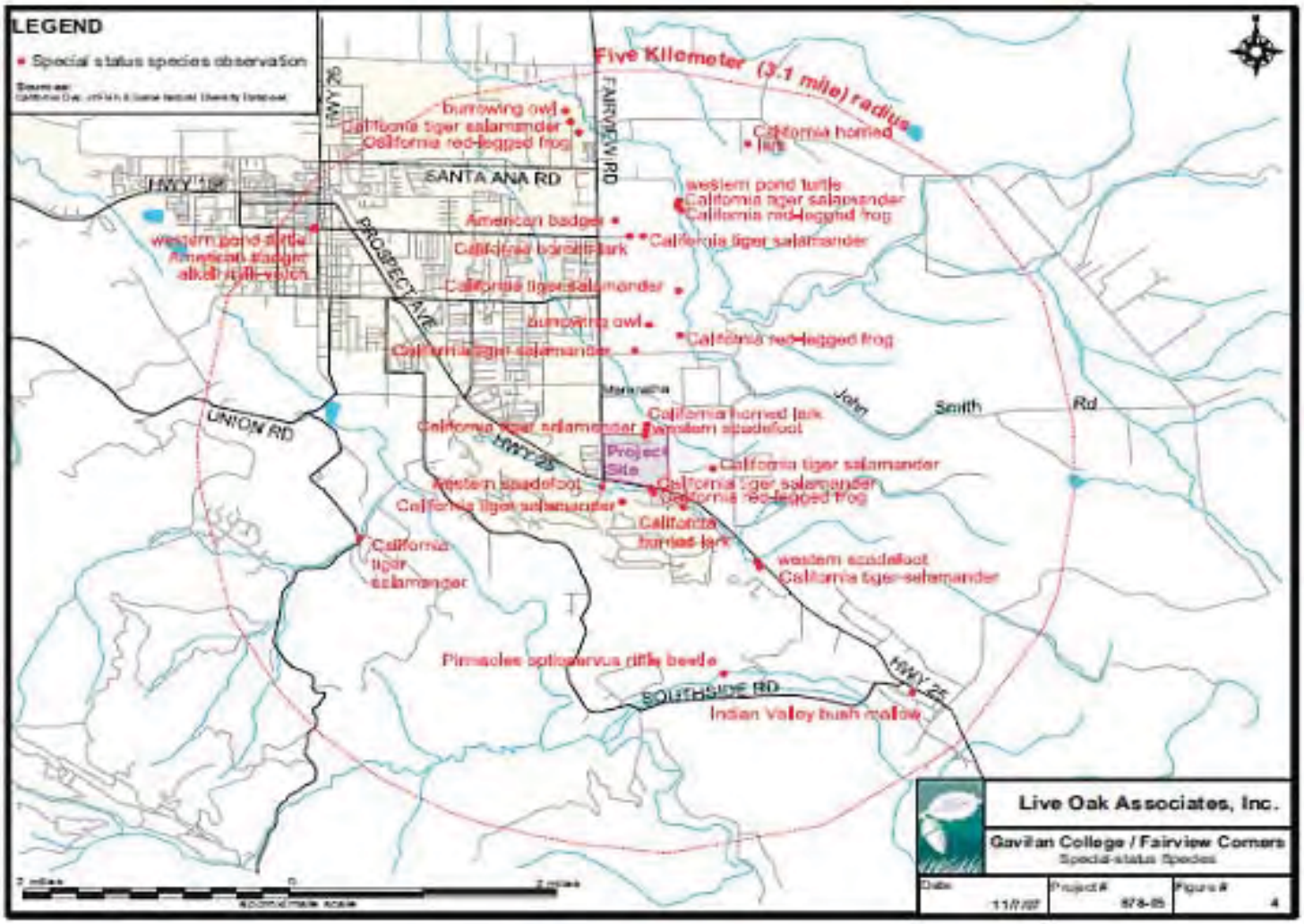

Figure 29

Special Status Species Observed within Five Kilometers

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As shown in Table 10, Special-Status Plant Species that Could Occur in the Project Vicinity (Live Oak Associates 2008), 10 special-status plant species were identified that could potentially occur within the project site based on initial background database searches, literature review, and an assessment of potential habitat present at the site. Surveys were conducted in the spring (April and May) of 2008 during the typical blooming periods of the special-status plant species known to occur in the project vicinity. None of these special-status plant species were identified on the site. Based on this evaluation, Live Oak Associates determined that all of these species should be removed from consideration due to the lack of appropriate habitat. The findings of the rare plant surveys are consistent with the marginal suitability of the project site for rare plants, due to the preponderance of non-native invasive species as a result of the agricultural cultivation and related practices, particularly discing, which tills the soil and removes existing vegetation. Therefore, based on these surveys, lack of habitat suitability, lack of previously-recorded occurrences of these species, and professional expertise, no special-status plant species have the potential to occur on-site.

Special-Status Wildlife Species

As shown in Table 11, Special-Status Wildlife Species that could Occur in the Project Vicinity (Live Oak Associates 2008), 28 special-status wildlife species were identified that could potentially occur within the project site, based on initial background database searches, literature review and an assessment of potential habitat present on the site. Of those, 20 would be absent or unlikely to occur on the site due to unsuitable habitat conditions, as noted in Table 11. These include the coast range newt, foothill yellow-legged frog, western pond turtle, San Joaquin coachwhip, peregrine falcon, black swift, Vaux's swift, western yellow-billed cuckoo, tricolored blackbird, yellow-breasted chat, Townsend's big-eared bat, hoary bat, pallid bat, ringtail, and.

Amphibians

California Tiger Salamander. The California tiger salamander (CTS) is federally- and state-listed as threatened. CTS typically occur in the Central Valley and in surrounding foothills of both the Coast Range and Sierra Nevada mountains. Adult CTS spend the non-breeding season below ground in existing ground squirrel or other rodent burrows. CTS migrate to aquatic breeding sites (i.e., seasonal ponds, stock ponds, reservoirs, lakes, and occasionally stream pools that are devoid of fish) during the winter and spring rainy season. The larvae spend approximately 2 to 4 months in the water before transforming to adults and seeking suitable terrestrial habitat. CTS can migrate considerable distances (more than one mile) to aestivation (summer) habitat (typically ground squirrel burrows in open grasslands) and to aquatic breeding sites (winter/spring).

Table 10 Special Status Plant Species that Could Occur in the Project Vicinity

Species	Status	Habitat	*Occurrence in the Study Area
Alkali milk-vetch *(Astragalus tener var. tener)*	CNPS 1B	Alkaline soils of playas, adobe clay valley and foothill grasslands, and alkali vernal pools at elevations of up to 60 meters. Blooms March-May.	**Absent.** The project site has been heavily managed for agricultural purposes. While moderately alkaline soils may persist on the site, any suitable habitat that may have once been present has been eliminated from the site.
San Joaquin spearscale *(Atriplex joaquiniana)*	CNPS 1B	Chenopod scrub, meadows and seeps, playas, and valley and foothill grasslands on alkaline soils at elevations of up to 835 meters. Blooms April-October.	**Unlikely.** The project site has been heavily managed for agricultural purposes. While moderately alkaline soils may persist, any suitable habitat that may have once been present has likely been eliminated from the site. However, this species was documented in 1995 approximately 5 miles southeast of the site.
Round-leaved filaree *(California macrophyllum)*	CNPS 1B	Clays of cismontane woodlands and valley and foothill grasslands at elevations between 15 and 1200 meters. Blooms March-May.	**Absent.** The project site has been heavily managed for agricultural purposes. Any suitable habitat that may have once been present has been eliminated from the site.
Vernal barley *(Hordeum intecedens)*	CNPS 3	Coastal dunes, coastal scrub, saline flats and depressions of valley and foothill grasslands, and vernal pools at elevations of between 5 and 1000 meters. Blooms March-June.	**Unlikely.** The project site has been heavily managed for agricultural purposes. Any suitable habitat that may have once been present has likely been eliminated from the site.

Species	Status	Habitat	*Occurrence in the Study Area
Woolly-headed lessingia *(Lessingia hololeuca)*	CNPS 3	Broadleafed upland forest, coastal scrub, lower montane coniferous forest, and valley and foothill grassland on clay or serpentinite at elevations between 15 and 305 meters. Blooms June-October.	**Absent.** The project site has been heavily managed for agricultural purposes. Any suitable habitat that may have once been present has likely been eliminated from the site. Additionally, serpentine soils are absent from the site.
Marsh microseris *(Microseris paludosa)*	CNPS 1B	Closed-cone coniferous forest, cismontaine woodland, coastal scrub, and valley and foothill grassland at elevations of between 5 and 300 meters. Blooms April-June and rarely in July.	**Absent.** The project site has been heavily managed for agricultural purposes. Any suitable habitat that may have once been present has been eliminated from the site.
Shining navarretia *(Navarretia nigelliformis ssp. radians)*	CNPS 1B	Cismontane woodland, valley and foothill grassland, and vernal pools at elevations of between 76 and 1000 meters. Blooms May-July.	**Absent.** The project site has been heavily managed for agricultural purposes. Any suitable habitat that may have once been present has likely been eliminated from the site.
Prostrate navarretia *(Navarretia prostrata)*	CNPS 1B	Mesic soils of coastal scrub, meadows and seeps, alkaline valley and foothill grassland, and vernal pools at elevations of between 15 and 700 meters. Blooms April-July.	**Absent.** The project site has been heavily managed for agricultural purposes. While moderately alkaline soils may persist on the site, any suitable habitat that may have once been present has been eliminated from the site.
Hairless popcorn-flower *(Plagiobothrys glaber)*	CNPS 1A	Alkaline meadows and seeps and in salty marshes and swamps at elevations of between 15 to 180 meters. Blooms March-May.	**Absent.** The project site has been heavily managed for agricultural purposes. While moderately alkaline soils may persist on the site, any suitable habitat that may have once been present has been eliminated from the site.

Species	Status	Habitat	*Occurrence in the Study Area
Caper-fruited tropidocarpum *(Trifolium depauperatum var. hydrophilum)*	CNPS 1B	Marshes and swamps, vernal pools, and mesic, alkaline soils of valley and foothill grasslands at elevations of up to 300 meters. Blooms April - June.	**Unlikely.** The project site has been heavily managed for agricultural purposes. Any suitable habitat that may have once been present has likely been eliminated. The nearest, documented occurrence of this species occurred in 1998, more than 9 miles from the site.

Source: Live Oak Associates, Inc. *Gavilan College/Fairview Corners ADEIR/DEIR Biotic Evaluation*. Hollister, California, August 2008

Notes: ***Explanation of Occurrence Designations and Status Codes**

Present: Species observed on the sites at time of field surveys or during recent past.

Likely: Species not observed on the site, but it may reasonably be expected to occur there on a regular basis.

Possible: Species not observed on the sites, but it could occur there from time to time.

Unlikely: Species not observed on the sites, and would not be expected to occur there except, perhaps, as a transient.

Absent: Species not observed on the sites, and precluded from occurring there because habitat requirements not met.

STATUS CODES

FE	Federally Endangered	CE	California Endangered
FT	Federally Threatened	CT	California Threatened
FPE	Federally Endangered (Proposed)	CP	California Protected
FC	Federal Candidate	CSC	California Species of Special Concern

CNPS	California Native Plant Society Listing		
1A	Plants Presumed Extinct in California	3	Plants about which more information is needed – a review list
1B	Plants Rare, Threatened, or Endangered in California and elsewhere	4	Plants of limited distribution – a watch list
2	Plants Rare, Threatened, or Endangered in California, but more common elsewhere		

Table 11 Special Status Animal Species that Could Occur in the Project Vicinity

Species Listed as Threatened or Endangered under the State and/or Federal Endangered Species Act

Species	Status	Habitat	*Occurrence in the Study Area
Peregrine falcon *(Falco peregrinus anatum)*	CE	Individuals breed on cliffs in the Sierra or in coastal habitats; occurs in many habitats of the state during migration and winter.	**Unlikely.** Peregrine falcons may occur incidentally on the site during migration or foraging. Suitable nesting habitat is absent from the site.
California tiger salamander *(Ambystoma californiense)*	FT, CSC	Breeds in vernal pools and stock ponds of central California; adults aestivate in grassland habitats adjacent to the breeding sites.	**Possible.** This species was documented on the site in 2000 as occurring in the stock pond, when it used to hold water. Additionally, this species has been documented in at least four locations within two miles of the project site since 1999. Two of these offsite occurrences, occurring in 1999, include the presence of larvae in water features associated with the Ridgemark Golf Course approximately 0.25 miles south of the site, on the other side of Highway 25. Breeding habitat is currently absent from the project site and has been absent for several years due to the site having been regularly farmed and disced. The remains of the stock pond feature were dry during all site visits conducted by LOA in 2007 and 2008. The site provides potential aestivation habitat in the form of ground squirrel burrows and other ground surface crevices.
California red-legged frog *(Rana aurora draytonii)*	FT, CSC	Rivers, creeks and stock ponds of the Sierra foothills and coast range, preferring pools with overhanging vegetation. May also be found in a variety of upland habitats.	**Absent.** Suitable breeding habitat for this species is absent from the project site. This species was observed in 2005 in a detention pond and a Ridgemark Golf Course pond on the south side of Highway 25, approximately 0.1 miles south of the project site.

Species	Status	Habitat	*Occurrence in the Study Area
Western yellow-billed cuckoo *(Coccyzus americanus occidentalis)*	FC, CE	Nests in dense riparian forests. Inhabits broad, lower flood bottoms of larger river systems	**Absent.** This species has not been observed within San Benito county since 1899 in the vicinity of Paicines. Furthermore, suitable habitat for this species is absent from the project site.
San Joaquin kit fox *(Vulpes macrotis mutica)*	FE, CT	Frequents annual grasslands or grassy open stages with scattered shrubby vegetation. Needs loose-textured sandy soils for burrowing and suitable prey base. Utilizes enlarged (4 to 10 inches in diameter) ground squirrel burrows as denning habitat. May forage in adjacent agricultural habitats.	**Unlikely.** At best, marginally suitable onsite breeding and foraging habitat for this species occurs onsite. However, the nearest observation of this species was documented approximately 0.5 miles north of the project site in 1971. Since that sighting, only one occurrence, which took place in 1992, approximately 5 miles from the site, has been documented in the region. Numerous regional surveys, conducted before and since the date of the 1992 occurrence, have failed to detect this species. In total eight occurrences of this species have been recorded within ten miles of the project site over the past 37 years. In the off-chance that a migrating kit fox is found in the region, the marginal quality of the project site suggests that they would not choose this site for denning or breeding. The likelihood of this species occurring on the project site is extremely low.

California Species of Special Concern and Protected Species

Species	Status	Habitat	*Occurrence in the Study Area
Coast Range newt *(Taricha torosa torosa)*	CSC	Breeds in ponds, reservoirs and slow moving water. May also occur in large streams and rivers.	**Absent.** Suitable habitat for this species is absent from the project site. The remnant stock pond feature no longer appears to hold water and is therefore unsuitable for this species. One regional occurrence of this species appears to have taken place approximately 5 miles to the west of the site in 1998, beyond many roadways and some urban development.
Western spadefoot *(Spea hammondii)*	CSC	Primarily occurs in grasslands, but also occurs in valley and foothill hardwood woodlands. Requires vernal pools or other temporary wetlands for breeding.	**Unlikely.** This species has been documented in three locations within two miles of the project site since 1978, including one documented occurrence on the northern portion of the site in 2000. This species is known to breed within the golf course ponds of Ridgemark Golf Course immediately south of the site. Individuals occurring on nearby lands could move onto the site, which provides potential, albeit marginal, aestivating habitat for the spadefoot. Breeding habitat is absent from the site, as the stock pond does not appear to hold water for a sufficient duration to support breeding populations.
Foothill yellow-legged frog *(Rana boylii)*	CSC	Found primarily in swiftly flowing creeks.	**Absent.** Suitable habitat for this species is absent from the project site.
Western pond turtle *(Actinemys marmorata)*	CSC	Open slow-moving water of rivers and creeks of central California with rocks and logs for basking.	**Absent.** Suitable habitat for this species is absent from the project site.

Species	Status	Habitat	*Occurrence in the Study Area
San Joaquin coachwhip *(Masticophis flagellum ruddocki)*	CSC	Frequents chaparral habitats, specifically scrublands, rocky hillsides, gullies, canyons, and stream courses of the foothills.	**Unlikely.** Suitable habitat for this species is marginal to absent from the project site. While this species has been known to utilize farmland habitats, this site is heavily managed, which would preclude it from supporting a suitable prey base to attract or support this species.
Golden eagle *(Aquila chrysaetos)*	CSC	Typically frequents rolling foothills, mountain areas, woodland areas, sage-juniper flats, and desert habitats.	**Likely.** The trees on adjacent properties provide suitable perching and possible breeding habitat for this species. This species was observed perching in eucalyptus trees immediately east of the project site during the October 2007 survey. The site itself lacks suitable breeding habitat and provides a marginally suitable prey base for this species.
White-tailed kite *(Elanus leucurus)*	CP	Open grasslands and agricultural areas throughout central California.	**Possible.** Breeding habitat is absent from the site. This species would be expected to forage on and near the project site.
Northern harrier *(Circus cyaneus)*	CSC	Frequents meadows, grasslands, open rangelands, freshwater emergent wetlands; uncommon in wooded habitats.	**Unlikely.** Because it is so heavily managed through discing and grazing, breeding and foraging habitat is marginal to poor for this species. This species may occasionally pass through the site.
Merlin *(Falco columbarius)*	CSC	Breeds in Canada but winters in a variety of California habitats, including grasslands, savannahs, and wetlands.	**Unlikely.** Breeding habitat is absent from the site, and foraging habitat is marginal to absent. This species may occur as an occasional winter migrant.

Species	Status	Habitat	*Occurrence in the Study Area
Burrowing owl *(Athene cunicularia)*	CSC	Open, dry grasslands, deserts and ruderal areas. Requires suitable burrows. This species is often associated with California ground squirrels.	**Unlikely.** LOA did not observe direct or indirect evidence of burrowing owls during site visits to this property conducted during the breeding and non-breeding seasons in April, May, and October 2007 and February 2008. While ground squirrel burrows found on the site provide marginally suitable nesting habitat and there appears to be marginally suitable foraging habitat onsite, the present site management regime results in the site being functionally poor habitat for this species. This species was observed utilizing a burrow approximately 1 mile north of the project site in November 2000.
Black swift *(Cypseloides niger)*	CSC	Migrants and transients found throughout many habitats of state. Breeds on steep cliffs or ocean bluffs, or in cracks and crevasses of inland deep canyons.	**Unlikely.** Suitable breeding habitat and foraging habitats are absent from the site. However, this species may occasionally pass through the site.
Vaux's swift *(Chaetura vauxi)*	CSC	Migrants and transients move through the foothills of the western Sierra in spring and late summer. Breeds in coniferous forests.	**Unlikely.** Suitable breeding habitat and foraging habitats are absent from the site. However, this species may occasionally pass through the site
Loggerhead shrike *(Lanius ludovicianus)*	CSC	Frequents open habitats with sparse shrubs and trees, other suitable perches, bare ground, and low herbaceous cover. Often be found in cropland.	**Possible.** Suitable breeding habitat is absent from the project site. Foraging habitat is marginal; however, this species could reasonably be expected to occasionally pass through the site.

Species	Status	Habitat	*Occurrence in the Study Area
Yellow-breasted chat *(Icteria virens)*	CSC	Breeds in brushy tangles, briers, and stream thickets. May occur in overgrown pastures and upland thickets.	**Unlikely.** Suitable breeding habitat is absent from the site, and foraging habitat is marginal to absent. However, this species may occasionally pass through the site.
Tricolored blackbird *(Agelaius tricolor)*	CSC	Breeds near fresh water, primarily emergent wetlands, with tall thickets. Forages in nearby grassland and cropland habitats.	**Unlikely.** Suitable breeding habitat is absent from the site, and foraging habitat is marginal. However, this species may occasionally pass through the site.
Townsend's big-eared bat *(Plecotus townsendii townsendii)*	CSC	Primarily a cave-dwelling bat that may also roost in buildings. Occurs in a variety of habitats of the state.	**Unlikely.** While suitable roosting and breeding habitat is absent for this species, foraging habitat is marginal to absent. This species may occasionally pass through the site.
Hoary bat *(Lasiurus cinereus)*	CSC	Forages over many habitats. Roosts mainly in coniferous and deciduous trees.	**Unlikely.** While suitable roosting and breeding habitat is absent for this species, foraging habitat is marginal to absent. This species may occasionally pass through the site.
Pallid bat *(Antrozous pallidus)*	CSC	Grasslands, chaparral, woodlands, and forests of California; most common in dry rocky open areas that provide roosting opportunities.	**Unlikely.** While suitable roosting and breeding habitat is absent for this species, foraging habitat is marginal to absent. This species may occasionally pass through the site.
American badger *(Taxidea taxus)*	CSC	Found in drier open stages of most shrub, forest and herbaceous habitats with friable soils.	**Unlikely.** Marginally suitable habitat is present on the project site for this species. This species was observed utilizing a burrow approximately 1.5 miles north of the project site in June 1993.

Source: Live Oak Associates, Inc. *Gavilan College/Fairview Corners ADEIR/DEIR Biotic Evaluation*. Hollister, California, August 2008

Notes: ***Explanation of Occurrence Designations and Status Codes**

Present: Species observed on the sites at time of field surveys or during recent past.
Likely: Species not observed on the site, but it may reasonably be expected to occur there on a regular basis.
Possible: Species not observed on the sites, but it could occur there from time to time.
Unlikely: Species not observed on the sites, and would not be expected to occur there except, perhaps, as a transient.
Absent: Species not observed on the sites, and precluded from occurring there because habitat requirements not met.

STATUS CODES

FE	Federally Endangered	CE	California Endangered
FT	Federally Threatened	CT	California Threatened
FPE	Federally Endangered (Proposed)	CP	California Protected
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CNPS	California Native Plant Society Listing		
1A	Plants Presumed Extinct in California	3	Plants about which more information is needed – a review list
1B	Plants Rare, Threatened, or Endangered in California and elsewhere	4	Plants of limited distribution – a watch list
2	Plants Rare, Threatened, or Endangered in California, but more common elsewhere		

The entire project site is within federally-designated critical habitat for CTS, as depicted in Figure 28. Critical habitat was designated for the CTS in 2005 (70 FR 49379 49458). The project site and adjacent lands to the north and east fall within Critical Habitat Unit 15A, Ana Creek Unit, San Benito County, 2,722 acres. Threats to Critical Habitat Unit 15A identified in the final rule include erosion and sedimentation, pesticide application, non-native predators, development, and road construction.

There are 11 documented occurrences of this species within five kilometers of the site. This includes four locations within two miles of the project site since 1999. Two of these off-site occurrences, occurring in 1999, included the presence of larvae in water features with the Ridgemark Golf Course approximately 0.25 mile south of the site, on the other side of Highway 25. CTS larvae were previously documented on the project site in what is now referred to as the former stock pond; however, standing water has not been observed in the location of the former stock pond since 2000, including the 2010/2011 rain season, where rainfall was recorded as being higher than average. Further, the habitat value of the former stock pond is considered to be low due to repeated discing over the years as a part of agricultural activities on the site. Although suitable breeding habitat for CTS no longer occurs within the project site, suitable breeding habitat does occur in at least one location approximately 250 meters (approximately 820 feet) off-site to the northeast, and the project site may provide aestivation habitat for the species. Ground squirrels (*Spermophilus beecheyi*), ground squirrel burrows and Botta's pocket gopher (*Thomonys bottae*) burrows were observed throughout and adjacent to the project site. As CTS uses burrows made by small mammals for aestivation, the presence of these small burrowing animals on and adjacent to the project site indicates that the site may provide suitable, albeit low quality, non-breeding (aestivation) upland habitat for CTS.

For the reasons noted above, suitable breeding habitat for CTS is not present and potential aestivation habitat on the site is considered to be of low quality. However, given the project site's location within Critical Habitat Unit 15A, the USFWS has identified the former stock pond as a potential resource that should either be restored or mitigated off-site.

To address the potential loss of CTS individuals and their habitat, the applicant and their representatives initiated contact with the USFWS and CDFG in 2008. Due to the location of the project site within a critical habitat unit and the potential for take of CTS aestivation habitat, Incidental Take Authorization is required through the USFWS. A Habitat Conservation Plan (HCP) for the CTS is currently being drafted in compliance with Section 10 of the federal Endangered Species Act and is anticipated to be completed and considered for adoption by the resource agencies in late 2012.

California Red-Legged Frog. The California red-legged frog (CRLF) is federally-listed as threatened and a California species of special concern. The project site is not located within federally-designated critical habitat for this species. The CRLF is California's largest native frog, and is generally restricted to riparian and lacustrine (lake) habitats. This species prefers deep, still pools, usually greater than 2 feet in depth, in creeks, rivers or lakes below 5,000 feet in elevation. Breeding habitats require fresh water emergent vegetation or thick riparian vegetation, especially willow thickets adjacent to shorelines. CRLF can survive in seasonal bodies of water that dry up for short periods if a permanent water body or dense vegetation is nearby. They can move considerable distances overland, with dispersal occurring predominantly within creek drainages. Individuals are often found during the summer in foraging habitat not suitable for breeding, and therefore presumed to move seasonally between summer foraging and winter breeding habitats.

No suitable breeding habitat for CRLF exists on the project site since the former stock pond no longer contains water and there are no other adequate aquatic features on or near the project site. Although the upland habitat within the project site may be used for dispersal, the species' inability to be away from aquatic resources for long periods of time makes it unlikely that the CRLF would occupy the existing burrows in the project site's uplands. Therefore, the species is considered to be absent from the site.

Western Spadefoot Toad. Western spadefoot toad is a California species of special concern. This species of toad lives within grassland habitats of Central California and the Southern California coast. It requires temporary pools of water free of predators (such as fish, bullfrogs, or crayfish) for egg-laying. Breeding usually occurs in late winter. With the exception of the breeding season and foraging excursions during rain events, this species spends most of its life aestivating in self-excavated burrows, although burrows of small mammals are sometimes utilized.

No western spadefoots were observed on-site during the surveys. There is no breeding habitat within the project site since the former stock pond does not accumulate water and there are no other temporary pools of water. This species has been documented in locations within two miles of the project site since 1978, and there was one documented occurrence on the northern portion of the project site in 2000. This species is known to breed within the ponds on Ridgemark Golf Course approximately 0.25 mile south of the project site, across Airline Highway. The dispersal distances of spadefoot toad are relatively unknown; however, current research on amphibian conservation suggests that average upland habitat use is within 368 meters (1,207 feet) of aquatic habitats (Semlitsch and Brodie 2003). Spadefoot toads are also highly sensitive to vibration (such as from an electric motor) while underground and may emerge prematurely (Dimmit 1980). If present in locations beyond the project site, individuals occurring on nearby lands could move onto the project site, which provides potential, albeit marginal, aestivating habitat for the species. However, disturbance from discing, mowing, or harvesting would likely cause

disruption during dormancy periods and the likelihood that spadefoot toad occurs on-site is considered low. Nevertheless, this species has been documented in locations near the project site. Therefore, project impacts on the spadefoot toad are **potentially significant**. Implementation of Mitigation Measure BIO-2b would reduce impacts on western spadefoot toads to a **less than significant level with mitigation incorporated**.

Birds

White-tailed kite. White-tailed kite is a California fully-protected species. This species nests in shrubs (in the Delta), trees adjacent to grasslands, oak woodland, and edges of riparian habitats. White-tailed kites roost communally. They are a year-round resident that breeds between February and October. This species was not observed on-site during the surveys, and has not been observed within a five-kilometer radius of the site (Live Oak Associates 2008). This species may forage within and adjacent to the project site. However, there are no trees on the project site; therefore, the site contains no breeding habitat for this species.

Loggerhead shrike. Loggerhead shrike is a California species of special concern, and occurs in grasslands and agricultural areas where trees and shrubs are scattered. Shrikes feed on insects, reptiles, small mammals and birds. Nests are usually built in trees and shrubs, although telephone poles and abandoned buildings and machinery may also be used. This species is a fairly common resident in the region; however, there are no recorded observations within five kilometers of the site (Live Oak Associates 2008). This species was not observed on-site during the surveys, but may forage within and adjacent to the project site. However, there are no trees, shrubs, or buildings on the project site. Therefore, the site contains no nesting habitat for the species.

Northern Harrier. Northern harrier is a California species of special concern, and uses a wide variety of open habitats in California, including deserts, coastal sand dunes, pasturelands, croplands, dry plains, grasslands, estuaries, flood plains, and marshes. The species also forages over coastal sage scrub and other open scrub communities. Northern harrier takes small and medium-sized prey, including birds, rodents, reptiles, and frogs, but also insects, such as beetles, grasshoppers, crickets, and locusts in small amounts. Nesting areas are associated with marshes, pastures, grasslands, prairies, croplands, desert shrub-steppe, and riparian woodland. Most of the breeding population in California occurs in ungrazed parts of the state and in federal wildlife refuges.

This species was not observed on-site during the surveys and there are no recorded occurrences within a five-kilometer radius of the project site (Live Oak Associates 2008). Because the project site is so heavily managed through disking and grazing, on-site breeding and foraging habitat is marginal to poor for this species. Although this species could pass through the site on rare occasions, it is unlikely to use the project site.

Western Burrowing Owl. Western burrowing owl is state-listed as a species of concern. Burrowing owls live and breed in burrows in the ground, especially in abandoned ground squirrel burrows. Optimal habitat conditions include large open, dry and nearly level grasslands or prairies with short to moderate vegetation height and cover, areas of bare ground, and populations of burrowing mammals. Resident burrowing owls are rare in northern San Benito County, although wintering owls are known to occur in the area and have been sighted within several miles of the project site. This species was observed utilizing a burrow approximately one mile north of the project site in November 2000. During the field surveys, no burrowing owls were observed on-site, nor were there any signs of their presence on-site. Given the current land use practices associated with dry farming, it is highly unlikely that burrowing owls would breed on the project site. However, due to the availability of ground squirrel burrows, they may colonize the area at any time.

Nesting Raptors and Migratory Birds. Many bird species are migratory and fall under the jurisdiction of the Migratory Bird Treaty Act (discussed further in Section 3.4.2, Regulatory Setting, below).

Several avian species were observed at the project site during the surveys, including American kestrel (*Falco sparverius*), rock pigeon (*Columba livia*), and Brewer's blackbird (*Euphagus cyanocephalus*). Additionally, red-tailed hawks (*Buteo jamaicensis*), Say's phoebe (*Sayornis saya*), northern mockingbird (*Mimus polyglottos*), western meadowlark (*Sturnella neglecta*), and lesser goldfinch (*Carduelis psaltria*) were observed flying over or near the site. Additional species were identified in the project vicinity, including golden eagle (*Aquila chrysaetos*) and whitecrowned sparrow (*Zonotrichia leucophrys*). There are no trees or shrubs present on the project site that could offer nesting habitat on the site and no nesting activity was observed during the surveys; however, ground nesting species may occur and nesting varies from year to year.

Mammals

San Joaquin Kit Fox. The San Joaquin kit fox is a federally-listed endangered species and a state-listed threatened species. The present range of the San Joaquin kit fox extends from the southern end of the San Joaquin Valley, north to Tulare County, and along the interior Coast Range valleys and foothills to central Contra Costa County. San Joaquin kit foxes typically inhabit annual grasslands or grassy open spaces with scattered shrubby vegetation, but can also be found in some agricultural habitats and urban areas. This species needs loose-textured sandy soils for burrowing, and they also need areas that provide a suitable prey base, including black-tailed hare, desert cottontails, and California ground squirrels, as well as birds, reptiles, and carrion.

The surveys conducted at the project site did not observe San Joaquin kit fox and found no indication of the presence of this species on the project site. Although the project site supports a prey base, and is contiguous to extensive suitable habitat to the east, the site is considered only marginal breeding and foraging habitat for the kit fox due to its adjacency to an urbanized area. Discing and mowing also diminish habitat suitability for the kit fox. Thus, if this species uses the site at all, it likely uses it only for foraging or dispersal on rare occasions and in low numbers. This is supported by the fact that the nearest observation of this species was documented approximately 0.5 mile north of the project site in 1971. Since that sighting, only one occurrence, which took place in 1992, approximately five miles from the site has been documented in the region. Numerous regional surveys, conducted before and since the date of the 1992 occurrence, have failed to detect this species. In total, eight occurrences of this species have been recorded within 10 miles of the project site over the past 37 years. In the off-chance that a migrating kit fox is found in the region, the marginal quality of the project site suggests that this species would not choose this site for denning or breeding. Therefore, the likelihood of this species occurring on the project site is extremely low (Live Oak Associates 2008).

American Badger. American badger is state-listed as a species of special concern. This species is a permanent resident found throughout most of the state (although relatively uncommon in the San Benito County region), with the exception of the northern area of the North Coast. The badger is most abundant in grassland and the drier, more open successional stages of shrub, forest, and herbaceous habitats with friable soils, although it also is found in open scrub and woodland habitats. This species requires an abundant source of burrowing mammals such as ground squirrels and gophers for sustenance. The nearest observation of this species occurred at a burrow approximately 1.5 miles north of the project site in 1993. No sign of badger was observed during the surveys and regular discing reduces the suitability of habitat at the project site; however, marginal habitat due to the presence of suitable prey remains on the project site.

Sensitive Habitats

Sensitive habitat includes areas of special concern to resource agencies, such as:

- Areas protected under the California Environmental Quality Act (CEQA)
- Areas designated as sensitive natural communities by the California Department of Fish and Game (CDFG)
- Areas outlined in Section 1600 of the California Fish and Game Code
- Areas regulated under Section 404 of the federal Clean Water Act (CWA) (33 U.S.C. § 1344)
- Areas protected under Section 402 of the CWA (33 U.S.C. § 1342)

- Areas protected under local regulations and policies
- Areas designated as critical habitat by the USFWS for federally-listed species

The USFWS defines "critical habitat" as a specific area that is essential for the conservation of a federally-listed species and that may require special management considerations or protection. As noted above, the project site is included in the area designated by the USFWS as "critical habitat" for the federally-listed CTS.

Wildlife Corridors

Many wildlife species need more than one type of habitat during their life cycles. Animals use ridges, canyons, riparian areas, and open spaces to travel between their required habitats. Wildlife corridors refer to established migration routes commonly used by resident and migratory species for passage from one geographic location to another. Corridors are present in a variety of habitats and link otherwise fragmented acres of undisturbed areas. Maintaining the continuity of established wildlife corridors is important to sustain species with specific foraging requirements, preserve a species' distribution potential, and retain diversity among many wildlife populations. For these reasons, resource agencies consider wildlife corridors to be a sensitive resource. Large mammals such as coyote and deer, and smaller mammals such as raccoons and weasels, rely on wildlife corridors for migrations necessary for their survival. Amphibians often require the ability to move between wetlands and other aquatic systems such as streams to forage and breed successfully. These wildlife movements may occur on a seasonal or even daily basis. Corridors provide foraging opportunities and shelter during migration. In wooded areas, these corridors often occur in open meadow or riverine habitats and provide a clear route for migration, in addition to supporting ample food and water sources during movement.

The project site is surrounded on three sides by undeveloped land. However, the adjacent Cielo Vista residential community on the west side of Fairview Road and the homes near the project site hinder its use for migration of large mammals. In addition, the project site does not contain habitat types that provide cover (i.e. riparian, woodland or forest habitats) for species that need cover for migration. Periodic livestock grazing and agricultural activities that disturb the site (i.e., discing and cultivation) further hinder its use as a wildlife corridor. Finally, the project site does not contain any established or known migratory routes and/or wildlife corridors, and is not located in an area that is proposed for establishment of a wildlife corridor (Penrod 2001). For the reasons set forth above, the project site is not considered to function as a wildlife corridor.

3.4.2 Regulatory Setting

Federal Law and Regulations

Special-Status and Other Protected Species

Federal Endangered Species Act

The Federal Endangered Species Act (FESA) (16 U.S.C. § 1531) forms the basis for the protection of threatened or endangered plants, insects, fish and wildlife. The FESA contains four key sections. Section 4 outlines the procedure for listing endangered plants and wildlife. Section 7 imposes limits on the actions of federal agencies that might impact listed species. Section 9 prohibits the "taking" of a listed species by anyone, including private individuals, and state and local agencies. Section 10 requires the issuance of an incidental take permit before any public or private action may be taken that would harm, harass, injure, kill, capture, collect or otherwise hurt any individual of an endangered or threatened species. In the case of salt water fish and other marine organisms, the requirements of the FESA are enforced by the National Marine Fisheries Service (NMFS). The USFWS enforces all other cases. Below, Sections 9, and 10 of the FESA are discussed since these are the two sections most relevant to the proposed project.

Generally, Section 9 of the FESA prohibits the "take" of any fish or wildlife species listed as "endangered" or "threatened." "Take" is defined under the FESA as follows: "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." "Harm" is defined to mean an act that actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

Section 9 applies to any person, including natural persons, corporations, and federal, state and local agencies. If "take" of a listed species is necessary to complete an otherwise lawful activity and if a federal agency will carry out, fund or approve that activity, this triggers the need for consultation under Section 7 of FESA. For those projects, such as the proposed project, that do not involve federal agency action (i.e., a federal agency is carrying out, funding, or approving a project), Section 10 of the FESA can be utilized to obtain authorization for the "incidental take" of listed species. In accordance with the statutory criteria set forth in Section 10(a)(2)(B), the applicant is required to submit a "habitat conservation plan" to the USFWS that specifies, among other things, the impacts that are likely to result from the taking; the measures that the applicant will undertake to minimize and mitigate such impacts; and the funding that will be available to implement those steps.

Migratory Bird Treaty Act

Migratory birds are protected under the federal Migratory Bird Treaty Act (MBTA) (16 U.S.C. §§ 703-711). The MBTA makes it unlawful to take, possess, buy, sell, purchase or barter any listed migratory bird, including their feathers or other parts, nests, eggs, young or products, except in accordance with regulations prescribed by the Secretary of the Interior (50 CFR § 21). The vast majority of birds found in the project region are protected under the MBTA, including geese, ducks, shorebirds, raptors, songbirds, wading birds, seabirds, and passerine birds.

Wetlands and Waters of the United States

U.S. Army Corps of Engineers Jurisdiction and General Permitting

The U.S. Army Corps of Engineers (USACE) is a federal agency with regulatory authority over navigable waters and other aquatic sites, including wetlands, which may be impacted by development. The goal of the Clean Water Act (CWA) (33 U.S.C. §§ 1342, 1344) is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." To meet this objective, the CWA prohibits the discharge of any pollutants into navigable waters, except as allowed by permits issued under Sections 402 and 404 of the CWA. Section 402 establishes the National Pollutant Discharge Elimination System (NPDES) program, which allows the issuance of NPDES permits by the EPA or by the states (such as California) with EPA-approved permit programs. Section 404 authorizes the USACE (or the EPA under certain circumstances) to issue permits for and to regulate the discharge of dredged or fill materials into waters of the United States.

State Laws and Regulations

Special-Status and Other Protected Species

California Endangered Species Act

Under the California Endangered Species Act (CESA), the CDFG maintains a list of endangered and threatened species (Cal. Fish & Game Code § 2070). The CDFG also maintains a list of "candidate species," which are those species that the CDFG is considering listing as endangered and threatened species. Finally, the CDFG maintains lists of "species of special concern," which serve as species "watch lists."

Under the CESA, an agency reviewing a proposed project within its jurisdiction must determine whether any state-listed endangered or threatened species may be present in the project study area and determine whether the proposed project will have a potentially significant impact on such species. In addition, the CDFG encourages informal consultation on any proposed project that may impact a candidate species.

Section 2080 prohibits, among other things, the "take" of state-listed threatened or endangered species. Under CESA, "take" means to "hunt, pursue, catch, capture, or kill," or to attempt any of these acts. However, the CDFG has the authority to permit the "incidental take" of state-listed species, subject to certain conditions.

Project-related impacts to species on the CESA endangered or threatened list would be considered significant. State-listed species are fully protected under the mandates of the CESA.

Birds of Prey

Under Section 3503.5 of the California Fish and Game Code, it is unlawful to take, possess, or destroy any birds in the orders of Falconformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird, except as otherwise provided by the applicable statute and regulations.

Fully-Protected Species

California statutes also accord "fully-protected" status to a number of specifically identified birds, mammals, reptiles, and amphibians. Specific species subject to this level of protection are listed in Sections 3505 and 3511 (birds), Section 4700 (mammals), and Section 5050 (reptiles and amphibians).

Water Quality Protection

Porter-Cologne Water Quality Control Act

The CWA contemplates states implementing many of its provisions for point and non-point source regulation. The Porter-Cologne Water Quality Control Act is California's comprehensive water pollution statute, and authorizes the state to implement the CWA. It specifically regulates the discharge of waste that could affect the quality of the "waters of the State." The Act requires that any person discharging waste, or proposing to discharge waste, which could affect state jurisdictional waters file a report of discharge with the applicable Regional Water Quality Control Board (RWQCB) through an application for a "Report for Waste Discharge." In turn, the RWQCB determines whether a permit ("Waste Discharge Requirements") is required.

The RWQCB will evaluate the proposed Best Management Practices (BMPs) that would be implemented during construction and operation of the project. Preconstruction requirements would need to be consistent with the requirements of the National Pollutant Discharge Elimination System (NPDES), as set forth in an approved Stormwater Pollution Prevention Plan (SWPPP). In addition, a post-construction BMPs plan, or a Stormwater Control Plan (SWCP), would be developed and incorporated into the site development plan (Refer to Section 3.9, Hydrology and Water Quality).

Clean Water Act, Section 401: Water Quality Certification

If an applicant proposes to discharge dredged or fill material into jurisdictional waters, Section 401 of the CWA (33 U.S.C. § 1341) requires that the applicant obtain a Water Quality Certification from the Regional Water Quality Control Board (RWQCB) to confirm that the discharge will comply with applicable effluent limitations and water quality standards.

Streambed Alteration Agreement

State and local public agencies are subject to Section 1602 of the California Fish and Game Code. Under this statute, the California Department of Fish and Game (CDFG) must approve any proposed activity that would substantially divert, obstruct, or alter the natural flow, or substantially modify the bed, channel, or bank of any river, stream or lake, the purpose of which is to protect fish and wildlife resources, through the issuance of a Streambed Alteration Agreement.

Protection for Special-Status Plant Species

California Native Plant Protection Act

The Native Plant Protection Act (Cal. Fish & Game Code §§ 1900-1913) is intended to preserve, protect and enhance endangered or rare native plants in California. The Act directs the CDFG to establish criteria for determining which native plants are rare or endangered. Under the Act, a species is endangered when its prospects for survival and reproduction are in immediate jeopardy from one or more causes. A species is rare, although not threatened with immediate extinction, if it is in such small numbers throughout its range that it may become endangered if its present environment worsens. This Act prohibits any person from importing into or taking, possessing, or selling within the state any endangered or rare native plant, except as incident to the possession or sale of the real property on which the plant is growing or as otherwise excepted under the Act.

California Native Plant Society

The California Native Plant Society (CNPS) maintains a list of plant species native to California that have low numbers, limited distribution, or are otherwise threatened with extinction. This information is published in the Inventory of Rare and Endangered Vascular Plants of California. Potential impacts to populations of rare plants receive consideration under CEQA. The CNPS ranking systems are defined below:

- **List 1A:** Plants presumed extinct
- **List 1B:** Plants rare, threatened, or endangered in California and elsewhere

- **List 2:** Plants rare, threatened, or endangered in California, but more numerous elsewhere
- **List 3:** Plants about which more information is needed (a review list)
- **List 4:** Plants of limited distribution (a watch list)

A new Threat Code extension has been added to the CNPS ranking system:

- .1: Seriously endangered in California (over 80% of occurrences threatened / high degree and immediacy of threat)
- .2: Fairly endangered in California (20-80% occurrences threatened)
- .3: Not very endangered in California (<20% of occurrences threatened or no current threats known)

In general, plants appearing on the CNPS Lists 1A, 1B, or 2 are considered to meet the criteria of endangered, rare or threatened under the state CEQA Guidelines. Additionally, plants identified on the CNPS Lists 1A, 1B, or 2 meet the definition of rare or endangered species under the California Fish and Game Code.

Local Policies and Plans

San Benito County General Plan

The San Benito County General Plan contains the following policies with regard to biological resources:

Land Use Element

> **Policy 32.** Specific development sites shall be free from the hazards identified within the Open Space and Conservation Element Maps (e.g., faults, landslides, hillsides over 30% slope, flood plains). The site shall also be on soil suitable for building and maintaining well and septic systems (i.e., avoid impervious soils, high percolation or high groundwater areas, set back from creeks). Absent adequate mitigation, development shall not be located on environmentally sensitive lands (wetlands, erodable soil, archaeological resources, important plant and animal communities).
>
> **Policy 33.** Specific development sites shall avoid, when possible, locating in an environmentally sensitive area (wetlands, erodable soils, important plant and animal communities, archaeological resources).

Open Space and Conservation Element

Policy 1. Major subdivisions or intense development shall not be allowed within potential habitat of federal or state listed rare, threatened, or endangered plant or animal species until said development(s) prepares habitat plans for the species unless an interim measure has been taken to mitigate the effect of development.

Policy 2: Maintain corridors for habitat. In rural areas, road and development sites shall be designed to maintain habitat connectivity with a system of corridors for wildlife or plant species and avoiding fragmentation of open space areas. Measures to maintain the long-term health of the plant and animal communities in the area shall be incorporated into project design such as buffers, consolidation or of rerouting access, transitional landscaping, linking nearby open space areas, and habitat corridors.

Policy 4: Avoid loss of habitat from other mitigation measures. Mitigation measures to reduce other environmental hazards (e.g., fire hazard, flood hazard, soil erosion) shall not be acceptable if they will significantly degrade existing habitat, riparian areas, or isolate habitat.

Policy 6: Exotic plants and animals. It is the policy of the County to work with state, federal, and local agencies and land owners to develop programs to reduce the destruction of plant and animal life and habitat caused by invasive plants and animals.

Policy 7: Grading, erosion, and native tree removal. It is the policy of the County to minimize erosion resulting from grading and cutting and native tree removal for all development proposals.

Policy 18: Protect rural atmosphere and natural resources. General Plan Amendments, Specific Plans, Area Plans, and Areas of Special Study that result in a net increase in general plan buildout (Table 1 of the Land Use Element), shall include methods to conserve open space for natural resources including agriculture, wildlife habitat, and water (e.g. conservation easements and/or similar resource protection measures). Proposed development areas shall also include measures to protect resources on-site and contiguous to the project with the use of clustering, conservation easements, and other similar programs.

San Benito County Code

Chapter 19.19 (Ordinance No. 541)

In April 1988, San Benito County adopted Ordinance No. 541, which established a habitat conservation plan study area for the San Joaquin kit fox and set interim mitigation fees for the preparation and adoption of a Habitat Conservation Plan to provide for the long term protection of the species. The current interim mitigation fee is $550 per developed acre converted from raw land to developed uses, paid prior to alteration of habitat, and $0.15 per square foot of any structures, paid at the building permit stage. Also, an interim mitigation fee is required to be paid at the time of recordation of each final map, based on the size of the building lot. To date, an applicable Habitat Conservation Plan has not been prepared or adopted by the County.

3.4.3 Standards of Significance

The following thresholds for evaluating a project's environmental impacts are based on the state CEQA Guidelines (Appendix G) and other applicable County CEQA standards. For purposes of this Draft EIR, a project may have a significant effect on the environment if it would:

- have a substantial adverse effect, either directly or through habitat modification, on any species identified as a candidate, sensitive, endangered, threatened or other 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;
- have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service;
- have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, coastal, riverine, stream, marsh, vernal pool, etc.) through direct removal, filling, hydrological interruption, or other means;
- 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;
- conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance; and/or
- conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional or state habitat conservation plan.

3.4.4 PROJECT IMPACTS AND MITIGATION MEASURES

Impacts to Endangered, Threatened, and Other Special-Status Species: Plants

Impact BIO-1: Implementation of the proposed project would not have a substantial adverse effect, either directly or indirectly or through habitat modification, on any plant species identified as a candidate, sensitive, endangered, threatened or other 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. Therefore, impacts would be **less than significant**.

The biological evaluation reported 10 special-status plant species that could potentially occur within the project site, based upon initial background database searches and literature review. In addition, species-specific surveys were conducted to evaluate the potential for the identified special-status plant species to occur on-site. These surveys, which were conducted during the typical blooming periods, concluded that all special-status plant species were absent from the project site. The findings of the rare plant surveys are consistent with the marginal suitability of the project site for rare plants, due to the preponderance of non-native invasive species as a result of previous agricultural production and ongoing agricultural practices, particularly discing, which tills the soil and removes existing vegetation.

Therefore, based on these surveys, lack of habitat suitability, lack of previously-recorded occurrences of these species, and professional expertise, no special-status plant species have the potential to occur on-site. Impacts of the project would be **less than significant**.

No mitigation is required.

Impacts to Endangered, Threatened, and Other Special-Status Species: Wildlife

Impact BIO-2: Implementation of the proposed project may have a substantial adverse effect, either directly or through habitat modification, on several wildlife species identified as a candidate, sensitive, endangered, threatened or other 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 (California tiger salamander, San Joaquin kit fox, American badger, burrowing owl, western spade toad, nesting and migratory raptors and birds). Therefore, impacts would be **potentially significant**.

California Tiger Salamander

As discussed more fully above, the proposed project would result in the loss or disturbance of aestivation and dispersal habitat for California tiger salamander (CTS). Suitable breeding habitat for CTS is not present on-site. However, there have been 11 documented occurrences of the species within three miles of the project site, there have been at least four documented sitings within two miles of the project site, and the entire site is within federally designated CTS critical habitat.

The overall habitat quality of the project site has been degraded from many years of agricultural practices and is annually disced; therefore, it is considered to be low-quality habitat for aestivation and dispersal of CTS. Nevertheless, project development that results in the destruction of the existing on-site ground squirrel and gopher burrows could result in the take of aestivating CTS that may occupy these burrows. This potential impact, in addition to the overall loss of upland habitat, would represent a **potentially significant impact**.

Incidental Take Authorization and Preparation of Habitat Conservation Plan

Given the project site's location within Critical Habitat Unit 15A, the applicant initiated contact with the USFWS and the CDFG in 2008, and the applicant will be required to comply with Section 10 of the FESA. The process of obtaining Incidental Take Authorization requires identifying measures to avoid, minimize, or compensate for impacts to protected species. One method employed to mitigate impacts to protected species is to compensate for habitat loss through implementation of mitigation measures both on- and off-site. As part of the Section 10 process, a Habitat Conservation Plan (HCP) and Implementing Agreement are currently being prepared. Many locations have been researched and analyzed by the applicant as potential sites for off-site mitigation for the loss of CTS habitat on the project site. Of the multiple locations considered over the last two years, one site within San Benito County has emerged as a preferred mitigation location, a site known to support CTS upland habitat and of suitable size to accommodate the project's anticipated off-site mitigation requirements for the species. With the approval of USFWS and CDFG (if required), the applicant intends to acquire from the landowner the right to place a conservation easement against the site which will preserve land as CTS habitat in perpetuity. The HCP will incorporate the final measures designed to avoid, minimize, or mitigate potential impacts to CTS, and is anticipated to be completed in late 2012.

In April 2010, the CDFG preliminarily indicated that due to the low habitat quality and location of the project site, it intended to decline jurisdiction over the project site and Incidental Take Authorization would not be required (personal communication between Justin Sloan, CDFG Biologist, and the applicant, 2010). However, because no formal determination was completed, the NOP letter submitted by the CDFG identifies the potential for the proposed project to affect

CTS and indicates that Incidental Take Authorization may be needed. Therefore, for purposes of this Draft EIR, it is assumed that Incidental Take Authorization from the CDFG may still be required.

Specific Plan Policies Relating to Resource Management

Article 5.0 (Resource Management) of the Specific Plan requires compliance with a number of policies that are designed to minimize the project's impact on special-status wildlife species, including CTS. These include requirements to:

Policy RM-1.1, Action #1

- Obtain Incidental Take Authorization from the USFWS (if required) by preparing an acceptable Habitat Conservation Plan that identifies adequate measures to avoid, minimize or compensate for the loss of protected species and habitat. Mitigation may occur off-site, on-site, through payment of in-lieu fees, or any combination as approved by USFWS.

- Mitigation is intended to occur off-site, and land may be acquired for purposes of species protection through a conservation easement, the details of which would be finalized in consultation with the USFWS as part of the Habitat Conservation Process.

- To the extent on-site mitigation is proposed, it may include provisions required by USFWS, without limitation, the following:

    - A biological conservation easement of not less than a 100-meter radius shall be provided around the former stock pond. No development other than stormwater runoff and filtering, interpretive signage, fencing and unpaved trails shall take place within the easement. Fencing shall be suitable for protection of the aquatic resources.

    - Use fencing and low level lighting adjacent to the biological conservation area, with the type of fencing being suitable to allow the passage of animals while still marking the area to be protected from intrusion, and the lighting screened to prevent direct light penetration into the area.

Policy RM-1.1, Action #2

- Comply with mitigation measures required by the CDFG regarding the protection of state-listed special-status species.

The above-referenced Specific Plan policies are designed to reduce the project's impacts on CTS. However, to ensure that these impacts are reduced to a less than significant level, the following mitigation measures are recommended:

MM BIO-2a: Prior to issuance of any grading permit on the project site, the developer shall obtain Incidental Take Authorization from the USFWS and the CDFG (if required). Incidental Take Authorization will require the identification and implementation of measures suitable to avoid, minimize, or compensate for impacts to the species and its habitat, which are acceptable to USFWS and CDFG. To mitigate for the loss of aestivation and dispersal habitat, the developer shall procure a conservation easement for land at a minimum of 1:1 ratio of project site impact area to compensation habitat area, or in such other ratio as required by USFWS and CDFG. Compliance with one of the following off-site mitigation strategies shall be followed, or as otherwise required by USFWS and CDFG:

a. Off-site upland habitat mitigation. The developer shall procure off-site aestivation habitat at a minimum of a 1:1 ratio of project site impact area to compensate for loss of habitat area. Off-site mitigation may include sites with occupied upland habitat or sites with upland habitat known to be occupied and occupied aquatic habitat.

   Conservation easements shall be offered for dedication to a suitable preservation entity, to be preserved and managed in perpetuity. Additionally, if the accepted mitigation site is located within the range of the San Joaquin kit fox and supports suitable habitat for this species as well, the same mitigation site may be utilized to meet the mitigation requirement for this species as well.

b. Off-site upland habitat mitigation and limited on-site mitigation. The developer shall procure off-site upland habitat at a minimum of a 1:1 ratio of project site impact area to compensation habitat area. The developer shall also preserve on-site the area in which the former stock pond was located, including, but not limited to, observance of a biological conservation easement of not less than a 100-meter radius around the former stock pond, fencing of said area, and installation of low level lighting.

MM BIO-2b: Prior to construction activities for each phase of development, the developer shall provide to the County of San Benito, evidence of compliance with Incidental Take Authorization conditions of approval for CTS and Western Spadefoot Toad as prescribed by the USFWS and the CDFG (as may be required). The Incidental Take Authorization conditions of approval may include the following or similar preconstruction survey requirements:

For CTS: Prior to ground disturbance of the project site and as directed by the Project Biologist, temporary barriers are constructed along the limits of the disturbance areas to prevent the movement of the CTS into the area. This measure, if required by the USFWS would be performed by a qualified biologist (Project Biologist) retained by the developer and may include the following elements. Barriers typically consist of 3-foot-tall silt

fencing with the bottom edge buried to a depth of at least 6 inches below the soil surface, held in place by rigid stakes or other stable means. Silt fence fabric may also be installed on any swinging gates or other movable sections of temporary construction fencing. Fence fabric installed on gates and movable sections of fence are draped onto the ground surface to form a continuous barrier to CTS access. All barriers would remain in place until all development activities within the disturbance area have been completed. Said barriers shall be inspected, maintained and repaired by the developer as necessary to ensure continuous functionality.

For Western spadefoot toad: Preconstruction survey(s) would be conducted during the spring season prior to construction or within 30 days prior to the onset of construction activities (if they are to begin in Spring). The Survey would be performed by a qualified biologist (Project Biologist) retained by the developer to first determine the presence of either species, and may include measures similar to the following: If there is any lapse in construction activity, new surveys must be conducted prior to the re-initiation of construction activity. If this species is not detected during the survey(s), then no further mitigation would be required. However, if western spadefoot is found within the project area during the survey(s), then passive relocation techniques would be employed by the applicant to transfer the individuals from the project area to an appropriate off-site location. Consultation with the CDFG would be required prior to relocating individuals to determine an appropriate off-site location(s) and techniques for relocation to be employed.

MM BIO-2c: Prior to ground disturbance of the project site, a temporary barrier shall be constructed along the limits of the disturbance area, to prevent the movement of the CTS into the area. The barrier shall consist of three-foot-tall silt fencing with the bottom edge buried to a depth of at least six inches below the soil surface, held in place by rigid stakes or other stable means. Silt fence fabric shall also be installed on any swinging gates or other movable sections of temporary construction fencing. Fence fabric installed on gates and movable sections of fence shall drape onto the ground surface to form a continuous barrier to CTS access. Installation of silt fencing and fence fabric shall be supervised by a qualified biologist, who shall be retained by the developer and approved by the County. Said barriers shall remain in place until all development activities within the disturbance area have been completed. Said barriers shall be inspected, maintained and repaired by the developer as necessary to ensure continuous functionality.

MM BIO-2d: Any netting or coir rolls used for erosion control or other purposes during the construction of the project shall be of tightly woven natural fiber or similar bio-degradable material to ensure that the CTS do not get trapped within the netting. Plastic monofilament netting (erosion control matting) or similar material shall not be used. This netting specification shall be incorporated within the bid and construction documents for the project.

As noted above, this species' federal- and state-listed status necessitates consultation with the USFWS and perhaps also with the CDFG. Accordingly, final measures designed to avoid, minimize, or compensate impacts to CTS will be implemented through the Habitat Conservation Plan (HCP) process in coordination with the USFWS and a similar process with CDFG (if necessary). The developer shall comply with any requirements from those resource agencies, including any required mitigation. By requiring replacement of habitat impacted by the project, installing barriers to prevent the CTS from entering the construction work area, and implementing measures to minimize the potential harm to the CTS during construction, implementation of Mitigation Measures BIO-2a through 2d would reduce impacts on CTS to a **less than significant level with mitigation incorporated**.

Western Spadefoot Toad

No western spadefoots were observed on-site during the surveys, and there is no breeding habitat on-site since there are no temporary pools of water. The dispersal distances of spadefoot toad are relatively unknown; however, current research on amphibian conservation suggests that average upland habitat use is within 368 meters (1,207 feet) of aquatic habitats (Semlitsch and Brodie 2003). Spadefoot toads are also highly sensitive to vibration (such as from an electric motor) while underground and may emerge prematurely (Dimmit 1980). Individuals occurring on nearby lands could move onto the project site, which provides potential, albeit marginal, aestivating habitat for the species. However, disturbance from discing, mowing, or harvesting would likely cause disruption during dormancy periods and therefore the likelihood that this species occurs on-site is low. Nevertheless, this species has been documented in locations near the project site. Therefore, project impacts on the spadefoot toad would be **potentially significant**.

Implementation of Mitigation Measure MM BIO-2b would mitigate impacts on the Western Spadefoot Toad to a **less than significant level with mitigation incorporated**.

San Joaquin Kit Fox

Direct evidence of San Joaquin kit fox was not observed on the project site during the course of field surveys. There is no suitable denning habitat for San Joaquin kit fox on the project site. However, open grassland areas may provide marginal foraging and migration habitat, and presence of this species is presumed for purposes of this analysis. Therefore, the project's impacts on the kit fox would be considered **potentially significant**.

The agricultural land on-site provides potential foraging habitat for the kit fox, but at +/-60 acres, the project site is very small relative to the one- to 12-square-mile range required for a typical home range for San Joaquin kit foxes. Development of the project site would therefore not represent a substantial loss of foraging habitat for individuals or the local population as a

whole. The very low densities of this species in the Hollister region and the large expanses of unbroken annual grassland habitat to the east of the project site make it even more unlikely that loss of grassland habitat on-site would prove to be a detrimental factor in the success of the species in the area. The cultivated field provides neither potential denning habitat nor high-quality foraging habitat for the San Joaquin kit fox. As this species would utilize the project site and vicinity, if at all, only for occasional foraging, direct impacts to individuals of this species have a low potential to occur. However, given occurrences of the species in the project vicinity, there is some potential that the loss of or harm to individual kit foxes could result if they seek shelter within artificial structures, such as stored pipes or exposed trenches during construction. Therefore, impacts to kit fox would be **potentially significant**. As a federally listed species, San Joaquin kit fox will be included in the HCP prepared for the project. Final measures designed to avoid, minimize, or compensate for impacts to this species will be incorporated into the HCP, in accordance with the requirements of USFWS and CDFG. Implementation of Specific Plan Policy RM-1.1 as well as Mitigation Measures BIO-2b through BIO-2e address potential impacts to the species. In addition, Mitigation Measures BIO-2i through BIO-2l below address construction-phase impacts to all special-status wildlife species, including kit fox.

MM BIO-2e: The developer shall pay the mitigation fee per County Ordinance 541 (San Benito County Code, Chapter 19.19), which would pay towards the preparation of the San Benito County HCP that is being developed to mitigate impacts for all federally-listed species, including the San Joaquin kit fox.

Therefore, the project's impacts on the San Joaquin kit fox would be **less than significant with mitigation incorporated**.

Western Burrowing Owl

Open areas and available burrows at the project site provide foraging habitat for western burrowing owls. While no burrowing owl was observed on-site during the field surveys, burrowing owls have been previously recorded within one mile of the site. Should active burrowing owl nests occur on or immediately adjacent to the project site, any construction or site preparation activities within or immediately adjacent to an active nest, if conducted during the nesting season, could result in the direct loss of nests, including eggs and young, or the abandonment of an active nest by the adults. Therefore, implementation of the project may result in direct and indirect impacts in the form of loss of habitat and mortality of individual burrowing owls. This would be considered a **potentially significant impact**. Therefore, the following mitigation measure is proposed.

MM BIO-2f: A pre-construction survey shall be conducted by a qualified biologist for burrowing owls within 30 days of the onset of construction, in accordance with methods described

in the Staff Report on Burrowing Owl Mitigation (CDFG 1995). Any occupied burrows shall be mapped on an aerial photo. At least 15 days prior to the expected start of any project-related ground disturbance activities, or restart of activities, the developer shall provide the burrowing owl survey report and mapping to the CDFG. If construction is delayed or suspended for more than 30 days after the survey, the area shall be re-surveyed. If no burrowing owls are detected during the pre-construction surveys, then no further action is necessary.

Based on the burrowing owl survey results, the following actions shall be taken by the developer to avoid impacts during construction (as outlined in CDFG guidance):

- If pre-construction surveys undertaken during the breeding season (February 1 through August 31 (CDFG 1995)) locate active nest burrows within or near construction zones, these nests, and an appropriate buffer around them (as determined by a qualified biologist approved by the CDFG), must remain off-limits to construction until the breeding season is over. The CDFG typically recommends setbacks from occupied nest burrows of at least 75 meters (approximately 246 feet).

- If pre-construction surveys undertaken during the non-breeding season (September 1 through January 31) locate occupied burrows within or near construction zones, then resident owls may be passively relocated to alternative habitat. The relocation of resident owls shall be in accordance with a relocation plan prepared by the qualified biologist and in consultation with the CDFG. The relocation plan shall provide for the owl's relocation to nearby lands possessing available nesting and foraging habitat and shall be in accordance with the protocol outlined in the *Staff Report on Burrowing Owl Mitigation* (CDFG 1995).

- In the event that active nests are found during pre-construction surveys, compensatory suitable habitat at the rate of 6.5 acres per pair of owls shall be identified and placed under a construction easement by the developer.

American Badger

Open areas on the project site may provide habitat for the American badger. Direct impacts to this species may occur if it is present during construction activities, as a result of den destruction during compaction or earthmoving activities. Indirect impacts such as noise or ground disturbance may cause the badger to abandon its den or relocate and forage in another location. Therefore, project impacts to this species would be **potentially significant**. The following mitigation measures are proposed.

MM BIO-2g: Pre-construction surveys for badger dens and burrows shall occur concurrently with burrowing owl and kit fox surveys to ensure that no occupied dens or burrows are present within or near project construction activities.

If active dens or burrows are present on or immediately adjacent to (i.e., within 300 feet of) the disturbance area, a buffer, within which no construction activity shall be permissible, shall be maintained during the pupping season (i.e., February 15 through July 1, or as otherwise determined through surveys and monitoring of the den). The size of the buffer shall be determined by a qualified biologist in consultation with the CDFG but shall be no less than 300 feet. A biological monitor shall be present on-site during construction activities to ensure the buffer is adequate to avoid direct impacts to individuals as well as nest abandonment. The on-site monitor shall be necessary until it is determined that young are of an independent age and construction activities would not harm individual badgers. Once it has been determined that badgers have vacated the project site, the burrows could be collapsed or excavated, and ground disturbance could proceed. Any dens determined to be occupied, but which cannot be avoided through construction timing or activity buffers, may be vacated during the non-pupping season by a qualified biologist using the procedures identified in MM BIO-2f above, in consultation with the CDFG.

If no active dens or burrows are found during the pre-construction surveys, then no further mitigation is necessary.

As noted above, the special status of the American badger may necessitate consultation with the CDFG. The developer shall comply with any CDFG requirements in accordance with applicable law, including any required mitigation, in addition to MM BIO-2g.

With implementation of MM BIO-2g, the project's impacts to the American badger would be **less than significant with mitigation incorporated**.

Nesting Migratory Birds and Raptors

Nesting Habitat

No evidence of nesting activity was observed on-site during site investigations. However, some ground nesting species may become established. Trees and shrubs located adjacent to the project site have the potential to provide nesting habitat for raptors and migratory birds. If active nest(s) of protected bird species, including, but not limited to, white-tailed kite, northern harrier, loggerhead strike, should occur in the agricultural land, trees or shrubs adjacent to the project site, construction and site preparation activities, if conducted during the nesting season, could result in the direct loss of nests, including eggs and young. Excessive noise, disturbance, and

vibrations can cause nesting raptors and migratory birds to abandon their nests, resulting in the mortality of eggs and chicks, as well as stress from loss of foraging areas. The loss of individuals of these species or abandonment of their nests would be a **potentially significant impact**. Therefore, the following mitigation is proposed:

MM BIO-2h: No more than 30 days prior to commencement of grading or construction activities occurring within 250 feet of trees located adjacent to the project site and within the agricultural land on-site, the developer shall retain a qualified biologist to conduct tree and agricultural land surveys to determine if active nest(s) of protected birds and raptors (white tailed kite, northern harrier, and loggerhead shrike) are present in the trees or on the ground. Surveys shall include searches of all potential nest sites, including snags, shrubs, ground, buildings and other structures. Two surveys shall be conducted, at least one week apart, with the second survey occurring no more than two days prior to vegetation removal or construction activities.

Areas within 250 feet of the construction zone that are not within the control of the developer shall be observed from the project site.

If active nest(s) are found, the USWFS and/or the CDFG (as appropriate) shall be notified regarding the status of the nest(s). Furthermore, construction activities shall be restricted as necessary to avoid disturbance of the nest(s) until they are abandoned or the qualified biologist deems disturbance potential to be minimal. Restrictions may include establishment of exclusion zones (no ingress of personnel or equipment at a minimum radius of 250 feet around an active raptor nest and 100 feet around an active non-raptor migratory bird nest) or alteration of the construction schedule.

If construction activities are not scheduled between March 1 and August 31, no further mitigation is required, and vegetation removal or construction activities may proceed.

With implementation of MM BIO-2h, the project's impacts on protected birds and raptors would be **less than significant with mitigation incorporated.**

Foraging Habitat

Foraging habitat within the project site would also be lost as a result of the project. While this habitat provides suitable foraging opportunities for many avian species, including some raptors and other migratory birds, overall foraging habitat in San Benito County is abundant, and would not be significantly diminished as a result of this project. Therefore, the project's impacts on foraging habitat are **less than significant**.

California Red-Legged Frog

As discussed above, the project site is not located within federally-designated critical habitat for CRLF; and no suitable breeding habitat for CRLF exists on the project site since there are no aquatic features. While there is the possibility that the upland habitat within the project may be used for dispersal, this is unlikely given the species' inability to be away from aquatic resources for long periods of time. Therefore, this species is considered to be absent from the site and project impacts on the CRLF would be **less than significant**.

No mitigation is required.

All Special-Status Species

The approved HCP would be the governing document for the treatment and dispensation of mitigation measure (above) applicable to all special-status wildlife species that would potentially be impacted by the project. In addition, the approved HCP would identify minimum qualifications, responsibility and authority for the Project Biologist, hired at the developer's expense, and would identify the protocol that ensures no direct take or harm to special-status species during construction. A required component of an approved HCP is a construction worker education program that typically includes measures to explain (1) compliance provisions and restrictions of all project permits; (2) how to recognize special-status species that could occur on-site; and (3) how best to avoid the accidental take of special-status species during construction. Verification of training is submitted to the USFWS and/or CDFC (as appropriate).

Mitigation Measures BIO-2a through 2h would reduce impacts to special-status wildlife species with the potential to occur within the project site to a **less than significant level with mitigation incorporated**. These species' federal- and state-listing status may necessitate consultation with the USFWS and/or the CDFG. The developer shall comply with those agencies' recommendations, including any required mitigation, in addition to the above mitigation measures.

Riparian Habitat

Impact BIO-3: The project would not 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 CDFG or the USFWS. Therefore, the project would have no impact.

As discussed above, there is no riparian habitat or other sensitive natural community identified in local or regional plans, policies or regulations, or by the CDFG or USFWS, within the project site. Therefore, the project would have **no impact** on any riparian habitat or other sensitive natural community.

No mitigation is required.

Wetlands

Impact BIO-4: The project would not have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, coastal, riverine, stream, marsh, vernal pool, etc.) through direct removal, filling, hydrological interruption, or other means. Therefore, the project would have no impact.

There are no federally protected wetlands as defined by Section 404 of the Clean Water Act on the project site. Remnants of a former stock pond are located within the northeast corner of the project site, although there have been no indications of ponding since 2000. In addition, current agricultural practices (i.e., annual discing) further impair its ponding ability. Surveys of the former stock pond determined that it does not support the three indicators (soils, vegetation, and hydrology) that define the presence of federal jurisdictional wetlands, and the USACE has verified that it does not constitute federal jurisdictional waters (See Appendix E). Therefore, the project would have **no impact** on any federally protected wetlands.

No mitigation is required.

Wildlife Corridors and Nursery Sites

Impact BIO-5: The project would not interfere substantially with the movement of any native or migratory fish or wildlife species or with established native resident or migratory wildlife corridors. This is a **less than significant impact**.

The project site is surrounded on three sides by undeveloped land. However, the adjacent suburban community on the opposite side of Fairview Road and the homes near the project site hinder its use for migration of large mammals. In addition, it does not contain habitat types that provide cover (i.e. riparian, woodland or forest habitats) for species that need cover for migration. Periodic grazing and agricultural activities that disturb the site (i.e., herbicides, insecticides, discing and cultivation) further hinder its use as a wildlife corridor. Finally, the project site does not contain established or known migratory routes and/or wildlife corridors, and is not located in an area that is proposed for establishment of a wildlife corridor. Therefore, the project's impacts on wildlife corridors would be **less than significant**.

No mitigation is required.

Conflict with Policies Protecting Biological Resources

Impact BIO-6: The project may impede the use of native wildlife nursery sites. This is considered a **potentially significant impact**.

As discussed above under Impact BIO-2, there is no indication of any native wildlife nursery sites. However, to the extent any wildlife nursery sites are discovered on-site during construction, implementation of Mitigation Measure BIO-2a through BIO-2h would mitigate any such impacts through the implementation of pre-construction surveys, protection, and avoidance measures, if needed. Therefore, the project's impacts on native wildlife nursery sites would be **less than significant with mitigation incorporated**.

Impact BIO-7: The project would not conflict with any local policies or ordinances protecting biological resources, except for a potential conflict with San Benito County General Plan Open Space and Conservation Element Policy 6 (invasive plant species). Therefore, all impacts except those related to Policy 6 are **less than significant**. Impacts related to potential conflicts with Policy 6 are **potentially significant**.

The project would be consistent with the following relevant local policies and ordinances:

Land Use Element

> **Policy 32.** Specific development sites shall be free from the hazards identified within the Open Space and Conservation Element Maps (e.g., faults, landslides, hillsides over 30% slope, flood plains). The site shall also be on soil suitable for building and maintaining well and septic systems (i.e., avoid impervious soils, high percolation or high groundwater areas, set back from creeks). Absent adequate mitigation, development shall not be located on environmentally sensitive lands (wetlands, erodable soil, archaeological resources, important plant and animal communities).

Consistency: As discussed above, the project site is designated as critical habitat for the CTS, and contains suitable habitat for other special-status species, and the analysis acknowledges that project development could result in significant biological resource impacts. Mitigation has been identified in this Draft EIR, however, which will reduce all identified impacts to biological resources, cultural resources and those related to geology and soil as well as hydrology, seismic hazards, and water quality to a less than significant level (Refer to Section 3.5, Cultural and Paleontological Resources; 3.7, Geology and Soils; and Section 3.9, Surface Water Hydrology and Water Quality for additional discussion). Therefore, the project is consistent with Policy 32.

> **Policy 33**. Specific development sites shall avoid, when possible, locating in an environmentally sensitive area (wetlands, erodable soils, important plant and animal communities, archaeological resources).

Consistency: As discussed above, the project site is designated as critical habitat for the CTS, and contains suitable habitat for other special-status species, and the analysis acknowledges that project development could result in significant biological resource impacts. Mitigation has been identified in this Draft EIR, however, which will reduce all identified impacts to biological resources, cultural resources and those related to geology and soil as well as hydrology, seismic hazards, and water quality to a less than significant level (Refer to Section 3.5, Cultural and Paleontological Resources; 3.7, Geology and Soils; and Section 3.9, Surface Water Hydrology and Water Quality for additional discussion). Therefore, the project is consistent with Policy 33.

Open Space and Conservation Element

> **Policy 1**. Major subdivisions or intense development shall not be allowed within potential habitat of federal or state listed rare, threatened, or endangered plant or animal species until said development(s) prepares habitat plans for the species unless an interim measure has been taken to mitigate the effect of development.

Consistency: As discussed above, the project site does not contain established or known migratory routes and/or wildlife corridors, and is not located in an area that is proposed for establishment of a wildlife corridor. However, the project site is designated as critical habitat for the CTS, and contains suitable habitat for several other special-status wildlife species. The applicant is currently in the process of preparing an HCP in accordance with Section 10 of the federal Endangered Species Act. In addition, the Specific Plan requires adherence to a number of policies designed to promote the conservation of natural resources, such as Policy RM-1.1 (Minimize impact to special-status species and their habitat in accordance with federal and state regulatory requirements); Policy RM-1.2 (Allow potential for localized grading in the on-site habitat conservation area); and Policy RM-1.3 (Minimize adverse changes to natural habitats), as well as related implementation measures. In addition, the project would be required to comply with mitigation measures as set forth in this Section 3.4 to ensure the long-term protection of special-status plant and animal communities within the project site. Implementation of the identified mitigation measures would reduce all impacts to a less than significant level. Therefore, the project is consistent with Policy 1.

> **Policy 2**: **Maintain corridors for habitat.** In rural areas, road and development sites shall be designed to maintain habitat connectivity with a system of corridors for wildlife or plant species and avoiding

> fragmentation of open space areas. Measures to maintain the long-term health of the plant and animal communities in the area shall be incorporated into project design such as buffers, consolidation of or rerouting access, transitional landscaping, linking nearby open space areas, and habitat corridors.

Consistency: As discussed above, the project site does not contain established or known migratory routes and/or wildlife corridors, and is not located in an area that is proposed for establishment of a wildlife corridor. The applicant is currently in the process of preparing an HCP in accordance with Section 10 of the federal Endangered Species Act. In addition, the Specific Plan requires adherence to a number of policies designed to promote the conservation of natural resources, such as Policy RM-1.1 (Minimize impact to special-status species and their habitat in accordance with federal and state regulatory requirements); Policy RM-1.2 (Allow potential for localized grading in the on-site habitat conservation area); and Policy RM-1.3 (Minimize adverse changes to natural habitats), as well as related implementation measures. In addition, the project would be required to comply with mitigation measures as set forth in this Section 3.4 to ensure the long-term protection of special-status plant and animal communities within the project site. Implementation of the identified mitigation measures would reduce all impacts to a less than significant level. Therefore, the project is consistent with Policy 2.

> **Policy 4: Avoid loss of habitat from other mitigation measures**. Mitigation measures to reduce other environmental hazards (e.g., fire hazard, flood hazard, soil erosion) shall not be acceptable if they will significantly degrade existing habitat, riparian areas, or isolate habitat.

Consistency: The applicant is currently in the process of preparing an HCP in accordance with Section 10 of the federal Endangered Species Act. Additionally, this EIR identifies mitigation measures, as appropriate, to address soil erosion (Section 3.7, Geology and Soils). These measures, including addressing barriers to ensure that species are not trapped and to protect water quality, are specifically designed to not negatively impact habitat or riparian areas.

> **Policy 6: Exotic plants and animals.** It is the policy of the County to work with state, federal, and local agencies and land owners to develop programs to reduce the destruction of plant and animal life and habitat caused by invasive plants and animals.

Consistency: Invasive species can spread during ground disturbances associated with construction. Some species, such as thistles, contain thousands of seeds from just one flower. The project would be required to comply with policies identified in Article 5.0 of the Specific Plan (Resource Management), in particular. Policy RM-1.3, which requires avoidance of planting species listed in the California Invasive Plant Council's inventory as having a Moderate

or High rating and affecting the Central West region, or included in the Exotic Pest Plant Council's "Exotic Pest Plants of Greatest Ecological Concern in California" list. Article 7.0 of the Specific Plan (Implementation Plan) further requires as a condition of approval of the first subdivision map, the master developer and/or individual neighborhood developer(s) prepare a Landscape Master Plan, subject to review and approval of the appropriate County staff.

In addition, the following mitigation measure is proposed:

MM BIO-7: Prior to issuance of a grading permit, the developer shall prepare and implement a landscaping and revegetation plan for each construction phase in order to prevent the spread of invasive non-native species. The plan shall include the following requirements:

- An eradication plan for plants listed on the Invasive Plant Inventory (Cal-IPC 2007) currently growing on the project site to be implemented during the grading phases of the project;
- Use of plants listed on the Invasive Plant Inventory (Cal-IPC 2007) shall be prohibited;
- Exposed soil areas shall be planted, mulched, or covered between October 15 and the following April 15 each year;
- Plant materials used in landscaping or erosion control shall consist of plants that are included in a list of appropriate native California plants as identified by a qualified biologist or landscape architect; and
- To prevent erosion and conserve water during construction, bare soil between newly installed plant materials shall be mulched, covered with jute netting, or seeded with a mix of seeds best suited for the climate and soil conditions, and native to the San Benito County region.

Therefore, any project impacts related to potential conflicts with Policy 6 would be **less than significant with mitigation incorporated**.

> **Policy 7: Grading, erosion, and native tree removal**. It is the policy of the County to minimize erosion resulting from grading and cutting and native tree removal for all development proposals.

Consistency: There are no trees on the project site. Section 3.7, Geology and Soils, evaluates erosion impacts that could occur as a result of project development. Specifically, grading, removal of vegetation, and other construction-related activities would disturb the soil, which could increase soil erosion rates. The developer would be required to submit erosion control plans, which would include measures to protect drainage courses and the on-site habitat conservation area (to the extent it is created) from eroded soils and debris during construction.

Furthermore, the developer would be required to comply with the National Pollutant Discharge Elimination System (NPDES) permit program, in accordance with MM HYD-1a. Specifically, the developer would need to prepare and implement a Storm Water Pollution Prevention Plan (SWPPP), which specifies Best Management Practices (BMPs) that will prevent construction pollutants from contacting stormwater and with the intent of keeping all products of erosion from moving off-site into receiving waters. In addition, the developer would be required to incorporate post-construction stormwater pollution management measures, including, among others, source control measures, to reduce stormwater pollution during operation of the project. Implementation of the identified measures would reduce project impacts associated with grading to a less than significant level. Therefore, the project is consistent with Policy 7.

> **Policy 18: Protect rural atmosphere and natural resources.** General Plan Amendments, Specific Plans, Area Plans, and Areas of Special Study that result in a net increase in general plan buildout (Table 1 of the Land Use Element), shall include methods to conserve open space for natural resources including agriculture, wildlife habitat, and water (e.g. conservation easements and/or similar resource protection measures). Proposed development areas shall also include measures to protect resources on-site and contiguous to the project with the use of clustering, conservation easements, and other similar programs.

Consistency: The project site is near the eastern edge of the City of Hollister and existing suburban development, and is currently designated under the County General Plan as an "Area of Special Study." Furthermore, development of the project is otherwise consistent with the intent of the Area of Special Study designation because by developing the project site with a variety of higher density housing, the project would direct development away from key natural resources and prevent leapfrog growth. The project would be developed in compliance with a comprehensive planning framework that provides for resource protection measures, including a Habitat Conservation Plan and/or potential conservation easement to protect natural resources. Therefore, the project is consistent with Policy 18.

Accordingly, as discussed above and with implementation of the proposed mitigation, the project would not conflict with any local policies or ordinances related to the protection of biological resources. Therefore, project impacts would be **less than significant with mitigation incorporated**.

Conflict with adopted HCP, NCCP, Or Other Approved Plans

Impact BIO-8: Implementation of the project would not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or any

other approved biological resources recovery or habitat conservation plan of any local, regional or state agency. Therefore, the project would have **no impact**.

Currently, there is no adopted Habitat Conservation Plan, Natural Community Conservation Plan, nor any other conservation or recovery plan in effect for the project site, in whole or in part. The applicant is currently in the process of preparing a Habitat Conservation Plan in accordance with Section 10 requirements under the FESA. Once approved, the developer would be mandated to comply with all requirements under the project site's Habitat Conservation Plan. Therefore, the project would have **no impact**.

No mitigation is required.

3.4.5 Cumulative Impacts and Mitigation Measures

Impact BIO-9: The proposed project, in addition to other past, present, and reasonably foreseeable, probable future projects along the Fairview Road corridor, may disturb special-status species, critical habitats, and wildlife movement throughout the region. These impacts would be considered **potentially significant cumulative impacts**.

The Fairview Corners project would result in the conversion of the project site from rural uses to suburban uses. Other planned projects along the Fairview Road corridor include:

- **Gavilan College San Benito Campus**: This project involves the construction of a 3,500-full-time equivalent (FTE) student college facility, as well as approximately 70 residential units and 35,000 square feet of retail space on a 77-acre site at the northeastern corner of Fairview Road and Airline Highway.
- **Santana Ranch Project**: This project involves the construction of a maximum of 1,092 residential units, approximately 65,000 square feet of neighborhood commercial uses, potential mixed uses within the residential multiple areas, an elementary school site upon which a future 700-student elementary school may be built, 18.2 acres of parks as well as additional park and recreational facilities, and related on- and off-site project infrastructure.
- **Award Homes Project**: This project involves the construction of approximately 595 single-family homes and 100 apartment units on the western side of Fairview Road, south of St. Benedict's Church and east of Calistoga Drive within the City of Hollister.

In addition to the above-referenced projects, there are a number of smaller projects that have been included in this cumulative impacts analysis, as noted on the Cumulative Projects list in

Section 3.0. It is also anticipated that, over time, the Fairview Road corridor will be further developed, consistent with the Area of Special Study designation of this corridor.

As presented in the impact discussions above, implementation of the proposed project would result in a loss of habitat and contribute to biological resource impacts, including the potential disturbance of special-status species and critical habitat for CTS. Anticipated development and suburban expansion of the area generally is expected to further contribute to these impacts and is considered a **potentially significant cumulative impact** to biological resources.

Implementation of mitigation measures presented within this section, MM BIO-2 through MM BIO-7 would, however, reduce the project's overall contribution to cumulative biological resources impacts resulting from completion of the project to a less than significant level. Further, it is anticipated that future projects along the Fairview Road corridor also would be required to undergo environmental review, during which potential impacts to biological resources as a result of those projects would be identified and mitigated to the extent feasible. Therefore, the proposed project's contribution to cumulative biological impacts **would not be cumulatively considerable**.

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