

FINAL ENVIRONMENTAL IMPACT REPORT FOR THE

Betabel Commercial Development Conditional Use Permit Project



State Clearinghouse No. 2022040455

Prepared for:



San Benito County
Resource Management Agency

September 2022

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Prepared for:



San Benito County Resource Management Agency

2301 Technology Parkway

Hollister, CA 95023

Contact:

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September 2022

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LIST OF ABBREVIATIONS

AFY	acre-feet per year
AMBT	Amah Mutsun Tribal Band
APN	Assessor Parcel Numbers
BMP	best management practice
CBC	California Building Code
CCR	California Code of Regulations
CDFW	California Department of Fish and Wildlife
CEQA	California Environmental Quality Act
County	San Benito County
CRHR	California Register of Historical Resources
Draft EIR	draft environmental impact report
ECA	Essential Connectivity Areas
EIR	Environmental Impact Report
ESA	Endangered Species Act
EV	electric vehicle
FEMA	Federal Emergency Management Agency
GHG	greenhouse gas
HRA	health risk assessment
JTCL	<i>Juristac</i> Tribal Cultural Landscape
kV	kilovolt
LID	low-impact development
NAHC	Native American Heritage Commission
NPDES	National Pollutant Discharge Elimination System
PRC	Public Resources Code
project	Betabel Commercial Development Conditional Use Permit
RWQCB	regional water quality control board
SWPPP	stormwater pollution prevention plan
SWRCB	State Water Resources Control Board
US 101	US Highway 101
USFWS	U.S. Fish and Wildlife Service
VMT	vehicle miles traveled

1 INTRODUCTION

This document has been prepared by San Benito County in accordance with the requirements of the California Environmental Quality Act (CEQA) and the State CEQA Guidelines (California Code of Regulations [CCR] Section 15132). It contains responses to comments received on the draft environmental impact report (Draft EIR) for the Betabel Commercial Development Conditional Use Permit (project). The Final EIR consists of the Draft EIR and this document, which includes comments on the Draft EIR, responses to those comments, and revisions to the Draft EIR.

1.1 PURPOSE AND INTENDED USES OF THIS FINAL EIR

CEQA requires a lead agency that has prepared a Draft EIR to consult with and obtain comments from responsible and trustee agencies that have jurisdiction by law with respect to the project and to provide the public with an opportunity to comment on the Draft EIR. This Final EIR is the mechanism for responding to these comments. It presents the comments received on the Draft EIR, along with corrections, revisions, and other clarifications and amplifications to the Draft EIR, including project updates, made in response to these comments and as a result of the applicant's ongoing planning and design efforts. This Final EIR, including all comments received and responses, will be used to support the County's decision regarding whether to approve the project.

This Final EIR will also be used by CEQA responsible and trustee agencies to ensure that they have met their requirements under CEQA before deciding whether to approve or permit project elements over which they have jurisdiction. It may also be used by other state, regional, and local agencies that have an interest in resources that could be affected by the project or that have jurisdiction over portions of the project.

1.1.1 Lead Agency

San Benito County is the lead agency for this project. The following entitlements are being requested under the project:

- ▶ A conditional use permit is being requested under San Benito County Code Chapter 25.16, Section 25.16.023 applicable to the C-1 District.
- ▶ If the Conditional Use Permit is approved, the County would subsequently be a responsible agency for the vacating of Betabel Road under California Streets and Highways Code Section 8300.

1.2 PROJECT LOCATION

The project site is located at 9644 Betabel Road, in unincorporated San Benito County (County) approximately 2 miles south of Sargent and 4 miles north of San Juan Bautista. The junction of U.S. Highway 101 (US 101) and State Route 156 is 3 miles south of the project site.

The project site is an approximately 116-acre property consisting of six Assessor's Parcel Numbers 013-150-026, 013-150-027, 013-150-030, 013-150-031, 013-150-032, and 013-150-033. The property is bordered by Betabel Road and US 101 to the east, Betabel RV Resort to the north, and agricultural/open space to the south and west. The Pajaro and San Benito Rivers are located west and south of the property, respectively. The disturbance area associated with project development and infrastructure improvements consists of approximately 32 acres (including the approximately 5-acre farm stand), as shown in Figure 2-1 in Chapter 2, "Project Description," of the Draft EIR.

1.3 PROJECT OBJECTIVES

The objectives of the project as identified by the project applicant are as follows:

- ▶ Honor the memory of Errol McDowell by generating revenues for the applicant to be used 100 percent for funding children's cancer research to cure childhood brain cancer (the number one cause of death by cancer in kids).
- ▶ Provide a one-stop roadside experience, with visitor-oriented commercial uses that promote the local history and local economy.
- ▶ Provide retail, hospitality, automotive service/fuel station, and feature local events to passengers driving on US Highway 101 (US 101).
- ▶ Create destination attractions that celebrate San Benito County's unique heritage, including contemporary and performing arts, winemaking culture, agritourism, and San Benito history.
- ▶ Create new employment opportunities within the County for residents, which are vital to the economic health of the community, allowing the County to make the most of the commercial and tax potential of the only portion of the County through which US 101 passes.

1.4 SUMMARY DESCRIPTION OF THE PROJECT

The project involves developing/improving approximately 26 acres and creating 108,425 square feet of commercial space. In addition to incorporating an approved on-site farm stand, the project would consist of a gas station with convenience store, a restaurant, amusement buildings with exhibits, a motel and banquet hall with outdoor pool and outdoor movie screen, and an outdoor event center. The design of the project would be reminiscent of the 1940s and 1950s American roadside.

1.5 MAJOR CONCLUSIONS OF THE ENVIRONMENTAL ANALYSIS

The Draft EIR identified the following significant and unavoidable impacts related to the project:

- ▶ Impact 3.1-2: Damage Scenic Resources
- ▶ Impact 3.2-1: Convert Lands Designated as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland) to Non-Agricultural Use
- ▶ Impact 3.15-2: Project Increases in Vehicle Miles Traveled
- ▶ Impact 3.16-1: Cause a Substantial Adverse Change in the Significance of a Tribal Cultural Resource
- ▶ CUM-1: Contribution to Cumulative Aesthetic Impacts
- ▶ CUM-2: Contribution to Cumulative Agricultural Resource Impacts
- ▶ CUM-15: Contribution to Cumulative Vehicle Miles Traveled Impacts
- ▶ CUM-16: Contribution to Cumulative Tribal Cultural Resource Impacts

1.6 CEQA PUBLIC REVIEW PROCESS

On July 22, 2022, the Draft EIR was released for a 45-day public review and comment period. It was submitted to the State Clearinghouse for distribution to reviewing agencies and posted on the County's website (<https://www.cosb.us/departments/resource-management-agency/planning-and-land-use-division/betabel>). The comment period ended on September 6, 2022.

As a result of these notification efforts, comments on the content of the Draft EIR were received from agencies, organizations, and individuals. Chapter 2, "Responses to Comments," identifies these commenting parties, presents their respective comments, and presents responses to these comments. None of the comments received, or the responses provided, constitute "significant new information" by CEQA standards (State CEQA Guidelines CCR Section 15088.5).

1.7 ORGANIZATION OF THIS FINAL EIR

This Final EIR is organized as follows:

- ▶ **Chapter 1, "Introduction,"** describes the purpose of this Final EIR, summarizes the project and the major conclusions of the Draft EIR, provides an overview of the CEQA public review process, and describes the content of this Final EIR.
- ▶ **Chapter 2, "Responses to Comments,"** contains a list of all parties who submitted comments on the Draft EIR during the public review period, copies of the comment letters received, and responses to the comments.
- ▶ **Chapter 3, "Revisions to the Draft EIR,"** presents revisions to the Draft EIR text made in response to comments or to make amplifications, clarifications, or minor modifications or corrections. Changes in the text are signified by strikeouts (~~strikeouts~~) where text is removed and by underline (underline) where text is added.
- ▶ **Chapter 4, "References,"** identifies the documents used as sources for the analysis.
- ▶ **Chapter 5, "List of Preparers,"** identifies the lead agency contacts, as well as the preparers of this Final EIR.

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2 RESPONSES TO COMMENTS

This chapter contains the following forms of comment on the Draft EIR:

- ▶ comment letters and
- ▶ comments contained in email correspondence.

In conformance with Section 15088(a) of the State CEQA Guidelines, written responses were prepared addressing comments on environmental issues received from reviewers of the Draft EIR.

2.1 LIST OF COMMENTERS ON THE DRAFT EIR

Table 2-1 presents the list of commenters, including the numerical designation for each comment received, the author of the comment, and the date of the comment.

Table 2-1 List of Commenters

Letter No.	Commenter	Date
AGENCY LETTERS		
A1	Darryl Wong, San Benito County Division of Environmental Health	7/22/2022
A2	Robert Johnson, Aromas Water District	7/29/2022
A3	Maura F. Twomey, Pajaro Regional Flood Management Agency	9/6/2022
A4	Lori Schmitz, State Water Resources Control Board	9/6/2022
A5	State Clearinghouse	9/7/2022
ORGANIZATION LETTERS		
O1	Cancer Commons	7/30/2022
O2	Rider and Victoria McDowell, McDowell Charitable Trust	9/5/2022
O3	Brian Schmidt, Green Foothills	9/6/2022
O4	Sara Clark, on behalf of Amah Mutsun Tribal Band and Amah Mutsun Land Trust	9/6/2022
O5	Lou Chiamonte Jr., South Bay Indigenous Solidarity	9/6/2022
O6	Tiffany Yap and Peter Broderick, Center for Biological Diversity	9/6/2022
O7	Mark R. Wolfe, on behalf of Protect San Benito County	9/6/2022
INDIVIDUAL LETTERS		
I1	Sheila K. Singh, MD	7/30/2022
I2	Carl H. June, MD	8/2/2022
I3	Roger J. Packer, MD	8/2/2022
I4	David Sandberg, MD	8/2/2022
I5	James M. Olson, MD	8/3/2022
I6	Mia Casey	8/3/2022
I7	Jeff Towne	8/4/2022
I8	Al Musella, DPM	8/8/2022
I9	Charles S. Cobbs, MD	8/8/2022
I10	Frank Paura	8/10/2022
I11	Robert Wechsler-Reya, PhD	8/14/2022
I12	Dorah Rosen	8/30/2022
I13	Mike Monroe	09/2/2022

Letter No.	Commenter	Date
I14	Greg Cotten	9/5/2022
I15	Dr. Rachel E. O'Malley	9/5/2022
I16	Stacie Wolny	9/5/2022
I17	Lizabeth Morell	9/6/2022
I18	Chris Wilmers	9/6/2022
I19	Benny Drescher	9/6/2022
I20	Paul Drescher	9/6/2022

2.2 COMMENTS AND RESPONSES

The written comments received on the Draft EIR and the responses to those comments are provided below. The comment letters are reproduced in their entirety and are followed by the responses. Where a commenter has provided multiple comments, each comment is indicated by a line bracket and an identifying number in the margin of the comment letter.

2.3 AGENCIES



SAN BENITO COUNTY

HEALTH & HUMAN SERVICES AGENCY

MARTIN FENSTERSHEIB, MD, MPH
INTERIM HEALTH OFFICER

TR
INTERIM AGEN

PUBLIC HEALTH

Healthy People in Healthy Communities

Letter
A1

DATE: 7/22/22
TO: San Benito County Planning Dept.
FROM: Darryl Wong – Division of Environmental Health
SUBJECT: **PLN210054; Design Review – Rider and Victoria CRT Trust; 0 Betabel Rd.; Parcel 1 APN 013-150-024, Parcel 2 APN 013-150-025, Parcel 3 APN 013-150-033, and Parcel 4 APN 013-150-031**

The Division of Environmental Health has reviewed the above-referenced project and has the following comments:

Sewage Disposal: C3 Engineering, Inc. has completed the OWTS calculations (3/22/22).

- The owner shall provide an accurate detailed scaled plot plan drawn by a licensed civil engineer showing the proposed septic system (size of septic tank(s) and dimensions of the leachfields, etc.). The plan shall be wet stamped by the engineer.
- The owner shall provide the percolation field test measurements and map of test holes. Note, soils appear marginal per the OWTS calculations.
- The owner shall provide an accurate estimate of the maximum number of visitors and staff during any given time of business hours.

A1-1

Water: Owner shall contact the State Water Resources Control Board Division of Drinking Water regarding permit(s) for this project. Note, the submitted pump test appears to be for only 12 hours.

A1-2

Hazardous Materials:

- If any hazardous materials are to be generated and/or stored on this property, a Hazardous Materials Business Plan (HMBP) must be completed and submitted to this department.

A1-3

Commercial Retail Food/Beverage Facilities:

- Any facility that offers food and/or beverages will be required to complete the Food Facility Plan Check application and have it approved by this department prior to approval of the project and the start of construction of said facility. Upon completion of the construction of said food/beverage facility, the owner of the facility will be required to complete the application for a Health Permit prior to stocking the facility and opening to the public.

A1-4

PUBLIC HEALTH SERVICES
351 Tres Pinos Road, Suite A-202
Hollister CA 95023
831-637-5367

ENVIRONMENTAL HEALTH
351 Tres Pinos Road, Suite C-1
Hollister CA 95023
831-636-4035

MEDICAL THERAPY UNIT
761 South Street
Hollister CA 95023
831-637-1989

HEALTH EDUCATION PROGRAMS
351 Tres Pinos Road, Suite A-202
Hollister CA 95023
831-637-5367

Letter A1 San Benito County Division of Environmental Health

Darryl Wong

- A1-1 The comment provides a review of the project's March 22, 2022, sewer calculations and requests that the applicant provide a detailed plot plan, percolation field test measurements and a map of the test holes, and an accurate estimate of the maximum number of project visitors and staff. This comment also notes that the soils appear to be marginal.
- As described on Draft EIR page 3.7-12, a septic system associated with the approved farm stand is located on the project site. New, expanded, or replacement septic systems in the County are required to obtain a permit from the San Benito County Environmental Health Division (consistent with San Benito County General Plan policy requirements) which must demonstrate the ability of the onsite system to meet the operational demand with minimal maintenance. More specifically, General Plan Policy LU 1.10 prohibits the installation of septic systems in areas with unsuitable soils. Additionally, as part of compliance with California Water Code Section 13290 and State Water Resources Control Board (SWRCB) Water Quality Control Policy for Siting, Design, Operation and Maintenance of Onsite Wastewater Systems, the project applicant would be required to demonstrate that onsite wastewater disposal is addressed efficiently and would not result in offsite pollution or nuisance. Percolation tests and analysis of the tests would also be conducted as part of the in-depth geotechnical review of the project site to be conducted for California Building Code (CBC)-compliance purposes. Combined with the presence of a septic system at the project site, the project site and onsite soils are considered capable of adequately supporting the use of septic tanks and/or alternative wastewater disposal systems.
- A1-2 The comment states that the project applicant must contact the SWRCB Division of Drinking Water regarding permits for water supply and notes that initial groundwater pumping tests appear to have been for only 12 hours.
- Draft EIR page 4.17-2 identifies the state's primary and secondary drinking water standards under CCR Title 22, Sections 64431–64501. In addition, the Draft EIR states that the project would be subject to compliance with San Benito County Code sections related to groundwater aquifer protections, local small water systems, and well standards, which are set forth in Chapter 15.05, Water, of Title 15 (Public Works) of the code (Draft EIR page 3.17-4). Under existing conditions, 7,454 acre-feet per year (AFY) of groundwater is produced in the San Juan Management Area. The difference between the current groundwater production level and the sustainable yield is 11,563 AFY. The overall site demand of 32 AFY (proposed project and approved farm stand) would be less than available groundwater under sustainable conditions (11,563 AFY), and the project is consistent with the existing land uses that were considered during development of the sustainable yield, as well as General Plan Policies PFS-3.9 (Sufficient Water Supply for New Development) and PFS-4.1 (Adequate Water Treatment and Delivery Facilities).
- A1-3 The comment states that the project would be required to have a Hazardous Materials Business Plan prepared if any hazardous materials are generated and/or stored at the site.
- As addressed on Draft EIR page 3.9-10, the project would include the routine transportation, storage, and dispensing of gasoline, and the project applicant would be required to prepare and submit a Hazardous Materials Business Plan. In accordance with existing regulations, the business plan must include an inventory of the hazardous materials used in the facility, as well as the emergency response plans and descriptions of the procedures to be used in the event of a significant or threatened significant release of a hazardous material. The business plan must also include the Material Safety Data Sheet for each hazardous and potentially hazardous substance used. These data sheets will summarize the physical and chemical properties of the hazardous and potentially hazardous substances used in the facility and their health impacts. The business plan will include the requirement that all appropriate agencies and personnel be immediately notified following

accidental release of hazardous materials, information on local emergency medical assistance appropriate for potential accident scenarios, contact information for all emergency coordinators of the business, a listing and location information for all emergency equipment stored at the business, an evacuation plan, and a training program for business personnel.

A1-4

The comment states that the project applicant would be required to complete a Food Facility Plan Check application for review and approval by the County and complete a Health Permit application before operation.

The project would include commercial uses that would be subject to these requirements.

PO Box 388
388 Blohm Avenue
Aromas, CA 95004
Phone: (831) 726-3155
FAX: (831) 726-3951



Letter
A2

July 29, 2022

Mr. Abraham Prado
San Benito County Resource Management Agency
2301 Technology Parkway
Hollister, CA, 95023-9174

Re: Betabel Commercial Development Use Permit

Dear Mr. Prado:

The Aromas Water District (District) is in receipt of the Notice of Availability of a DRAFT Environmental Impact Report for the project referenced above and appreciates the opportunity to provide comments. This property is outside of the District's current Sphere of Influence; therefore the District will not be providing any comments directed at the specific project or project area.

A2-1

The District comments are in relation to being in compliance of San Benito County Ordinance #564, Regulations for Local Small Water Systems regarding water supplies, water quality and capacity production. The California Department of Water Resources and Best Use Practices recommend the connection to a regulated municipal system, where practical. For best practice, the District recommends additional information be requested and verified regarding the water supply. With intensification of land use and its requisite increased water demand, the District recommends the potable water supply source be verified prior to approval of the referenced project with a current pump test for quantity and quality, thereby ensuring long term sustainability for users of the well.

A2-2

As always, the District thanks you for the opportunity to comment, please call me at 831.726.3155 if you have any further questions.

Sincerely,

Robert Johnson
General Manager

The Aromas Water District is dedicated to providing a reliable supply of high quality water.

Letter A2**Aromas Water District**

Robert Johnson, General Manager

A2-1

The comment states that the project is outside the Aromas Water District's current sphere of influence for services and that the district therefore will not be providing any comments regarding the project or project area.

This comment is noted.

A2-2

The comment references County water system standards under County Ordinance #564, as well as California Department of Water Resources and best use practice recommendations regarding connection to a municipal system where practical. The comment further requests that the water supply source be verified.

As identified on Draft EIR page 2-20, the project would use groundwater through the operation of four wells. The project would be subject to compliance with San Benito County Code sections related to groundwater aquifer protections, local small water systems, and well standards, which are set forth in Chapter 15.05, Water, of Title 15 (Public Works) of the code (see Draft EIR page 3.17-4). No municipal water systems are located at the project site.

Under the existing conditions, 7,454 AFY of groundwater is produced in the San Juan Management Area. The difference between the current groundwater production level and the sustainable yield is 11,563 AFY. The overall site demand of 32 AFY (proposed project and approved farm stand) would be less than available groundwater under sustainable conditions (11,563 AFY), and the project is consistent with the existing land uses that were considered during development of the sustainable yield, as well as General Plan Policies General Plan Policies PFS-3.9 (Sufficient Water Supply for New Development) and PFS-4.1 (Adequate Water Treatment and Delivery Facilities) (see Draft EIR page 3.17-7).



**PAJARO REGIONAL
FLOOD MANAGEMENT AGENCY**

Pajaro River Watershed
Flood Prevention Authority

Office: 831-883-3750 www.pajaroriverfpa.org

**Letter
A3**



San Benito County Resource Management Agency
Attn: Abraham Prado
2301 Technology Parkway
Hollister, CA 95023
aprado@cosb.us

Thank you for the opportunity to comment on the Betabel Commercial Development Use Permit (project) Draft Environmental Impact Report (Draft EIR). The Pajaro River Watershed Flood Prevention Authority (FPA) was established by the California State Legislature in 2000 to "identify, evaluate, fund and implement flood prevention and control strategies in the Pajaro River Watershed on an intergovernmental basis." The Pajaro River watershed encompasses a 1,310 square mile region terminating in the Monterey Bay. The FPA is made up of the four counties and flood management agencies in the watershed, including:

County of Santa Clara
Santa Clara Valley Water District (now Valley Water)
County of San Benito
San Benito County Water District
County of Santa Cruz
Santa Cruz County Zone 7 Flood Control District
County of Monterey
Monterey County Water Resources Agency

A3-1

The geographical nature of the watershed made it critical that a Joint Powers Authority representing the entire watershed work together to develop a sustainable flood protection strategy. The eight Directors of the FPA represent the interests of their respective counties and flood districts but share the regional support of flood protection for the lower Pajaro River watershed. The FPA has worked to preserve flood attenuation benefits of the upper watershed, identify and implement flood management opportunities throughout the watershed in support of flood protection for the lower Pajaro River communities, and monitor and consider project proposals that could impact flood conditions or proposed improvements for the lower Pajaro River. It is for this reason that the FPA is submitting this comment letter regarding potential significant flood impacts identified in the EIR.

The FPA, and more historically the two counties of Santa Cruz and Monterey along with their flood control districts, have been working for many decades with the United States Army Corps of Engineers (USACE) to plan, design, and build new levees on the Pajaro River that would protect both the City of Watsonville and the Town of Pajaro, and surrounding agricultural lands. The prospect of being able to finally fund and build new levees on the lower Pajaro River has never been so promising and possible as it is now. This is in large part due to the completion of

the feasibility (planning) phase, the award of design funds from USACE and the Department of Water Resources (DWR), and the establishment of a new local agency that will manage the design, construction and long term operation of the new flood risk reduction facilities on the Pajaro River. The new agency, the Pajaro Regional Flood Management Agency (PRFMA), was formed in July 2021 to plan, finance, implement and operate/maintain projects and programs to reduce flood risk in the Pajaro River watershed in Santa Cruz and Monterey Counties. PRFMA is a joint powers authority (JPA) agency composed of the five members agencies: the Counties of Monterey and Santa Cruz, the City of Watsonville, the Monterey County Water Resources Agency, and the Santa Cruz County Flood Control and Water Conservation District - Zone 7. The FPA and PRFMA comments are directed at the importance of ensuring the proposed project would not impact flood flows or runoff volume in the Pajaro River or exceed the capacity of the Pajaro River, as detailed below.

A3-1
cont.

The proposed project would involve a Conditional Use Permit to build a roadside attraction near the intersection of U.S. Highway 101 (US 101) and Betabel Road. The project would establish a range of new commercial, lodging, and recreational uses on the site. The project site is an approximately 116-acre area and involves the development/improvement of approximately 26 acres of the site. The project would create approximately 108,425 square feet (sf) of total commercial and building space on the project site, consisting of a gas station with convenience store, a restaurant, amusement buildings with exhibits, a motel and banquet hall with outdoor pool and outdoor movie screen, and an outdoor event center. The Pajaro and San Benito rivers extend along the western boundary of the project site, and the western portion of the site is located within the 100-year flood zone (FEMA 2009).

A3-2

Construction and operation of the proposed project would increase impervious land cover, alter onsite grading conditions and include development within the estimated extent of the 100-year floodplain, all of which could increase flooding downstream of the site. Thus, the proposed project includes the creation of a permanent stormwater retention pond to meet drainage needs of the overall site. This retention pond would be located west of the outdoor event area and would measure approximately 180 feet by 140 feet. The retention pond would have a retention volume of 76,500 cubic feet, such that the post-development 100-year runoff would not exceed the predevelopment 10-year runoff as required by San Benito County. The volume of stormwater in the flood way would be mitigated by an equal amount of cut so that the floodway volume is unchanged post construction. However, no final drainage and grading details have been provided to verify the effectiveness of these design features to address changes to the floodplain. Therefore, this impact was identified as significant and Mitigation Measure 3.10-4 was developed to mitigate this impact to less than significant.

A3-3

Mitigation Measure 3.10-4 requires that, prior to grading activities, the project applicant shall provide final grading, building, structure, and drainage details that demonstrate compliance with storm drainage design standards under San Benito County Code of Ordinances Chapter 23.31 as well as no increase in offsite floodplain area or its elevation. This may be accomplished through grading, use of the onsite stormwater retention pond, or other measures acceptable to the County.

The FPA and PRFMA are requesting to review the drainage details and reports, when they are available, to confirm that they include the necessary components to mitigate any increased runoff to the Pajaro and San Benito rivers. Additionally, the Development Use Permit should document riparian setback and native planting requirements consistent with San Benito County Code of Ordinances, as applicable.

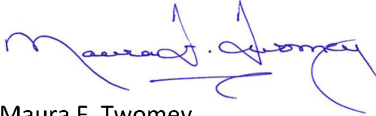
A3-4

A3-5

We appreciate the opportunity to comment on the DEIR. Please provide a copy of the Final Environmental Impact Report (FEIR) to the FPA and PRFMA and drainage details, when available.

If you have any questions, please contact Ms. Lidia Gutierrez, PRWFPA at (925) 766-5294 or Mark Strudley, PRFMA at 831-454-2807.

Sincerely,



Maura F. Twomey
Executive Coordinator
PRWFPA
831-883-3750

Letter A3 Pajaro Regional Flood Management Agency

Maura F. Twomey, Executive Coordinator

- A3-1 The comment provides background information on the Pajaro River Watershed Flood Prevention Authority, including its inception, its role, and areas under its jurisdiction. The comment emphasizes the importance of ensuring that the project not create flood flows or runoff volumes that exceed the capacity of the Pajaro River.
- As discussed under Impact 3.10-4 on page 3.10-13 of Section 3.10, "Hydrology and Water Quality," of the Draft EIR, the project would adhere to local, state, and National Pollutant Discharge Elimination System program requirements to ensure that increases in stormwater runoff are adequately managed and that the project would not substantially increase the amount of surface runoff or flood flows onsite or offsite. As discussed on page 3.10-14 of the Draft EIR, under the project, all structures would be elevated 2 feet above the base flood elevation, and Mitigation Measure 3.10-4 would be required to maintain the floodplain elevation at preproject conditions.
- A3-2 The comment summarizes elements of the project and states that the project site is located in the Federal Emergency Management Agency (FEMA) 100-year floodplain.
- The comment is correct that the project site is located in the FEMA 100-year floodplain, as disclosed on page 3.10-14 of the Draft EIR.
- A3-3 The comment summarizes the contents of the Draft EIR related to the potential for increased flooding downstream of the project site. The comment states that because there are no final drainage or grading details for the project, Mitigation Measure 3.10-4 would be required. The comment then lists the requirements of the mitigation.
- Mitigation Measure 3.10-4 would be required to maintain the elevation and extent of the floodplain at preproject conditions.
- A3-4 The comment requests review of drainage details and reports, when available, to confirm that they include the components necessary to mitigate any increased runoff to the Pajaro and San Benito Rivers.
- The County will provide drainage details and reports to the Pajaro River Watershed Flood Prevention Authority and Pajaro Regional Flood Management Agency upon completion.
- A3-5 The comment states that the Development Use Permit should document riparian setback and native planting requirements.
- As identified in Section 3.4, "Biological Resources," the proposed development area would avoid the riparian corridor along the Pajaro River. Implementation of Draft EIR Mitigation Measure 3.4-3 would require the identification of setbacks from riparian habitat and preparation of a compensatory mitigation plan that would include restoring or enhancing riparian habitat.



**Letter
A4**

September 6, 2022

San Benito County
Attn: Abraham Prado
2301 Technology Parkway
Hollister, CA 95023

SAN BENITO COUNTY (COUNTY), ENVIRONMENTAL IMPACT REPORT (EIR) FOR THE DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE BETABEL COMMERCIAL DEVELOPMENT CONDITIONAL USER PERMIT PROJECT (PROJECT); SCH #2022040455

Dear Mr. Abraham Prado:

Thank you for the opportunity to review the EIR for the proposed Project. The State Water Resources Control Board, Division of Drinking Water (State Water Board, DDW) is responsible for issuing water supply permits pursuant to the Safe Drinking Water Act. The proposed Project may create a new public water system that will require issuance of a water supply permit. A project requires a permit if it includes the creation of a new water system or a permit amendment for changes to a water supply source, storage, or treatment.

A4-1

The State Water Board, DDW, as a responsible agency under CEQA, has the following comments on the County's draft initial study EIR:

- A public water system is defined as a system that provides water for human consumption to 15 or more connections or regularly serves 25 or more people daily for at least 60 days out of the year. Please coordinate with applicant to confirm that a new public water system will be created by the proposed Project.
- Water supply permits are subject to an application review. Applications for new public water systems are subject to Health and Safety Code section 116527 (aka SB 1263) which requires potential public water systems to evaluate the feasibility of consolidating with nearby water systems through a preliminary technical report that must be sent to DDW at least six months prior to starting construction of a new public water system. Please describe all water system infrastructure that may need to be permitted as part of the new public water system. If consolidation is feasible, it should be included as part of the Project.
- Please describe all new and existing components of the proposed new public water system in the EIR.

A4-2

A4-3

A4-4

Once the EIR is certified, please forward the following items in support of the new water system's permit application to the State Water Board, DDW Monterey District Office at DWPDIST05@waterboards.ca.gov:

- Copy of the draft and final EIR, Mitigation Monitoring and Reporting Plan (MMRP), with any comment letters received, and the lead agency responses as appropriate;
- Copy of the Resolution or Board Minutes certifying the EIR and adopting the MMRP; and
- Copy of the date stamped Notice of Determination filed at the San Benito County Clerk's Office and the Governor's Office of Planning and Research, State Clearinghouse.

A4-5

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

Mr. Abraham Prado

- 2 -

September 6, 2022

Please contact Lori Schmitz of the State Water Board at (916) 449-5285 or Lori.Schmitz@waterboards.ca.gov, if you have any questions regarding this comment letter.

Sincerely,

Lori Schmitz

Lori Schmitz
Environmental Scientist
Division of Financial Assistance
Special Project Review Unit
1001 I Street, 16th floor
Sacramento, CA 95814

Cc:

Office of Planning and Research, State Clearinghouse

Jonathan Weininger
District Engineer
Monterey District

Letter A4 State Water Resources Control Board

Lori Schmitz, Environmental Scientist

- A4-1 The comment states that SWRCB is responsible for issuing water supply permits and that the project may require a new water supply permit or a permit amendment for changes to water supply, storage, or treatment.
- The project applicant would acquire a permit from SWRCB because the project would serve 25 or more people daily. Based on the size of the project, the anticipated number of employees and volunteers (136), and the anticipated number of visitors (motel would provide 125 rooms), the project water system would meet the definition of a public water system.
- A4-2 The comment states that SWRCB is a responsible agency under CEQA and requests that the applicant confirm that a new water system would be created by the project.
- The applicant would create a new water system for the project and obtain a domestic water supply permit. As noted in response to comment A4-1, the project water system would meet the definition of a public water system.
- A4-3 The comment states that water supply permits are subject to an application review and requests a description of all water system infrastructure that may be permitted as part of the project. The comment also notes that the permitting process requires evaluation of consolidating water systems with existing nearby water systems.
- Water system infrastructure to be permitted for the project is described on page 2-20 of Chapter 2, "Project Description," of the Draft EIR and is shown in Draft EIR Figure 2-2. As described therein, the project would include four wells and three water storage tanks. A water system associated with the Betabel RV Resort is currently located adjacent to the project site. It is acknowledged that the permitting process would need to evaluate potential consolidation of the project's water system with the Betabel RV Resort water system.
- A4-4 The comment requests a description of all new and existing components of the proposed new public water system.
- The reader is referred to responses to comments A4-1 and A4-3.
- A4-5 The comment requests information on the Final EIR after the document is certified.
- The County will send the requested information related to the Final EIR and project approval (if the project is approved) to the provided email address.

<p>Letter A5</p>

From: [Arielle Goodspeed](#)
To: [Pat Angell](#); [Alta Cunningham](#)
Cc: [Peter Prows](#); [Roberson, Holly](#); [Casey Jerome](#)
Subject: FW: SCH Number 2022040455
Date: Thursday, September 8, 2022 10:06:49 AM

Here you go.

From: Meng Heu <Meng.Heu@OPR.CA.GOV>
Sent: Wednesday, September 7, 2022 1:58 PM
To: Arielle Goodspeed <AGoodspeed@cosb.us>
Subject: SCH Number 2022040455

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

The State Clearinghouse (SCH) received comments from a state agency after the review period. To view comments on your project, please visit: <https://ceqanet.opr.ca.gov/Search/Advanced>

○ Filter for the SCH# of your project **OR** your "Lead Agency" ○ If filtering by "Lead Agency" ■
 Select the correct project

○ Only State Agency comments will be available in the "attachments" section: **bold and highlighted**

A5-1

The California Environmental Quality Act (CEQA) does not require Lead Agencies to respond to late comments. However, we encourage you to incorporate these additional comments into your final environmental document and to consider them prior to taking final action on the proposed project. Should you have any questions or concerns regarding the environmental review process, please contact the SCH at (916) 445-0613 or state.clearinghouse@opr.ca.gov . If your question is regarding the above-named project, please reference the ten-digit SCH number when contacting this office.

Meng Heu

Office of Planning and Research (OPR)
 State Clearing House

****Note:** No reply, response, or information provided constitutes legal advice.

To view your submission, use the following link.
<https://ceqasubmit.opr.ca.gov/Document/Index/278101/2>

Letter A5

State Clearinghouse
Meng Heu

- A5-1 The comment acknowledges receipt of comments from a state agency after the review period ended. The comment letter, from SWRCB, is included herein as Comment Letter A4, and responses are provided in responses to comments A4-1 through A4-5.

2.4 ORGANIZATIONS



Letter
01

To: San Benito County Resource Management Agency
Attn: Abraham Prado
2301 Technology Parkway Hollister, California 95023

July 30, 2022

RE: The Betabel Project

Dear Mr. Prado:

As Founder and Chair of Cancer Commons, I'm writing to solicit your support for a very important initiative -- the Betabel project.

Over the past decade, non-profit Cancer Commons has helped over 10,000 patients who have exhausted the standard of care identify and access novel, individualized, experimental treatment options. Five years ago, Errol McDowell was one of those patients. It was our privilege to help him and his father Rider mobilize a dream team of physicians and scientists. They identified more than a dozen potential therapies, which combined investigational and approved drugs in novel regimens, based on the unique molecular features of Errol's tumor. They tracked his response to each treatment, modifying it in real time to maximize its efficacy or block resistance mechanisms. In so doing, they pioneered a new paradigm for clinical oncology, that focused on curing patients rather than approving drugs. While Errol ultimately succumbed to his disease, what was learned has the potential to help many future patients.

There are thousands of cancer non-profits -- huge institutions like Memorial Sloan Kettering and the American Cancer Society, as well as tiny community patient advocacy groups. They support many valuable efforts -- from basic science to hospice care, and everything in between. But virtually no one supports the kind of individualized clinical research that gave Errol and his family hope, and that many regard as the future of oncology.

Betabel will -- by funding physicians and scientists who believe in tightly integrating clinical research and clinical care to afford each patient the best possible outcome, while continuously learning from each patient's experience to help the next.

I urge you to support this important project. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to be a stylized 'M' or 'W'.

650 Castro Street, Suite 120-522 | Mountain View, CA 94041
650-289-4044 | www.cancercommons.org | info@cancercommons.org

O1-1

Letter O1**Cancer Commons**

Marty Tenenbaum, PhD

O1-1

The comment expresses support for the project, stating that it would generate funds for physicians and scientists that would be used for clinical care and research. The comment does not raise any environmental issues related to the adequacy of the EIR analysis; therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.

<p>Letter 02</p>

MCDOWELL CHARITABLE TRUST

PO 492
PEBBLE BEACH, CA
93953
831 915-9888
CUTSTINGER@GMAIL.COM

Attn: Abraham Prado
San Benito County Assistant Director of Planning and Building

September 5th, 2022

Re: The Betabel Charity Project

Dear Mr. Prado:

I write on behalf of the project applicants (my family). We are enormously grateful for the hard work of County staff and the EIR consultant to get this project to this point.

O2-1

I am submitting this letter to give additional background on the property and this project, and to comment on a few aspects of the draft EIR.

My wife and I are not developers. This is the first—and last—development project our family will ever undertake. As the ‘project objectives section’ in the draft EIR notes, the purpose of this project is to provide an ongoing source of funding for our charity, the McDowell Charitable Trust, which is devoted to supporting pediatric cancer research and curing children’s cancer. Which is what killed our oldest son, Errol McDowell, 18, the light of our lives. Errol died of medulloblastoma, a devastating pediatric brain cancer, after a valiant six year battle. Unless you’ve lost a child, you can’t understand the depth of our loss nor the power of our resolve to make a difference, so this awful thing doesn’t happen to anyone else’s child. That is the genesis and goal of the ‘Betabel Project’ and it was Errol’s goal too.

O2-2

Currently only about 4% of cancer research funds go towards children’s cancers.¹ All profit from the Project (other than the estimated \$2 million/year in sales and occupancy tax revenue projected to go to the County) will go into our 501C3 charity to be distributed to hospitals and researchers endeavoring to cure this family-destroying disease. According to leading world cancer researcher Dr. Sam Cheshier, Director of Pediatric Surgical Neuro-Oncology at the University of Utah: **“The Betabel Project has the potential to be the largest private contributor to pediatric brain cancer research in the entire world.”**²

¹ <https://cac2.org/interest-groups/awareness/childhood-cancer-fact-library/>

² <https://www.ksbw.com/article/highway-101-project-is-slated-to-help-cancer-research-but-rural-activists-could-stop-it/29834998#>

You may not have heard Errol's story. I share it here to explain who he was and why we are trying to build this project at Betabel Rd. Errol picked the site himself as we drove by the land, sometimes two to six times per week commuting between Monterey and UCSF for his cancer treatments. Errol collected books on old fashioned roadside attractions; it was one of his unique and many interests. The property had a "for sale" sign on it, and it occurred to Errol to build a vintage roadside stop on the property using the charity trust we had previously established, and to dedicate the profits from the roadside business to Medulloblastoma research, the disease he was fighting.³ This kind of pediatric brain cancer kills many children around the world every year, but there is limited research funding available to search for a cure. The "project" became his passion. He helped design it and it is uniquely beautiful, like a roadside stop from the 1930's. Errol was an amazing guy, a young visionary who never gave up, and in his memory, we want to build the project he conceived of to cure the disease that stole him from us.

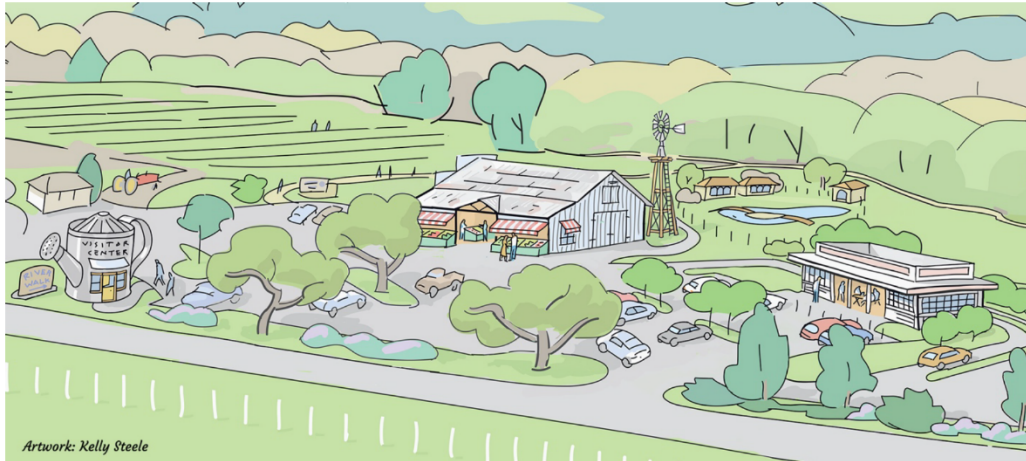


Errol McDowell and his brothers Mac and Piers

³ We had no inside track on purchasing the property; it was offered for sale on the open market and anyone else could have, but did not, decide to purchase it for their own priorities.

O2-3

Our partial vision for the Betabel Property



O2-4

When we bought the property, it was a dump.



Figure 1: Betabel property before cleanup

After we bought the property, we spent years and hundreds of thousands of dollars cleaning it up, in partnership with Herman Garcia and his environmental group CHEER (Coastal Habitat Education Environmental Restoration). **We tore down the derelict buildings (including all the buildings in the photo above), and cleared a meth lab, chop shop, four dead bodies, more than 170 abandoned vehicles, hundreds of tires, and hundreds of tons of trash from the property and out of the river.** As a result of this cleanup, **baby steelhead trout have now returned to the river**, where they had not been seen since the 1930s.⁴ We invited other groups, like the Amah Mutsun, to join in these cleanup efforts, but they did not respond.

O2-5

⁴ <https://betabelproject.com/news/threatened-trout-return-to-san-benito-river/>;
<https://benitolink.com/environmentalist-pushes-for-watershed-restoration-through-two-controversial-projects/>.



Figure 2: Trash cleaned up



Figure 3: More trash cleaned up



Figure 4: Even more trash cleaned up

Despite our laudable goal to cure children's cancer, and our significant efforts to clean up the property, we have faced additional roadblocks to get to this point. A group that at times has called itself "Protect Our Rural Communities" (PORC), and which has also rebranded itself as the "Campaign to Protect San Benito", has filed multiple lawsuits against the project and sponsored multiple initiatives to try to make this development impossible. Evidently PORC would rather see this property return to being a landfill than be cleaned up and contribute positively to the County and to curing children's cancer.

O2-6

We have also faced opposition from the Amah Mutsun Tribal Band group.⁵ To better understand their concerns, and try to reach a resolution with them, we agreed to fund an "integrated tribal cultural resources survey", including ground-penetrating radar, and an "ethnographic report" carried out by researchers of that group's choosing, at a cost of tens of thousands of dollars—money that comes directly out of charity funds dedicated for children's cancer research. **The onsite fieldwork done for those studies did not reveal any physical**

O2-7

⁵ This group is one of two groups claiming to represent the Amah Mutsun tribe. The federal Bureau of Indian Affairs has put the tribe's federal recognition petition on hold pending resolution of the longstanding leadership dispute between the two factions.

https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/120_amamut_CA/120_pf_ldrship_2020_06_Lo.pdf

evidence of any tribal village or gravesites at the property. We have also hired multiple sets of attorneys with expertise representing and dealing with tribal concerns in the CEQA process who have spent months negotiating with this group. We have gone the extra mile at every turn in an effort to earn the trust of the Tribe and to mitigate any conceivable issue.

O2-7
cont.

For the Amah Mutsun, the draft EIR in Mitigation Measure 3.16-1d would require us to grant a tribal conservation easement over 50-80 acres of the property “adjacent to the riparian corridor”. In our conversations with this group, we have come to understand that they would particularly value an easement over at least part of the riparian corridor, provided the Amah Mutsun can satisfy any concerns by the regulatory agencies about activities in the riparian corridor. We are proposing a tribal conservation easement that would include part of the riparian corridor, and **we would ask that the final EIR delete the “adjacent to the riparian corridor” language from this condition.**⁶

O2-8

This has been a long, difficult, and enormously expensive process for us. Hopefully we are now within sight of final approval of this beautiful project that will help cure pediatric cancer, and bring hope to so many terrified families, while honoring the memory of Errol McDowell, an amazing and heroic guy.

O2-9

Thank you very much,

Sincerely Rider and Victoria McDowell

⁶ The draft tribal conservation easement being transmitted today to the County and the Amah Mutsun is incorporated into this letter by reference.

Letter O2 McDowell Charitable Trust
Rider and Victoria McDowell

- O2-1 The comment states that the commenters are the applicant and that the comment letter provides additional background on the property and comments on the Draft EIR.
- This comment is noted. Responses to comments in this letter are provided below.
- O2-2 The comment provides an overview of the intent of the project to provide funding for pediatric brain cancer research in the memory of the commenters' son.
- The comment does not raise any environmental issues related to the adequacy of the EIR analysis; therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.
- O2-3 The comment provides background on the commenters' son and the inspiration for the project.
- The comment does not raise any environmental issues related to the adequacy of the EIR analysis; therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.
- O2-4 The comment presents images of the vision for the project development, as well as pictures of the condition of the project site before it was cleaned up, and refers to the site as a dump.
- This comment is noted. The reader is referred to Draft EIR Chapter 2, "Project Description," for a complete description of the proposed project. The project site was never operated as a permitted landfill, and comments referring to the site as a "dump" appear to be in reference to its blighted land use condition.
- O2-5 The comment describes the extent of effort required to clean up the project site and mentions removal of buildings, cars and trash, and four dead bodies.
- Subsequent correspondence from the commenter clarified that the dead bodies were recovered several miles from the project site (McDowell, pers. comm., 2022). The comment does not raise any environmental issues related to the adequacy of the EIR analysis; therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.
- O2-6 The comment describes efforts to prevent the project and states that the opposition would appear to prefer that the project site return to being a landfill rather than contribute positively to curing children's cancer.
- This comment is noted. The reader is referred to response to comment O2-4, regarding the reference to a landfill on the site.
- O2-7 The comment describes opposition from the AMTB and efforts to address tribal concerns, including the preparation of an Integrative Cultural Resource Survey for Indigenous Resources (Integrative Survey) and an Ethnographic Study.
- This comment is noted. Tribal cultural resource issues are addressed in Section 3.16, "Tribal Cultural Resources," of the Draft EIR.
- O2-8 The comment refers to Draft EIR Mitigation Measure 3.16-1d, which would establish a tribal conservation easement, and requests edits to the mitigation measure that would allow the conservation easement to include the riparian corridor.
- The reader is referred to response to comment O4-20, regarding proposed revisions to Mitigation Measure 3.16-1d.

- O2-9 The comment presents closing remarks and does not require a response pursuant to CEQA Guidelines Section 15088(a). The comment is included in the record for consideration by the decision makers as part of the project approval process.

**Letter
03**

From: [Juan Estrada](#)
To: [Abraham Prado](#)
Cc: [Brian Schmidt](#); [Alice Kaufman](#)
Subject: Comment on the Betabel Commercial Development Use Permit DEIR
Date: Tuesday, September 6, 2022 4:16:31 PM
Attachments: [Carbon Footprint of Construction Equipment-compressed.pdf](#)
[Green Foothills Ltr Betabel DEIR 9.6.22.pdf](#)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Mr. Prado:

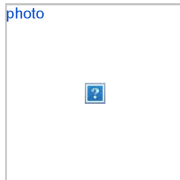
Thank you for the opportunity to comment on the Betabel Commercial Development Use Permit Draft Environmental Impact Report (DEIR). Green Foothills submits the comments in the attached comment letter, "Green Foothills Ltr Betabel DEIR 9.6.22.pdf", in support of its mission to protect the open spaces, farmlands, and natural resources for the benefit of all through advocacy, education, and grassroots action. Please note that the second attached document, "Carbon Footprint of Construction Equipment-compressed.pdf", is referenced in the comment letter.

To summarize, absent substantial revision, the DEIR cannot be used as the basis of approval for the project. The County should reject the project and should end further environmental review. If the County chooses not to terminate the project, then substantial revision and recirculation of the DEIR will be necessary.

03-1

Sincerely,
Juan Estrada

photo



Juan Estrada

Advocacy Associate and Organizer

(650) 968-7243 x351 | greenfoothills.org

Protecting local nature since 1962.

[Get tickets](#) for our Nature's Inspiration celebration on September 25th!





September 6, 2022

Abraham Prado
aprado@cosb.us
San Benito County Resource Management Agency

Re: Comment on the Betabel Commercial Development Use Permit DEIR

Dear Mr. Prado:

Thank you for the opportunity to comment on the Betabel Commercial Development Use Permit Draft Environmental Impact Report (DEIR). Green Foothills submits these comments in support of its mission to protect the open spaces, farmlands, and natural resources for the benefit of all through advocacy, education, and grassroots action.

To summarize, absent substantial revision, the DEIR cannot be used as the basis of approval for the project. The County should reject the project and should end further environmental review. If the County chooses not to terminate the project, then substantial revision and recirculation of the DEIR will be necessary.

O3-2

Section 3.8 Greenhouse Gas Emissions. This section underestimates the significant impact of greenhouse gas emissions (GHG) for Impact 3.8-1 because it fails to include the embedded emissions - the production emissions - of the equipment used to construct the project, operate the various facilities at Betabel, and the vehicles used by customers and employees to travel to and from the project. These production/embedded emissions are considerable and quantifiable. As a significant impact, the DEIR is required to accurately quantify this impact and it has failed to do so. For more information, see "Carbon Footprint of Construction Equipment" by Climate Neutral Group (attached). In addition to construction equipment, all vehicle traffic to and from the project for the lifetime of the project should have a portion of their embedded emissions attributed to project in accordance with the percentage of their overall mileage that is spent traveling to and from the project, and the failure to do so results in an underestimation of this significant impact.

O3-3

O3-4

Conclusion.

For all the reasons stated above, the County cannot legally proceed with the project on the basis of this inadequate DEIR, and we request that the County terminate further consideration of the Betabel project.

O3-5

Please contact us with any questions.

Sincerely,

Brian Schmidt
Policy and Advocacy Director

Local. Vocal. Effective.

(650) 968-7243 • info@greenfoothills.org • greenfoothills.org • 3921 E Bayshore Road, Palo Alto, CA 94303

1



Attachments to be provided:
Carbon Footprint of Construction Equipment

Local. Vocal. Effective.

(650) 968-7243 • info@greenfoothills.org • greenfoothills.org • 3921 E Bayshore Road, Palo Alto, CA 94303

2

Letter O3 Green Foothills (Comment Letter Attachments Provided in Appendix A)

Brian Schmidt, Policy and Advocacy Director

- O3-1 The comment states that the Draft EIR should not be approved by the County and that further environmental review and recirculation are required.
- The comment does not identify why the Draft EIR is inadequate. It does not raise any environmental issues related to the adequacy of the EIR analysis; therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.
- O3-2 The comment states that the Draft EIR should not be approved by the County and that further environmental review and recirculation are required.
- The reader is referred to response to comment O3-1.
- O3-3 The comment states that the Draft EIR underestimated GHG emissions because embedded emissions (i.e., production of construction equipment and vehicles, operation of equipment and vehicles, and end life of the equipment and vehicles—lifecycle emissions) for project construction equipment and project and visitor construction and operation were not included in the emission modeling. A research report, *Carbon Footprint of Construction Equipment* (provided in Appendix A), was submitted with the comment.
- Project construction and operational emissions were included in the emissions model for the project, as discussed in Section 3.8.3, “Methodology,” of the GHG section and Appendix C of the Draft EIR. As shown in Appendix C, construction worker vehicle trips and emissions from various construction vehicles were assumed in the model. As discussed on page 3.8-7 of the Draft EIR, long-term operational GHG emissions were estimated for all applicable emissions sectors anticipated for the project, and mobile-source emissions were estimated using estimates of project-generated vehicle trips that were developed as part of the traffic analysis. The project does not involve assembly of construction equipment or project and visitor vehicles; thus, this assembly is not a component of the project subject to environmental review under CEQA. Emissions associated with the assembly of construction equipment and vehicles in California are addressed through state regulations (e.g., California Air Resources Board Cap-and-Trade Program).
- O3-4 The comment states that emissions associated with all vehicle traffic to and from the site should be attributed to the project.
- The reader is referred to response to comment O3-3 regarding mobile emissions. In accordance with legal requirements, the Draft EIR evaluates transportation impacts using vehicle miles travelled or “VMT” – “the amount and distance of automobile travel attributable to a project.” (State CEQA Guidelines Section 15064.3(a) [emphasis added].) As discussed on page 3.15-6 of the Draft EIR, VMT attributable to the project is quantified insofar as it can feasibly be modeled using San Benito County Travel Demand Model (SBCM) modeling, and qualitatively described insofar as land uses with unique travel characteristics (the outdoor event arena and motel) cannot be accurately modeled by SBCM. The comment does not discuss any reason to believe this methodology is inadequate or inaccurate. (See *Saltonstall v. City of Sacramento* (2015) 234 Cal.App.4th 549, 582-583 [“The City was entitled to rely on the methodology and conclusions it articulated in its draft EIR because it had the prerogative to resolve conflicting factual conclusions about the extent of traffic congestion that would result from the... project”].)
- O3-5 The comment states that the Draft EIR should not be approved by the County for reasons discussed in comments O3-3 and O3-4 and that further environmental review and recirculation are required.
- The reader is referred to responses to comment O3-3 and O3-4.



Letter
O4

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

SARA A. CLARK
Attorney
Clark@smwlaw.com

September 6, 2022

Via Electronic Mail Only

San Benito County Resource Management Agency
Attn: Abraham Prado
2301 Technology Parkway
Hollister, California 95023
E-Mail: aprado@cosb.us

Re: Comments of the Amah Mutsun Tribal Band on the Betabel
Commercial Development Use Permit Draft Environmental Impact
Report

Dear Mr. Prado:

On behalf of our clients, the Amah Mutsun Tribal Band and Amah Mutsun Land Trust (“Amah Mutsun” or “AMTB”), we submit the following comments on the Draft Environmental Impact Report (“DEIR”) for the Betabel Commercial Development Use Permit (“Project”). As the Amah Mutsun have informed San Benito County (“County”) and the Applicant, the Project is proposed for a sacred site which plays a significant role in the *Juristac* cultural landscape and to which the Amah Mutsun feel a tremendous spiritual connection. The decision to pursue this Project, despite the AMTB’s repeated explanations of the site’s spiritual significance, reflects a clear disregard for the Amah Mutsun’s religious practices and beliefs.

O4-1

The proposed Project is completely out of sync with the feeling and character of a sacred site. In essence, the Project as a whole would convert one of the most sacred sites of the people of the Amah Mutsun Tribal Band into a 1940s/1950s American roadside attraction, complete with five “amusement buildings” containing retail and curio items and “rural based vintage exhibits.” The Project invokes a painful reminder of both America’s racist past and current failure to honor the rights of Indigenous people. Indeed, for the Amah Mutsun Tribal Band and other Native Americans, the 1940s and 1950s conjure up one of America’s worst periods—the Termination Era—which sought to assimilate Native Americans into mainstream American society and end tribal

O4-2

San Benito County Resource Management Agency
 September 6, 2022
 Page 2

sovereignty. Being asked to sacrifice one of the few remaining sacred sites to make way for a novelty tourist attraction highlighting this period is unfathomable.

O4-2
 cont.

For this reason, the AMTB strongly urge the County to adopt the No Project alternative and prevent further development at this site.

We also submit these comments to inform the County that this draft Environmental Impact Report (“DEIR”), is inadequate under the California Environmental Quality Act (“CEQA”), Public Resources Code § 21000 et seq., and the CEQA Guidelines, California Code of Regulations, title 14, § 15000 et seq. (“CEQA Guidelines”). In addition, the Project as currently described conflicts with several provisions of the San Benito County General Plan, in violation of state Planning and Zoning Law, Govt. Code § 65000 et seq. For all of these reasons, the County cannot certify this fundamentally flawed EIR or approve the Project.

O4-3

I. The Amah Mutsun Object to the County’s Handling and Timing of the Project Permitting, Environmental Review, and Tribal Consultation Process.

As a preliminary matter, the Amah Mutsun must reiterate their frustration with the County’s handling of the permitting, environmental review, and tribal consultation for this Project. While the County is currently engaged in AB 52 consultation with the AMTB, these conversations have been significantly hampered by the County’s refusal to slow down its environmental review process to allow for proper study and discussion of the tribal cultural resources at issue. Further, many of the tribal cultural resource concerns related to the Project could have been avoided or lessened if the County had adhered to its legal obligations and processes prior to this point. The DEIR suggests that the AMTB first requested consultation on March 20, 2022, DEIR at 3.16-7, but the history between the County and the Amah Mutsun reaches back much further.

O4-4

First and foremost, the Project site never should have been designated for commercial development under the General Plan. In 2013, as the County was in the process of developing its current Plan, AMTB representatives requested consultation with the County Planning Department under SB 18. At this meeting, the AMTB submitted extensive maps and information identifying *Juristac* as a sacred and culturally significant location associated with the Amah Mutsun’s belief system. *Betavel* (also known as Betabel and/or Bitabel) *Bluffs* and the adjacent river confluence form a core component of the *Juristac* landscape. For these and other reasons, the Amah Mutsun continue to have an emotional and spiritual association with Betabel, which they have repeatedly shared directly with County staff.

O4-5

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Yet, rather than use this information to place the *Juristac* landscape under appropriately protective land designations in the General Plan, the County failed to incorporate any input from the Amah Mutsun into the final planning documents, or to complete its SB 18 consultation obligations beyond the single meeting. *Juristac* remains largely unprotected under the County's General Plan. When asked about this failure to incorporate Tribal cultural resource knowledge into the County's General Plan update under SB 18, current County staff explained that the County did not retain documentation from the single consultation meeting with Amah Mutsun due to high staff turnover and poor recordkeeping practices. Had the County actually complied with SB 18 in that instance, the currently proposed Betabel Project would have been a non-starter because the landscape would have been protected from large-scale commercial development.

O4-5
 cont.

A failure to timely consider Tribal input and follow appropriate legal procedures further characterized the County's review of this specific Project. After becoming aware of the Applicant's intentions to build a sizeable development on the Betabel site, the Amah Mutsun submitted a letter to the County's Board of Supervisors in March 2020, requesting government-to-government consultation. The County never responded to this letter.

O4-6

In August 2021, the Amah Mutsun sent another letter to the County, this time expressing concerns with the Applicant's Betabel Seasonal Produce Stand Project, in which the County approved construction of a 10,000 square-foot structure as a "seasonal farm stand." See San Benito County Code §25.05.004. When questioned about the massive scale of this supposed "seasonal farm stand," County staff insisted that the only requirement to meet this definition is to sell "agricultural produce grown on the premises where the stand is located" and to operate for no more than nine months per year. See San Benito County Code § 25.05.004. Yet, to the Amah Mutsun's knowledge, the site had no agricultural use when the County approved the Applicant's permit, nor has there been any agricultural production since that time.

O4-7

There has not been never any agricultural produce grown to fill this almost 10,000 square foot "seasonal farm stand." Rather, the Applicant used the conditional use permit for a seasonal farm stand as a pretense under which it could conduct extensive grading and erect a portion of the current Project before the permit conditions had been satisfied and without having to undergo CEQA review or triggering AB 52 consultation.¹ The County's use of April 2022 as a baseline for its DEIR analysis—after which the farm

¹ Also egregiously, the developer graded areas beyond the scope of their grading permit; this illegal activity likely would have continued but for the Amah Mutsun Tribal Band alerting the County to the violation.

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stand, restroom building, septic tank, and storm water retention pond had been mostly constructed—further confirms this reality.

O4-7
 cont.

The AMTB’s August 2021 letter also flagged the fact that the County’s General Plan contains a requirement for preparation of an archaeological report “prior to the issuance of *any project permit or approval* in areas determined to contain significant historic or prehistoric archaeological artifacts and when the development of the project may result in the disturbance of the site...” General Plan Land Use Element §7.12. This language is not limited to discretionary permits. Yet, no archaeological report was completed or required when the County granted a permit for the “seasonal farm stand.” Nor did the County consult with the Amah Mutsun regarding the approval, despite the clear legal mandate to undergo government-to-government consultation with California Native American Tribes. *See, e.g.,* General Plan Land Use Element 7.9.

O4-8

Given this lack of archaeological study and tribal input, the Amah Mutsun proposed that they be given the chance to conduct an Integrated Cultural Resources Survey of the site—work the Applicant would need to do anyway for its future CEQA review. As the AMTB explained in a September 2021 letter, conducting the survey work “in partnership with the Amah Mutsun while utilizing the Amah Mutsun’s proposed model [would] save time and money in the future and offer[ed] the best chance for protecting sacred cultural resources.” Despite this request for early collaboration, neither the Applicant nor the County took any action regarding this request for over seven months.

Indeed, it was not until May 2022 that the County held its first AB 52 consultation meeting with the Amah Mutsun regarding the Project. The Applicant authorized the requested Integrated Cultural Resource Survey at this time as well. During consultation, the AMTB repeatedly articulated the need for a better understanding of the Project’s tribal cultural resource impacts prior to engaging in discussions of appropriate mitigation or circulating a draft environmental impact report. The Amah Mutsun identified the site-specific Betabel ethnographic study as a key component in furthering this understanding.

O4-9

Yet, rather than allowing the necessary time for meaningful tribal consultation and cultural resource review, the County and the Applicant insisted on rushing the process at every turn. After ignoring the AMTB’s requests for consultation and cultural resource study for over a year, the County was unwilling to delay release of its DEIR long enough to allow for completion and consideration of the Betabel ethnography. Instead, the County insisted it could review the ethnography—a draft of which was only completed on August 23—during the public comment period and incorporate the information into

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the Final EIR. However, as explained further below, this process violates CEQA and denies the public a full understanding of the Project's impacts. As repeatedly expressed in the course of AB 52 consultation, the Amah Mutsun strongly disapprove of these aspects of the County's timing and approach to Project review, which have severely undermined the AB 52 process.

O4-9
 cont.

II. The DEIR Is Inadequate Under CEQA.

The EIR is "the heart of CEQA." *Laurel Heights Improvement Ass'n v. Regents of University of California* (1988) 47 Cal.3d 376, 392 (citation omitted). It is "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return. The EIR is also intended 'to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological impacts of its action. Because the EIR must be certified or rejected by public officials, it is a document of accountability.'" *Id.* (citations omitted). The EIR must disclose and analyze all reasonably foreseeable direct and indirect environmental effects of a project. *See* CEQA Guidelines § 15064(d); *see also id.* §§ 15065(a)(4), 15358(a); Pub. Res. Code § 21065.3 (emphasis added).

Beyond merely disclosing potential environmental impacts, CEQA requires the EIR identify ways to avoid or minimize them. Pub. Res. Code § 21002.1. An EIR may not defer evaluation of mitigation to a later date. CEQA Guidelines § 15126.4(a)(1)(B). Where, as here, the environmental review document fails to fully and accurately inform decisionmakers and the public of the environmental consequences of proposed actions, or identify ways to mitigate or avoid these impacts, it does not satisfy the basic goals of CEQA. *See* Pub. Res. Code § 21061 ("The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect that a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.") As a result of the DEIR's numerous and serious inadequacies, there can be no meaningful review of the Project by the Amah Mutsun, the public, or the County's decisionmakers.

O4-10

A. The DEIR Fails to Adequately Analyze or Mitigate for the Project's Impacts on Tribal Cultural Resources.

CEQA requires public agencies to analyze the impact of a project on tribal cultural resources. Pub. Res. Code § 21084.2. Tribal cultural resources are defined as "[s]ites, features, places, cultural landscapes, sacred places, and objects with cultural value to a

O4-11

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California Native American tribe” determined eligible for inclusion in the California Register of Historical Resources or a local register of historical resources. Pub. Res. Code § 21074(a)(1)(A)-(B). An agency also has discretion to identify tribal cultural resources as significant based on their the criteria under Section 5024.1(c). This could include (1) association with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage; (2) association with the lives of persons important in the past; and (3) embodiment of the distinctive characteristics of a type, period, region, or method of construction, or (4) ability to yield information important to prehistory. Any discretionary determinations “shall consider the significance of the resource to a California Native American tribe.” Pub. Res. Code § 21074(a)(2).

O4-11
 cont.

1. The DEIR Fails to Identify the Project’s Significant Impacts on Tribal Cultural Resources.

Here, the Amah Mutsun have provided extensive information regarding the tribal cultural resources at the Project site, both during AB 52 consultation and in the Integrated Cultural Resources Survey Report (“Survey Report”). The Survey Report touched on the significance and scope of the *Juristac* Tribal Cultural Landscape (“TCL”), as well as eight individual sites or features within or near the Project site that have cultural or archaeological significance. *See* Survey Report at pp. 22-25. While the DEIR does analyze the impacts to and/or cultural resource eligibility of some of these sites (e.g., the Sanchez Adobe and the historic Betabel railroad spur), it fails to consider the Project’s impacts on the rest of these individual resources.

O4-12

Rather, the DEIR’s tribal cultural resource analysis appears to group analysis of these individual resources, such as the *Betavel* Bluff or the *Medicine Man Hill* viewshed,² together under the umbrella of the *Juristac* TCL. *See* DEIR at 3.16-5 to -6. While many of the individual resources contribute to the significance of the *Juristac* landscape, they also have separate value as tribal cultural resources in their own right. The Betabel ethnographic report, discussed below, corroborates this distinction with its determination that many of these resources are individually eligible for listing in the California Register of Historical Places, separate from the *Juristac* TCL. *See* Confidential Ethnographic Study for the Betabel Project at pp. i, 75-102. The County has an obligation to consider

O4-13

² As discussed in Section II.D of this letter, the DEIR’s Aesthetics discussion also fails to fully consider and mitigate these viewshed impacts.

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the Project's impacts to these individual tribal cultural resources *in addition to* the Project's impacts on the *Juristac* TCL.³

This failure to analyze the Project's impacts to these individual tribal cultural resources violates CEQA's mandate to analyze *all* of the Project's impacts. *See* CEQA Guidelines § 15064(d); *see also id.* §§ 15065(a)(4), 15358(a); Pub. Res. Code § 21065.3 (emphasis added); *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109. Discussion of these individual resources only as components of the landscape is insufficient because the Project impacts may be different for a particular tribal cultural resource than they are for the landscape as a whole. For instance, an alteration to the project may mitigate impacts to a sacred viewshed, but may not fully mitigate impacts to *Juristac* as a cohesive landscape. The County's refusal to engage in this individual tribal cultural resource analysis runs afoul of CEQA's requirements and leads to an inadequate discussion of possible mitigation, as explained below.

O4-13
cont.

Moreover, it is not sufficient under CEQA that the County has already concluded that the Project's cumulative tribal cultural resource impacts will be "significant and unavoidable," even with mitigation. *See* DEIR at ES-2. A rote acknowledgement of an impact's significance without addressing why, or to what degree, those impacts are significant is inadequate under CEQA. *See, e.g., Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1123 (quoting CEQA Guidelines § 15151). Further, a disclosure of a project's significant *cumulative* impacts on a landscape-level resource does not tell the public what the project's impacts will be on *individual* resources. The County cannot circumvent CEQA's requirements in this way.

O4-14

2. The DEIR Must Be Revised to Include Omitted Tribal Cultural Resource Information and Then Recirculated.

The DEIR mentions preparation of an "ethnographic study of the project location to supplement the Integrated Cultural Resource Survey," which "will be completed during the public comment period for the Draft EIR and incorporated in the confidential appendix for the EIR." DEIR at 3.16-8. The DEIR further states that the ethnographic study will be "reflected in the Final EIR for certification, and the Mitigation Measure

O4-15

³ For an example of how an agency should analyze tribal cultural resources both individually and as contributing elements of a tribal cultural landscape, please refer to Section 3.5: Tribal and Cultural Resources from the Sargent Quarry Draft EIR, July 2022, attached as Exhibit 1.

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Monitoring and Reporting Program” adopted with any approval. *Id.* This insufficient treatment of the ethnographic study violates CEQA, which requires an agency to provide detailed information about the effect a proposed project is likely to have on the environment. Pub. Res. Code § 21061; CEQA Guidelines § 15003(b)-(e). Merely tacking the ethnography report onto the confidential appendix, without considering its substance and integrating that information into the DEIR’s analysis, fails to satisfy the County’s obligations. *See, e.g., Laurel Heights*, 47 Cal.3d at 404 (CEQA requires “a disclosure of the analytic route the...agency traveled from evidence to action.”) (citation omitted). Though the ethnography report contains confidential resource information, it must be utilized to inform the County’s analysis of tribal cultural resource impacts.

O4-15
 cont.

Here, the Amah Mutsun repeatedly urged the County to delay release of the DEIR until the Betabel ethnography could be completed and the information contained therein could be considered, discussed in AB 52 consultation, and fully integrated into the County’s tribal cultural resource analysis. This would have allowed decisionmakers and the public to gain a more accurate sense of the Project’s tribal cultural resource impacts. *See Friant Ranch*, 6 Cal.5th at 514 (an EIR that lacks the analysis needed for the public to fully understand a project’s impacts is inadequate as a matter of law). Yet, rather than allowing the time for the proper sequencing and analysis tribal cultural resource impacts—all of which the AMTB requested for over a year—the County rushed the release of the DEIR to accommodate the Applicant’s schedule. In doing so, the County put forward an inadequate tribal cultural resource analysis under CEQA.

O4-16

Review of the completed draft Betabel ethnographic study further confirms the DEIR’s analytical shortcomings. In particular, the ethnography report identifies five resources found eligible to be listed on the California Register of Historical Resources as tribal cultural resources: (1) Ascension Solorsano’s Historical Period Traditional Plant Gathering Area; (2) *Juristac* and *Isleta/Isleta* Village Area; (3) Sanchez Adobe (CA-SBN-149H/P-35-000143); (4) Medicine Man Hill, *Layaani* Medicine Man Pole, and its Viewshed, and (5) Mount Pajaro and Sargent Hills Viewshed. *See Confidential Ethnographic Study for the Betabel Project* at pp. i, 75-102. Though the DEIR does address impacts to Sanchez Adobe in its Cultural Resources section and mentions viewshed impacts in passing, the environmental analysis does not disclose the Project’s impacts on these four other resources as individual entities separate from the *Juristac* Tribal Cultural Landscape. The CRHR eligibility of these resources elevates them to the level of tribal cultural resources under CEQA, (Pub. Resources Code § 21084.2), meaning the County has an obligation to consider the Project’s impacts on *each* of these resources under CEQA. Pub. Res. Code § 21074(a)(1)(A)-(B). If the Project causes a

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substantial adverse change to *any* individual tribal cultural resource, that is a significant impact under CEQA. *See* DEIR at 3.16-11.

O4-17
 cont.

Indeed, the ethnographic study's revelations about the CRHR eligibility of these four resources is significant new information triggering the need for recirculation of the DEIR. CEQA Guidelines § 15088.5(a). Because the County gave public notice of the availability of the DEIR without giving the public "a meaningful opportunity to comment" on the Project's adverse environmental effect on these four CRHR-eligible tribal cultural resources and potential mitigation for those direct impacts, it must go back and update its DEIR analysis and give an opportunity for the informed public comment that CEQA requires. *Id.*

O4-18

3. **The DEIR Fails to Consider Any Impacts on Native American Spiritual and Religious Values.**

The proposed Project would result in a profound impact on the Mutsun people. *Juristac* is the home of a powerful spiritual being known as Kuksui. Big Head dances associated with Kuksui and other healing and renewal ceremonies took place in the area for centuries. The entire area, including the project site, is replete with storied cultural sites and features of spiritual significance, as now documented in both the Survey and ethnographic report.

O4-19

The Project's direct threat to these sites is clearly connected to the legacy of colonial violence endured by Mutsun people. The Tribal Band owns no land within its traditional territory, leaving the last remaining sacred sites subject to the whims of non-Native people. The development of this Project would result in significant and irreparable spiritual impacts.

However, the DEIR fails to discuss impacts to the values at all. The DEIR merely states that because development of the project would result in damage to tribal cultural resources, the project would cause a significant impact. But this is an impermissible short cut. *See, e.g., Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1370-71; *Galante Vineyards v. Monterey Peninsula Water management Dist.* (1997) 60 Cal.App.4th 1109, 1123; *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831 (a lead agency may not simply jump to the conclusion that impacts would be significant without disclosing to the public and decision makers information about how adverse the impacts would be).

O4-20

The fact that these impacts may be labeled as "social" is of no import. As the CEQA Guidelines explain:

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Economic or social changes may be used . . . to determine that a physical change shall be regarded as a significant effect on the environment. [E]conomic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.

O4-20
 cont.

Guidelines § 15064(e). The Project will result in a physical change to the tribal cultural resources on and near the Project site. That physical change will result in an adverse spiritual and religious effect on people – just like the effects from overcrowding cited in the guidelines. These effects must be discussed in revised DEIR.

4. The DEIR Fails to Adequately Mitigate for the Project's Significant Tribal Cultural Resource Impacts.

One key purpose of AB 52 consultation is to allow the lead agency and tribal representatives to discuss and find agreement on mitigation measures that might reduce a project's significant impacts. Pub. Resources Code § 21080.3.2. However, as the County improperly released the DEIR before having sufficient information to enable those conversations, the suggested mitigation measures are currently inadequate and must be revised.

O4-21

(a) The DEIR Fails to Consider Mitigation for Individual Tribal Cultural Resources.

Because the DEIR erroneously fails to consider the Project's impacts to individual tribal cultural resources within the Project site, it also fails to consider any feasible mitigation for those impacts. Given the DEIR's conclusion that tribal cultural resource impacts will be significant, the County has an obligation to consider and adopt all feasible measures that would substantially reduce a project's significant environmental impacts. Pub. Res. Code §§ 21002, 21002.1(b); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 526 ("*Friant Ranch*"). Yet, the DEIR never discusses whether there are actions and protections that could be taken to lessen the Project's effects on the individual tribal cultural resources identified in the Survey Report and the Betabel ethnographic study. This violates CEQA's requirement that public agencies consider and adopt all

O4-22

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feasible measures that would substantially reduce a project's significant environmental impacts. *Id.*

O4-22
 cont.

(b) Mitigation Measure 3.16-1d Has Not Been Fully Developed or Analyzed.

The DEIR proposes to mitigate the Project's tribal cultural resource impacts by establishing a tribal cultural resources conservation easement. Under Mitigation Measure 3.16-1d, the County, Applicant, and the AMTB would enter a Memorandum of Agreement to implement authorized activities identified in a conservation easement for the undeveloped area within and adjacent to the riparian corridor. DEIR at 3.16-13. The DEIR estimates that this easement would cover approximately 50-80 acres, and would be aimed at protecting tribal cultural resources and facilitating AMTB's use of the area for cultural activities in perpetuity. *Id.*

While the AMTB generally support use of a cultural access easement to protect resources and allow cultural activities, the DEIR's proposed measure is woefully underdeveloped. The measure fails to give a sense of what types of activities would be allowed or to consider the relationship between this easement and the other mitigation measures throughout the DEIR. While the measure states that the easement would "have to be compatible with the vegetation management plan identified in Mitigation Measure 3.18-2," it is not clear from the DEIR that the Vegetation Management Plan provision actually contemplates the types of cultural activities the AMTB would want to undertake, such as ethnobotanical restoration and cultural burns.⁴

O4-23

The Amah Mutsun are aware that the County must satisfy its regulatory and legal obligations with respect to vegetation management, fire control, endangered species, and myriad other issues that impact the Project site. However, the failure to adequately develop this mitigation and ensure that it is in harmony with the DEIR's other mitigation measures is a violation of CEQA. Pub. Res. Code §§ 21002, 21002.1(b); *Friant Ranch*, 6 Cal.5th at 526; *King and Gardiner Farms v. County of Kern* (2020) 45 Cal.App.5th 814, 852 (agencies generally must adopt feasible mitigation to reduce significant effects to a level of insignificance). Because the Project will have significant tribal cultural resource impacts, the County has a duty to develop the cultural access easement in a way that has the greatest feasible mitigatory value.

⁴ Indeed, because Mitigation Measure 3.18-2 contains no performance standards or other requirements for deferred mitigation, it is similarly unlawful. *Golden Door*, 50 Cal.App.5th at 518 [citing CEQA Guidelines § 15126.4(a)(1)(B)].

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Yet, rather than doing that, the County has rushed the DEIR process and failed to give the parties enough time to discuss and consider appropriate terms for the easement or to revise the rest of the DEIR to ensure it would be consistent with this mitigation. This is an unfortunate outgrowth of the County's failure to allow enough time for AB 52 consultation *before* the environmental review was released. While the AMTB will continue to discuss appropriate terms for the tribal cultural easement with the County and Applicant in the AB 52 context, the failure to adequately analyze and provide all feasible tribal cultural resource mitigation renders the DEIR inadequate.

O4-23
cont.

(c) Mitigation Measure 3.16-1b Should Be Revised.

Mitigation Measure 3.16-1b should be revised to state that the County shall contact the AMTB a minimum of 60 days before beginning earthwork or other ground disturbing activities to ensure a tribal monitor is available. Since the measure requires a response at least 48 hours before the ground disturbing activity, this notice should be extended to give the Amah Mutsun more time to make the requisite monitoring arrangements. AMTB monitors may otherwise be engaged in other jobs or projects, rendering this mitigation measure ineffective.

O4-24

(d) The DEIR Should Evaluate the Mitigatory Effects of Moving the Project's Septic System.

The DEIR identifies the riparian corridor along the west and south edges of the project site areas as having "a very high likelihood of containing buried archaeological deposits." DEIR at 3.5-11. The Integrated Cultural Resources Survey Report also identified the riparian area and southern section of the site as having greater tribal cultural resource and ethnobotanical significance for the AMTB. *See* Survey Report at pp. 15-20. The Amah Mutsun have further emphasized these areas of heightened cultural concern in AB 52 consultation, and have objected in particular to the proximity of sewage effluent to these sensitive areas.

O4-25

Yet, none of the alternatives considers alterations to the Project to fully avoid these impacts. For instance, while Alternative 4 (the Reduced Intensity Alternative) addresses concerns associated with the height of the motel and the event center, it inexplicably leaves the septic system at the southern end of the site. The DEIR should be revised to evaluate the possibility of a Project redesign that would allow the septic system to be moved out of this culturally sensitive area and closer to the rest of the Project.

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B. The DEIR Fails to Adequately Address the Project's Impacts on Sanchez Adobe.

CEQA Guidelines Section 15064.5(b) defines a “substantial adverse change” in the significance of a historical resource as “physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of [the] resource would be materially impaired,” usually meaning that the resource’s historical significance and eligibility for the CRHR would be undermined. While the DEIR does acknowledge that the Project will have a significant impact on the Sanchez Adobe, it fails to adequately analyze the resource’s significance or to provide appropriate mitigation for the impact.

O4-26

1. The DEIR Fails to Adequately Analyze the Adobe Sanchez's Significance.

The DEIR acknowledges that the Sanchez Adobe is a “significant archaeological resource” that is recommended eligible for National Register of Historic Places- (“NRHP”) and CRHR-listing. DEIR 3.5-13. It further explains that the archaeological review for the project “also identified several indigenous material finds, adding a previously unrecorded prehistoric component to the Sanchez Adobe site,” and expanding the boundary to within the Project site. DEIR at 3.5-11. However, in analyzing the Sanchez Adobe’s eligibility for the NRHP and CRHR, the DEIR makes no mention of the site’s association with the local Indigenous population, including the Mutsun people. As the AMTB explained in their Survey Report, “the Sanchez Adobe was most likely constructed by Indian laborers, including Mutsun people living in the area who had grown skilled at adobe construction as a result of their conscription at Mission San Joan Bautista...” Survey Report at p. 7, 24. For this reason, the Sanchez Adobe has significance to the AMTB and has additional archaeological value for what it might convey about Indigenous laborers during this period. Yet, the DEIR fails to consider this in analyzing the site’s significance. DEIR at 3.5-11.

O4-27

2. The DEIR Fails to Adequately Mitigate the Project's Cultural Resource Impacts.

After acknowledging the Project’s significant impact on the Sanchez Adobe, the DEIR provides several mitigation measures that it claims will reduce the Project’s impacts to less-than-significant. However, these mitigation measures are inadequate and must be revised to comply with CEQA.

O4-28

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First, Mitigation Measure 3.5-1a requires preparation and implementation of a treatment plan for the Sanchez Adobe. Given the prehistoric component of this site and its importance to the Amah Mutsun, the measure should be revised to include the AMTB in the development of said treatment plan. The current measure focuses heavily on “excavation,” “monitoring,” “resource significance assessment,” and “curation.” But CEQA requires lead agencies to use preservation in place for archaeological resources if feasible, unless other mitigation would be more protective. CEQA Guidelines § 15126.4(b); *Madera Oversight Coal. v. County of Madera* (2011) 199 Cal.App.4th 48, 82-87. The measure must be revised to make clear that preservation in place should be the preferred approach under the treatment plan. If avoidance and preservation are not feasible, the County must provide a detailed explanation of this in its analysis. *See Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 881 (agency must provide good faith, reasoned analysis for rejecting mitigation that could further reduce significant impact).

O4-28
 cont.

Without more detail regarding the goals or performance standards of the treatment plan, it is difficult for the AMTB and the public to know whether the plan will adequately mitigate the Project’s impacts. *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670; *see also Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281 (invalidating mitigation that failed to “specify performance standards or provide other guidelines”). CEQA does not allow for deferred mitigation without these standards. *See Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 520-21 (deferral of mitigation without “objective and measurable standard” or “reasonable assurance” impacts will be reduced is legal error). This is especially true where the DEIR relies on this mitigation to conclude the impact will become less-than-significant.

Mitigation Measures 3.5-1b and 3.5-1c must also be revised. Measure 3.5-1b should be revised to cross reference 3.16-1b and acknowledge the need for tribal as well as archaeological monitoring, given the significance of the Sanchez Adobe to the AMTB. Measure 3.5-1b should also be modified to include AMTB input in the development of the Worker Environmental Awareness Program. Measure 3.5-1c should be revised to reference Measure 3.16-1c and the tribal monitor’s ability to halt construction in the event of a discovery with significance to the AMTB.

O4-29

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3. The DEIR Fails to Adequately Explain How the Mitigation Measures Would Reduce the Project's Cultural Resource Impacts to Less Than Significant.

The DEIR concludes that “[i]mplementation of Mitigation Measures 3.5-1a through 3.5-1c would reduce impacts associated with archaeological resources to a less-than-significant level,” but fails to provide support for this assertion. DEIR 3.5-14. According to the Thresholds of Significance, the Project will have a significant impact if it causes a substantial adverse change in a historical or archaeological resource. Here, the DEIR contemplates a data recovery plan, which could preserve some of the Sanchez Adobe site from total destruction but would not protect the site from being dismantled or forever changed. Much of an archaeological resource’s value comes from its provenance, which is undermined when it is removed from its original location. Moreover, data recovery will do nothing to mitigate impacts to the AMTB’s cultural associations to the site. If the Sanchez Adobe site cannot be fully avoided or preserved in place, it is difficult to see how a “substantial adverse change” to the resource would be avoided by these measures. The County must revise its direct and cumulative significance determinations accordingly and recirculate the DEIR.

O4-30

C. The County Failed to Consult with the Native American Heritage Commission As A Responsible Agency.

Under CEQA, a lead agency is required to identify “responsible agencies” which have discretionary approval power over the project for which the lead agency has prepared an environmental document. CEQA Guidelines § 15381. The DEIR states its intention to coordinate with five responsible agencies, including the California Department of Fish and Wildlife and the State Water Resources Control Board. DEIR at 1-4. Noticeably absent from this list, however, is the Native American Heritage Commission (“NAHC”).

O4-31

This is a very significant omission, given the CRHR-eligible tribal cultural and archaeological resources present at the Project site. Public Resources Code section 5097.95 requires that local agencies cooperate with the NAHC in carrying out its duties, including by transmitting “copies...of appropriate sections of all environmental impact reports relating to property identified by the [NAHC] as of special religious significance to Native Americans or which is reasonably foreseeable as such property.” Yet, the DEIR makes no mention of this explicit transmittal or an intent to consult with the NAHC as a responsible agency. This failure to consult with the NAHC regarding the Betabel site violates CEQA. *See, e.g., Environmental Protection Information Center, Inc. v. Johnson* (1985) 170 Cal.App.3d 604, 626 (“The presence of the archaeological site on the site of

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the [project] mandated [agency] consultation with *at least* the Native American Heritage Commission.”) (emphasis added).

O4-31
 cont.

D. The DEIR Fails to Adequately Analyze the Aesthetic Impacts of the Project.

1. The DEIR Fails to Address the Project’s Impacts to Culturally Significant Viewsheds.

Both in AB 52 consultation and in the Integrated Cultural Resources Survey Report, the Amah Mutsun expressed concerns regarding the Project’s impacts to sacred viewsheds, including the *Medicine Man Hill* viewshed and the *Sargent Hills/Mt Pajaro* viewshed. Survey Report at pp. 35-36, 40. The recent Betabel ethnographic study further confirms the tribal cultural significance of these viewsheds. *See* Betabel Ethnographic Study at p. i, 92-100. Yet, the DEIR fails to fully analyze the Project’s impacts to these viewsheds—either in the Tribal Cultural Resources or the Aesthetics sections of the DEIR.

The Aesthetics discussion acknowledges that the *Juristac* Tribal Cultural Landscape includes viewshed elements, such as *Medicine Man Hill*, and states that the Project would “alter the character” of the *Juristac* TCL. DEIR at 3.1-4, 3.1-14. The DEIR further concludes that the Project’s damage to “scenic resources,” which include a locally scenic roadway and the *Juristac* TCL, would be significant. The DEIR then defers to the Tribal Cultural Resources section for a more in depth discussion of these cultural viewshed components. *Id.*

O4-32

Yet, as previously discussed, the Tribal Cultural Resources section also fails to analyze the Project’s impacts on the individual tribal cultural viewshed resources of *Medicine Man Hill* and *Sargent Hills/Mt Pajaro*. Merely mentioning these viewsheds as contributing elements of the *Juristac* TCL is not sufficient under CEQA. Each of these viewsheds is a CRHR-eligible tribal cultural and aesthetic resource in its own right. *See* Survey Report at pp. 35-36, 40; Betabel Ethnographic Study at p. i, 92-100. The County has a duty under CEQA to analyze the Project’s impacts on each of these viewsheds. Pub. Res. Code § 21074(a)(1)(A)-(B). The DEIR’s failure to do so violates CEQA.

2. The DEIR’s Analysis of Impacts to the Visual Character of the Site is Inadequate.

The DEIR contemplates the impact of converting 32 acres of “largely undeveloped land to commercial uses” with “increased traffic” to “an area that is primarily

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undeveloped at present.” DEIR at 3.1-12. While the DEIR acknowledges that the Project would “change the existing visual character of the area,” it concludes that the landscaping and General Plan design policies would make this impact “less than significant.” *Id.* at 3.1-13. However, in determining that the project “would not substantially degrade the visual character of the project area,” the DEIR fails to take into account the AMTB’s perspective and the sacred nature of this site.

For instance, the DEIR blithely notes that “[w]ith the exception of the motel, onsite structures would be one-story in height and roughly similar in height and scale to existing development associated with the Betabel RV Resort, located immediately to the north.” DEIR 3.1-13. The DEIR then acknowledges that the motel would be three-stories tall and include a drive-in movie screen behind it. *Id.* The County dismisses the visual impacts of these Project components based on the fact that the screen would not be visible from US 101, but this emphasis on the perspective of those driving by for a few seconds rather than the people with a centuries-old ancestral, spiritual connection to this land misses the mark.

In AB 52 consultation, the Amah Mutsun have extensively described their concerns about this Project and its inconsistencies with the existing feeling and character of the proposed site, yet none of those comments are reflected in this analysis. The DEIR makes dismissive comments such as “[i]t is important to note that the project site is not unique or distinctive relative to the visual character of the surrounding region,” DEIR at 3.1-13, without ever acknowledging the visual character of the land as experienced by the Amah Mutsun. This failure to incorporate tribal perspectives into the aesthetics analysis or to consider aesthetics-based tribal cultural resources in later sections is deeply disrespectful, runs counter to the purposes of AB 52 consultation, and violates CEQA.

The Project would have tremendous impacts to the visual character and feeling of the Project site, and the DEIR must be revised to analyze those impacts. The Amah Mutsun further request that the Project be modified to remove the “informational exhibit . . . highlighting the Native American history in the region” as part of the Visitor Center. DEIR at 2-19. At this time, the AMTB do not believe the proposed Project appears conducive to the type of respectful environment necessary for an informational exhibit of this nature.

E. The DEIR’s Noise Impacts Analysis is Inadequate.

In describing the existing noise environment of the Project site, the DEIR notes that “[a]dditional land uses such as schools, transient lodging, historic sites, cemeteries, and places of worship are also generally considered sensitive to increases in noise levels.”

O4-33
cont.

O4-34

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DEIR at 3.12-9. The DEIR then identifies the nearest existing sensitive receptors as nearby residences, a local high school, and the Betabel RV Resort. *Id.* Despite the fact that the Amah Mutsun repeatedly identified the Project site and the *Juristac* Tribal Cultural Landscape as a sacred place desired to be used for worship and ceremony as part of the cultural access easement, the DEIR attributes no noise sensitivity to the identified tribal cultural resource locations. Indeed, the DEIR makes no mention of the adverse effect that the Project's noise levels would have on the spiritual character of the site for the Amah Mutsun. The DEIR must be revised to consider these impacts.

O4-34
 cont.

F. The DEIR's Project Description is Flawed.

Under CEQA, a clear and comprehensive description of the proposed project is critical to meaningful public review. *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193. The court in *County of Inyo* explained why a thorough project description is necessary in an EIR:

A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance.

O4-35

Id. at 192-93. Thus, "[a]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 830. Here, the Project description in Chapter 2 of the EIR is flawed in at least two ways.

1. Conversion of the "Farm Stand" is Part of the Project.

The DEIR repeatedly states that that the farm stand is "existing," and thus not part of the DEIR's analysis. *E.g.*, DEIR at 2-1 ("Approximately 5 acres of the northern portion of the project site is currently being developed with a farm stand, restroom building, a septic tank, and a storm water retention pond; these uses were approved by the County under an administrative permit separate from this project and not part of the proposed Condition Use Permit"); 3-1 ("These uses were approved by the County as a separate project under an administrative permit and is *[sic]* not part of the proposed Conditional Use Permit").

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While the farm stand structure was previously permitted by the County,⁵ *the proposed use of the farm stand structure is changing as a result of this Project*. As such, the change in use must be described as part of the Project and included in the DEIR's analysis.

Specifically, the farm stand building was permitted pursuant to San Benito County Code § 25.07.004. Under that portion of the code, the farm stand is only permitted sell "agricultural produce grown on the premises where the stand is located" and only for nine months of the year. However, there is no agricultural use currently on the property (DEIR at 2-19), and the DEIR anticipates that no agricultural uses will occur in the future (DEIR at 3.2-7). Consequently, the developer requires—as part of this Project—a conditional use permit to expand the scope of the currently permitted use to allow sale of other products. This expansion of use is part of this Project and must be described and analyzed in the EIR. *San Joaquin Raptor Rescue Center*, 149 Cal.App.4th at 655–656.

O4-36
cont.

The County has already acknowledged as much. An August 23, 2021 letter from County Counsel to AMTB explained that "the property owner intends to submit an application for a conditional use permit to expand the scope of the permitted use of the [farm stand] structure under construction If and when such development permit applications are submitted, . . . the appropriate level of CEQA review [will be initiated]."

The EIR's failure to include the farm stand in its analysis is not a trivial error. For instance, in determining whether the expanded motel and other uses can be safely served by septic, the DEIR relies on the alleged functionality of the current farm stand and restroom septic system to conclude that "onsite soils are capable of adequately supporting the use of septic tanks and alternative wastewater disposal systems." DEIR at 3.7-12. However, construction of these uses *are still underway*, and there is presently minimal, if any, use of the septic system. Its mere presence provides no evidence that the expanded system can function.

O4-37

Similarly, in considering the GHG emissions generated by the Project, the DEIR completely excludes emissions that will be generated by the onsite farm stand, even though the building cannot be used in its current permitting state (i.e., because no produce is currently grown on site). DEIR at 3.8-8. The failure of the DEIR to include the expanded farm stand use renders the Project description unstable and inaccurate, and

O4-38

⁵ AMTB also reiterates its prior comments that the farm stand should not be considered part of the baseline, as it was constructed for uses that could not reasonably be expected to occur (and indeed, have not occurred), and at a size that far exceeds what is reasonable for a seasonal produce stand.

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results in a underreporting of the Project's emissions. The DEIR must be revised to include either the entire farm stand development, or at a minimum, the impacts anticipated from converting the vacant, unused structure to the anticipated future use.

O4-38
 cont.

2. The Project Objectives Are Artificially Narrow.

The California Court of Appeal has recently made clear that CEQA does not permit a lead agency to rely on the desires of a project proponent to establish the project objectives. In *We Advocate Through Environmental Review v. County of Siskiyou*, the lead agency relied exclusively on project objectives proposed by the Applicant Crystal Geyser for a revived water bottling plant. (2002) 78 Cal.App.5th 683, 691. But the Court of Appeal reiterated the Supreme Court's position: project objectives must be established *by the lead agency*. *Id.* The purpose of using broad and public-oriented objectives is to ensure that the project objectives are not "so narrow[] as to preclude any alternative other than the Project." *Id.* at 692.

Yet, that is exactly what the DEIR does here. At page 1, the DEIR states "The objectives of the project *as identified by the project applicant*, are to" Indeed, in allowing the Applicant to define the objectives of the Project, the Project has ended up with an incredibly narrow scope: to "[h]onor the memory of Errol McDowell by generating revenues for the Applicant to be used 100 percent for funding children's cancer research to cure childhood brain cancer (the number one cause of death by cancer in kids)." DEIR at 1. AMTB is deeply sympathetic for the Applicant's loss and respectful of his efforts to honor his son. However, the purpose of project objectives is to determine if there are alternative ways to meet the goals of project as established by the lead agency. It is not the place to explain the Applicant's internal motivations.

O4-39

As in *We Advocate*, these artificially narrow Project Objectives are prejudicial. By establishing the primary goal as the generation of as much revenue as possible for the Applicant, the DEIR immediately dismisses further exploration of an off-site alternative, even though "there are two other designated regional commercial nodes" in the vicinity. DEIR at 6-5. These alternative sites could meet all of the public-oriented objectives – providing a visitor-oriented commercial use along Highway 101, creating a destination attraction, creating employment opportunities, and realizing tax potential. They should be considered as alternatives in a revised EIR. *Citizens of Goleta Valley v. Bd. of Supervisors* (1988) 197 Cal. App. 3d 1167, 1179 ("Serving the public purpose at minimal environmental expense is the goal of CEQA. Ownership of the land used and the identity of the developer are factors of lesser significance.").

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G. The DEIR's Consideration of Impacts to Biological Resources Is Inadequate.

1. The DEIR Improperly Downplays Impacts to Wildlife Corridors.

The DEIR concludes that impacts to habitat connectivity and wildlife movement will be less than significant because no “essential connectivity areas” are located near the Project site, and because wildlife will allegedly prefer the existing riparian corridors to the west of the Project site. DEIR at 3.4-20. However, by relying on these assumptions, the DEIR fails to actually study the issue or take into account the latest data showing the critical importance of the site for wildlife movement. *See id.* (concluding without evidence that “it is unlikely that the project site currently functions as a critical habitat linkage” but conceding that it “likely functions as a movement corridor,” without explaining the author’s definition for either term).

However, a recent report produced by wildlife movement experts concludes that the site is “high priority, critically urgent” for wildlife movement. *See Exhibit 2 at page 124-125.* The summary explains that deer, bobcat, mountain lion, gray fox, racoon, skunk, and opossum rely on the San Benito River Bridge undercrossing to the south of the site as a “highly important regional connection between the Santa Cruz Mountain Range and Gabilan Range.” *Id.* The Pathways for Wildlife report concludes that the Betabel Road Project poses a regional development threat to the corridor. This information demonstrates the lack of analysis or support for the DEIR’s conclusions.

The DEIR also concludes that impacts to wildlife movement corridors would be less than significant because 80 acres of the project site would be retained as “undeveloped area.” DEIR at 3.4-37. However, the Applicant is not currently required to keep those acres undeveloped in perpetuity (except to the extent such terms are contained in the cultural access easement). This term must be made enforceable if it is to be relied on in the DEIR.

In addition, the DEIR erroneously fails to consider wildlife movement corridors in the section on cumulative biological resources. DEIR at 4-7 to -8. Both the Strada Verde and Sargent Quarry projects have the potential to significantly disrupt wildlife movement in the immediate vicinity of the Project. *See Exhibit 2.* In addition, the proposed Traveler’s Station Project and the forthcoming, adjacent commercial development known to the County on the Weiler Property on the west side of Searle Road would result in additional impacts to wildlife movement through this area. Together with the Project, they may result in the isolation of large mammal species and the elimination of a key

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connection point between the Santa Cruz Mountains, Diablo Range, Lomerias Muertas, and Gabilan Range, for species such as mountain lion, bobcat, gray fox, striped skunks, wild pig and black-tailed deer. This significant impact must be recognized in a revised DEIR.

O4-40
 cont.

2. **The DEIR Fails to Adequately Describe Future Permitting Requirements.**

The DEIR reveals that the Applicant will likely need additional permits from the California Department of Fish and Wildlife (“CDFW”) and the U.S. Fish and Wildlife Service (“USFWS”) related to biological resources on site. CDFW has the authority to regulate projects that may impact species protected by the California Endangered Species Act, as well as projects that may impact waters of the state. USFW has authority to regulate projects that may impact species protected by the federal Endangered Species Act.

Under CEQA case law, the DEIR should have discussed CDFW’s permitting process and any potential mitigation or project modifications that may be required by the agency. Specifically, the DEIR must include a list of consultation requirements and “to the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.” CEQA Guidelines, § 15124(d)(1)(C); see *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal. 5th 918, 936-942. In *Banning Ranch*, the city ignored its “obligation to integrate CEQA review with the requirements of the Coastal Act” (specifically the Coastal Act’s habitat designation requirements). *Id.* at 936. The Court invalidated the City’s CEQA analysis because the “omission resulted in inadequate evaluation of project alternatives and mitigation measures. Information highly relevant to the Coastal Commission’s permitting function was suppressed. The public was deprived of a full understanding of the environmental issues raised by the Banning Ranch project proposal.” *Id.* at 942.

O4-41

The DEIR describes CDFW as the agency with authority over “lake and streambed alteration” and “incidental take permits.” DEIR at 3.4-2. It also notes that USFWS has authority to regulate the taking of federally listed species. DEIR at 3.4-1. However, the DEIR does not provide any explanation of the consultation and agency approval process, or where current compliance and consultation stands. Vague references to future permitting and CDFW/USFWS involvement is not enough. The DEIR must discuss the consultation with CDFW/USFWS and compliance with its requirements, as well as those of any other local, state, or federal agency with jurisdiction over the Project.

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3. Impacts to Riparian Habitat Could Be Further Reduced.

Mitigation Measures in the DEIR require the Applicant to avoid construction activities in riparian woodland habitat. DEIR at 3.4-34 to -35. However, the proposed Project inexplicably includes a 10,300 square foot animal/livestock corral “to provide an area to keep livestock, maintaining the agricultural and rural integrity of the area” that appears to encroach on riparian habitat. DEIR at 2-19. Apparently, the corral will be primarily a visitor serving attraction, with “a permanent collection of livestock open to public view.” DEIR 2-35. The corral should be moved out of the riparian habitat in order to comply with the intent of this mitigation measure.

O4-42

H. The DEIR’s Consideration of Water Quality and Floodplain Impacts is Inadequate.

1. The DEIR Fails to Adequately Analyze and Mitigate the Project’s Water Quality Impacts.

The DEIR acknowledges that “development of the project could impact water quality through ground disturbance and erosion leading to sediment delivery, and the potential release of hazardous materials during construction,” but concludes that compliance with various regulations and permit conditions would “minimize the potential water quality impacts related to construction activities, resulting in a less-than-significant impact.” DEIR at 3.10-11 to -12. However, in reaching this conclusion, the DEIR fails to provide *any* information regarding current water quality levels at the site, whether the site is in attainment with the Central Coast Basin Plan for water quality protection, or what the existing water quality baseline is for the site. *San Joaquin Raptor/Wildlife Center v. Stanislaus County* (1994) 27 Cal.App.4th 713, 728; *see also Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 825 (incomplete description of the Project’s environmental setting fails to set the stage for discussion of significant effects). An EIR “must include a description of the environment in the vicinity of the project, as it exists before the commencement of the project, from both a local and a regional perspective.” CEQA Guidelines § 15125; *see also Environmental Planning and Info. Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354.

O4-43

The DEIR’s deficiencies in describing the Project’s water quality setting undermine its adequacy as an informational document, and leave its less-than-significant determination without support. Without a proper description of baseline conditions, the DEIR is unable to provide an adequate analysis of Project-related and cumulative impacts on water quality resources compared to existing conditions. Indeed, the DEIR does not even attempt to provide specific information as to the Project’s water quality impacts.

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Rather, the analysis just assumes that the Project will not have a significant impact because it will follow applicable regulations. Under well-established case law, an agency may not use compliance with regulations to avoid describing Project activities or analyzing resulting impacts. *See, e.g., Oro Fino Gold Mining Corporation v. County of El Dorado* (1990) 225 Cal.App.3d 872, 885.

O4-43
 cont.

The County fails to provide any explanation or evidence to support the conclusion that the Project's impacts on water quality are less than significant. This failure to analyze the Project's impacts—and a corresponding failure to provide project-specific mitigation, if needed—is especially egregious in light of the fact that both the Pajaro and San Benito Rivers are listed as impaired waters by the State Water Resources Control Board because of high levels of pollutants. DEIR 3.10-8.

2. **The DEIR Fails to Consider Increased Flooding in Its Floodplain Analysis.**

Due to its relatively flat topography, the western portion of the Project site is located within the 100-year flood zone. DEIR at 3.10-8. The DEIR concludes that the Project's increased localized flood risk will be less than significant as long as the Applicant submits a plan demonstrating compliance with County design standards prior to grading. DEIR at 3.10-14. Similarly, the DEIR proposed to mitigate the Project's risk of releasing pollutants during inundation by floodwaters by elevating fuel tanks outside the 100-year floodplain. *Id.*

O4-44

Yet, the DEIR fails to analyze the fact that 100 year flooding events are now happening more frequently.⁶ Indeed, the DEIR's cursory analysis ignores State and Federal guidance related to development in the floodplain. The County should consider more modern guidance, such as the Federal Flood Risk Management Standard ("FFRMS"), the California Water Resiliency Portfolio, and the California Flood Future Report regarding flood risk, given that climate change is increasing the frequency and intensity of extreme flood events. These standards and guidance documents provide more current information and recommendations that account for changing conditions due to climate change. The DEIR's failure to consult such guidance understates the flood risk at the Project site and renders its mitigatory conclusions unreliable.

⁶ *See, e.g.,* Exhibit 3 (<https://www.nytimes.com/interactive/2022/08/12/climate/california-rain-storm.html>)

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I. The DEIR Erroneously Concludes that Greenhouse Gas Emission Impacts are Less than Significant.

“The Legislature has ‘emphatically established as state policy the achievement of a substantial reduction in the emission of gases contributing to global warming.’ . . . This policy is implemented in CEQA.” *Golden Door*, 50 Cal.App.5th at 484. With the Project emitting at least 13,591 metric tons of climate pollution every year, the EIR acknowledges that the Project’s climate change impacts could be significant, and cumulatively considerable. DEIR 3.8-8. However, the DEIR both underestimates the Project’s contribution to climate change and erroneously contends that these impacts would be mitigated to a less-than-significant level.

O4-45

1. The DEIR Omits Any Discussion of Emissions Generated by the Project’s Gas Station.

The DEIR states that the Project is anticipated to have an annual throughput of approximately 1.3 million gallons of gasoline. DEIR at 2-3. The greenhouse gas emissions associated with the use of such gasoline is approximately 11,550 metric tons of CO₂e per year.⁷ However, the DEIR fails to account for the emissions associated with this aspect of the Project.

Effects of a project that must be analyzed include “all the direct and *indirect* environmental effects of a project . . .” Pub. Resources Code § 21065.3 (emphasis added). As a result of the Project, gasoline will be purchased and consumed, emitting significant CO₂ in the atmosphere. California has recently banned new gas cars by 2035, through CARB’s adoption of the Advanced Clean Cars II proposal, setting up the state for the phase-out of gas-related infrastructure over the next two decades. Yet, the Project proposes to build a brand new gas station with 16 pumps. This perpetuation of fossil fuel infrastructure, and the resulting greenhouse gas emissions, must be accounted for in the EIR.

O4-46

2. The DEIR Improperly Defers Development of PV Systems.

Specific details of a mitigation measure “may be developed after project approval when it is impractical or infeasible to include those details during the project’s environmental review provided that the agency (1) commits itself to the mitigation, (2)

O4-47

⁷ According to the EPA, 1 gallon of gasoline contains approximately 8,887 grams of CO₂. See <https://www.epa.gov/greenvehicles/greenhouse-gas-emissions-typical-passenger-vehicle>.

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adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will [be] considered, analyzed, and potentially incorporated in the mitigation measure.” *Golden Door*, 50 Cal.App.5th at 518 [citing CEQA Guidelines § 15126.4(a)(1)(B)].

Here, the DEIR requires the Applicant to “include solar photovoltaics onsite capable of generating at least the equivalent of electricity required for project consumption per year.” MM 3.8-1a. However, the DEIR continues: “if complete offset is not feasible, the Applicant shall provide documentation demonstrating infeasibility” *Id.* This approach is backward. By allowing the Applicant to defer development of the PV system design, the DEIR is increasing the possibility that not all electrical needs will be met. Instead, the mitigation measure should require the Applicant to determine the PV System needs now, and to design their Project around it. Greater electrical generation is possible if the project is designed with the PV system in mind. *See, e.g.*, Exhibit 4, National Renewable Energy Laboratory, *Solar-Ready Building Design: A Summary of Technical Considerations*, available at: <https://www.nrel.gov/state-local-tribal/blog/posts/solar-ready-building-design-a-summary-of-technical-considerations.html> (explaining that building orientation, shading, roof design, and other factors all contribute to the amount of electricity a project can generate). The mitigation measure should not allow the developer to defer development of the PV System and then have an automatic exemption if their lack of planning results in an inability to meet the Project’s electrical needs.

O4-47
 cont.

3. **The DEIR Relies on an Offset Scheme Found Invalid by the Court of Appeal.**

The EIR concludes that the Project will have a less-than-significant impact on greenhouse gas emissions in large part because of Mitigation Measure 3.8 – Purchase Carbon Offset Credits. However, this mitigation measure does not assure that the emissions generated by the Project actually will be offset. Instead, it relies on an offset scheme—in which emission reduction projects undertaken by others but funded by the Applicant through the purchase of “credits” from a private carbon registry—that was invalidated by the Court of Appeal in *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467.

O4-48

“Mitigating conditions are not mere expressions of hope.” *Lincoln Place Tenants Assn. v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508. “They must be enforceable through permit conditions, agreements, or other legally-binding instruments.” *Golden Door*, 50 Cal.App.5th at 506. A lead agency must have substantial evidence

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demonstrating that the measures are feasible and effective. *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1027.

In *Golden Door*, the Court of Appeal concluded that a carbon offset program established by San Diego County violated these core CEQA requirements. 50 Cal.App.5th at 505-07. The San Diego offset scheme was developed to purportedly mitigate climate change impacts associated with projects not otherwise allowed by the County's General Plan. *Id.* at 494-95. Project developers would be required to purchase credits from carbon offset "registries" or marketplaces approved by the California Air Resources Board ("CARB"). *Id.* at 511. The offsets would purportedly have to meet some of the standards for the state's cap-and-trade program, found in Health and Safety Code § 38562(d)(1), including that they be real, permanent, quantifiable, verifiable, and enforceable. *Id.* at 506-07. Project developers would have to prioritize purchased offsets geographically, focusing first within the County, then moving on to California, the United States, and finally, the world. *Id.* at 568, App. 2.

The Court of Appeal held that these requirements did not provide "sufficient safeguard[s]" to assure the public and decisionmakers that the purchase of voluntary offset credits would actually result in the purported emission reductions. *Id.* at 511. *First*, because the San Diego offset scheme allowed developers to purchase offsets from voluntary, private registries, the County could not be assured that the offsets would actually meet the alleged performance standards. *Id.* at 511-12. *Second*, the Court found that the County lacked authority to enforce the San Diego offset scheme, especially outside of California. *Id.* at 512-13. *Finally*, the Court found that the San Diego offset scheme improperly delegated and deferred mitigation, by allowing the County planning director to approve offsets based on "unidentified and subjective criteria." *Id.* at 518-20.

O4-48
 cont.

The Project's carbon offset program, found in Mitigation Measure 3.8, suffers from the same legal deficiencies, and then some. MM 3.8 relies on the same inadequate and unenforceable private registry standards and prioritize offset project geography in the same exact way. DEIR at 3.8-10. While the Applicant may point to minor differences in wording between the San Diego offset scheme and the MM 3.8, these are distinctions without a difference. The Court of Appeal already considered a substantively identical offset scheme and found it to be unlawful.

The DEIR purports to require that Project offsets meet the standards of real, additional, quantifiable, enforceable, validated, and permanent. DEIR at 3.8-10. But, as the Court of Appeal acknowledged in invalidating the San Diego offset scheme, "the devil is in the details." *Golden Door*, 50 Cal.App.5th at 506. By relying on the same voluntary registries—Climate Action Reserve, American Carbon Registry, and Verra—to

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implement the MM 3.8, the DEIR fails to ensure that these standards are met and that the Project's significant emissions are offset. (See Ex. 5, comment letter from expert Barbara Haya regarding similar offset programs outlining the "profound and well-documented uncertainties in voluntary greenhouse gas offsets"].)

In some ways, MM 3.8 is even more flawed than the San Diego offset scheme struck down in *Golden Door*. Those mitigation measures required that the registries where developers would purchase their credits be approved by CARB. While the Court found this reference to CARB to be an insufficient safeguard, MM 3.8 is even less restrictive, requiring only "verification by a major third-party registry." DEIR at 3.8-10. But a registry is a private entity that provides a marketplace for sellers and buyers of carbon credits by listing carbon credit projects. *Golden Door*, 50 Cal. App.5th at 485, 510. There is no regulatory entity ensuring that programs listed on such registry meet the standards set forth in the DEIR. See *id.* at 508, 511-12.

As a result of this program design, it will be nearly impossible for the County to determine if the Applicant's purchased offsets actually meet any of the standards outlined in the mitigation measures. "Real," "permanent," "verifiable," etc. are all terms of art, and their implementation requires both expertise and rigorous oversight. For instance, to meet the "permanent" standard, the particular offset must demonstrate that emissions reductions will remain in place (i.e., not be "reversed"), or that if it is, there are "mechanisms [] in place to replace" the reversal. *Id.* at 506. The Court of Appeal found it would be impossible for the County to make such determinations with respect to individual programs listed on voluntary registries because the San Diego offset scheme contained no "objective criteria" for the County to use. *Id.* at 522. The same is true here. Just like the San Diego offset scheme, MM 3.8 impermissibly relies on the private registries themselves to verify reductions. See *Golden Door*, 50 Cal.App.5th at 513 (County's reliance on registries to ensure the validity of offsets is improper, because it wrongly assumes the adequacy of the registry's offsets).

O4-48
 cont.

Mitigation measures must be fully enforceable. *Lincoln Place*, 155 Cal.App.4th at 445 (citing § 21081.6(b)). Yet, *all* of the Project's carbon credits could be purchased from projects outside of the County, and even outside of California, based on vague and amorphous feasibility findings. This allowance renders the mitigation measure unenforceable.

The DEIR purports to prioritize offsets "generated within or as close to San Benito County as possible." DEIR at 3.8-10. But in-county offsets are very hard to come by; indeed, none of the cited registries currently list San Benito County projects. See *also*

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Golden Door, 50 Cal.App.5th at 498 [given the “paucity of offsets available within the County,” “offsets are all but certain to come from outside the County”].) The Project Offsets are all but certain to include out-of-state offsets.

Out-of-state offsets, however, present serious jurisdictional and enforcement issues. The Court of Appeal explained: “The fundamental problem, unaddressed by [the CAP Offsets] is that the County has no enforcement authority in another state . . .” *Id.* at 512-13. Under MM 3.8, there are no limits to the use of out-of-County and out-of-country offsets. “In sharp contrast, cap-and-trade offsets cannot exceed 8 percent of an entity’s entire compliance obligation” (*Golden Door*, 50 Cal.App.5th at 513); allowing up to 100 percent of offsets from non-California sources exacerbated the Court of Appeal’s verification and enforcement concerns.

Further, MM 3.8 provides inadequate enforcement mechanisms and objective standards. Indeed, the only enforcement requirement is to secure the “satisfaction” of the County prior to construction activities and the issuance of any building permits. DEIR at 3.8-10. Unlike CARB, which can invalidate cap-and-trade offsets that violate regulatory standards, MM 3.8 provide no remedy should the County discover that previously issued offsets fell short. *See Golden Door*, 50 Cal.App.5th at 517 (noting CARB’s ability to reverse cap-and-trade offsets). The *Golden Door* court found that a similar lack of objective standards for the San Diego offset scheme amounted to improper delegation and deferral. *Golden Door*, 50 Cal.App.5th at 520-25. The Court held that the San Diego offset scheme established only a “generalized goal,” the achievement of which depends on “meeting one person’s subjective satisfaction.” (*Id.* at 520.) MM 3.8 does precisely the same thing, and contravenes CEQA for the same reasons.

O4-48
 cont.

Finally, MM 3.8 improperly defers the determination of how many offsets will need to be acquired. Rather than explain the calculations and assumptions in the public DEIR, MM 3.8 simply requires the Applicant to use a “qualified” GHG specialist to calculate the level of GHG offsets needed to achieve net zero. But this determination is surprisingly difficult and subject to significant variability based on selection of key assumptions – such as the anticipated “lifetime” of the project, the speed with which California drivers will convert to lower or zero emission vehicles, and the availability of zero emission electricity. CEQA does not permit such analysis to be conducted in a bilateral negotiation between Applicant and the County away from public scrutiny. *See Communities for a Better Env’t v. City of Richmond* (2010) 184 Cal.App.4th 70, 93 (overturning a greenhouse gas emission mitigation program because “the only criteria for ‘success’ of the ultimate mitigation plan adopted is the subjective judgment of the City Council, which presumably will make its decision outside of any public process a year

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after the Project has been approved. Fundamentally, the development of mitigation measures, as envisioned by CEQA, is not meant to be a bilateral negotiation between a project proponent and the lead agency after project approval; but rather, an open process that also involves other interested agencies and the public.”).

O4-48
cont.

J. The DEIR Does Not Demonstrate that the Septic System Will Be Safe.

This large development will rely entirely on septic systems, including several acres of leach fields and more than five septic tanks. DEIR at 3.7-12. Yet, the County relies on the scantest of evidence to claim that the septic system will be safe. Specifically, the DEIR claims that “the presence of onsite septic facilities is a preliminary indication that onsite soils are capable of adequately supporting the use of septic tanks.” *Id.* It then defers percolation tests, soil testing, and analysis to a later time, outside of the public process. The DEIR thus lacks substantial evidence to support its conclusion.

O4-49

K. Alternative Four Should Be Revised.

While the DEIR includes a number of alternatives, they are not precisely targeted to certain significant issues of concern to AMTB. For example, while Alternative 4 (the Reduced Intensity Alternative) addresses concerns associated with the height of the motel and the event center, it inexplicably leaves the septic system at the southern end of the site. This footprint increases the size of the disturbed area and leaves in place the proximity of the Project’s sewage to both the riparian areas and key areas of cultural sensitivity. The alternative should be revised to also move the septic system closer to the hotel.

O4-50

In addition, the DEIR concludes that “elimination of the outdoor event center would also address the tribal concern related to the entertainment atmosphere” DEIR at 6-19. While elimination of the event center does reduce this concern, it is not fully addressed by this alternative, particularly as it leaves in place the “amusement” buildings. This statement must be revised for accuracy in the final EIR.

L. The DEIR’s Analysis of the Project’s Cumulative Impact is Incomplete and Flawed.

CEQA requires an EIR to analyze a project’s “cumulative” impacts in addition to its individual impacts. CEQA Guidelines § 15130. This analysis considers how a project might combine or interrelate with other past, present, and reasonably foreseeable future projects to exacerbate environmental impacts. *Id.* § 15355(b). Disclosing and analyzing such cumulative impacts ensures that a project’s incremental effects, in combination with

O4-51

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those from other projects, are not ignored. *See* Guidelines § 15355; *Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 114 (“environmental damage often occurs incrementally from a variety of small sources...[that] assume threatening dimensions when considered collectively”) (disapproved on other grounds). A rote acknowledgment of an impact’s significance without addressing why, or to what degree, those impacts are significant is inadequate under CEQA. *See, e.g., Galante Vineyards*, 60 Cal.App.4th at 1123 (quoting CEQA Guidelines § 15151).

The DEIR acknowledges that the Project’s “potential contribution to cumulative tribal cultural resource impacts would be cumulatively considerable and significant and unavoidable.” DEIR at 4-18. While the DEIR comes to the correct conclusion, it fails to provide information on the extent and severity of the cumulative tribal cultural resource impacts and the efficacy of the proposed mitigation, so that the public and decision makers may reach their own conclusions. *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 130. As with the tribal cultural resources section, the only tribal cultural resource the cumulative impact analysis appears to consider is the *Juristac* Tribal Cultural Landscape. While the *Juristac* TCL is tremendously important, the DEIR must consider all cumulative tribal cultural resource impacts and discuss them accordingly.

O4-51
 cont.

Finally, the DEIR must include and discuss the cumulative biological, cultural, and other impacts associated with the Traveler’s Station and Weiler property projects.

III. The Project Conflicts with the County’s General Plan, and the EIR Fails to Address These Conflicts.

The State Planning and Zoning Law (Gov’t Code § 65000 et seq.) requires that development decisions be consistent with the jurisdiction’s general plan. *See, e.g.,* Gov’t Code §§ 65860, 66473.5, 66474, 65359, 65454. Thus, “[u]nder state law, the propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.” *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800, 806. Accordingly, “[t]he consistency doctrine [is] the linchpin of California’s land use and development laws; it is the principle which infuses the concept of planned growth with the force of law.” *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336.

O4-52

It is an abuse of discretion to approve a project that “frustrate[s] the General Plan’s goals and policies.” *Napa Citizens for Honest Gov’t v. Napa County* (2001) 91

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Cal.App.4th 342, 379. The project need not present an “outright conflict” with a general plan provision to be considered inconsistent; the determining question is instead whether the project “is compatible with and will not frustrate the General Plan’s goals and policies.” *Napa Citizens*, 91 Cal.App.4th at 379. Here, the proposed Project does more than just frustrate the General Plan’s goals. It is directly inconsistent with numerous provisions in the General Plan, a violation of State Planning and Zoning Law.

Moreover, the DEIR pays short shrift to these inconsistencies. In each chapter, the DEIR lists the allegedly applicable General Plan policies, but fails to analyze the Project’s consistency with said policies. The only analysis is in a two-page section that provides cursory coverage of seven land use-related policies. This omission violates CEQA, which requires an analysis of potential conflicts with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. *See* CEQA Guidelines, App. G, § XI(b); DEIR at 3.11-5 (adopting Appendix G threshold of significance).

Some of the clear inconsistencies are as follows:

General Plan Policy	Project Consistency
Policy LU-3.2: Agricultural Integrity and Flexibility. The County shall protect the integrity of existing agricultural resources.	Inconsistent. The Project would permanently convert 27 acres of prime farmland to a gas station, hotel, and other commercial uses. No mitigation is available to reduce this impact, threatening the integrity of existing agricultural resources on the site.
Policy NRC-1-1: Maintenance of Open Space. The County shall support and encourage maintenance of open space lands that support natural resources, agricultural resources, recreation, tribal resources, wildlife habitat, water management, scenic quality, and other beneficial uses.	Inconsistent. The Project site currently supports significant tribal resources, as well as wildlife habitat, water management, and scenic qualities. The Project would permanently convert a significant portion of this open land to development.
Policy NCR-2.4: Maintain Corridors for Habitat. The County shall protect and enhance wildlife mitigation and	Inconsistent. The Project site contains a significant wildlife movement corridor. Rather than “protect[ing] and

O4-52
 cont.

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movement corridors to ensure the health and long-term survival of local animal and plant populations, in particular contiguous habitat areas . . .	“enhanc[ing]” this corridor, the Project would interfere with its functionality.
Policy PFS-5.5 Individual Onsite Septic Systems. The County shall permit onsite septic systems only when connection to an existing wastewater system or sewer system is not reasonably available.	Inconsistent. The County has not shown that connections to existing wastewater or sewer systems are infeasible. Removal of the septic system would prevent a significant adverse impact to the cultural and spiritual value of the site to AMTB.
Policy NCR-4.15: Septic Systems. The County shall require septic systems to be limited to areas where sewer services are not available and where it can be demonstrated that septic systems will not contaminate groundwater.	Inconsistent. As discussed elsewhere, the County has not demonstrated that the septic system will not contaminate groundwater. Instead, it has deferred this determination to a later time, with unknown results.
Policy NCR-4.15 Develop Existing Areas. The County shall encourage development to occur in or near existing developed areas in order to reduce the use of individual septic systems in favor of domestic wastewater treatment in an effort to protect groundwater quality.	Inconsistent. The County is permitting significant development far from other developed areas, requiring a significant septic system on culturally and spiritually significant land.
Policy HS-5.7: Greenhouse Gas Emission Reductions. The County shall promote GHG emission reductions by . . . protecting grasslands, open space, oak woodlands, riparian forest and farmlands from conversion to urban uses.	Inconsistent. Rather than protecting open space and farmlands from conversion to urban uses, the Project would generate significant greenhouse gas emissions and then rely on an unverifiable and unenforceable offset scheme.

O4-52
 cont.

The DEIR must be revised to clearly analyze the Project’s consistency with applicable General Plan and other policies, and the potential for significant environmental impacts that arise out of the demonstrated inconsistencies

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IV. Conclusion

This Project cannot be approved in its present form. The DEIR is legally inadequate and cannot serve as the basis for Project approval, especially when it fails to incorporate significant new information regarding tribal cultural resources at the Project site. For these reasons, County must make the requisite changes to the DEIR so that it is consistent with CEQA and all applicable requirements, and recirculate it for public review.

O4-53

Thank you for your consideration.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Sara A. Clark

cc: Valentin Lopez, Amah Mutsun Tribal Band

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Letter O4 Amah Mutsun Tribal Band and Amah Land Trust (Comment Letter Attachments Provided in Appendix A)

Sara Clark, Shute, Mihaly, and Weinberger

- O4-1 The comment provides an introduction to the comment letter and states that the project site is considered a sacred site that plays a significant role in the JTCL associated with the AMTB. The comment also states that the project reflects a disregard for the AMTB's religious practices and beliefs.
- This comment is noted. Tribal cultural resources and associated impacts of the project are addressed in Section 3.16, "Tribal Cultural Resources," of the Draft EIR.
- O4-2 The comment states that the project is out of sync with the feeling and character of a sacred site, and the AMTB recommends that the County adopt the No Project Alternative.
- Tribal cultural resources and the associated impacts of the project are addressed in Section 3.16, "Tribal Cultural Resources," of the Draft EIR. It is unclear which no project alternative the comment is referencing. Two no project alternatives are evaluated in Draft EIR Chapter 6, "Alternatives":
- ▶ Alternative 1: No Project–No Development Alternative assumes no development of the project site. The project site would remain in its current condition.
 - ▶ Alternative 2: No Project – Orchard and Flea Market Alternative would involve not moving forward with the proposed project and the reestablishment of orchard agricultural uses on the site with a flea market operation along the site's frontage with US 101 as allowed under County Use Permit No. 1006-08.
- The comment is included in the record for consideration by the decision makers as part of the project approval process.
- O4-3 The comment states that the Draft EIR is inadequate under CEQA and that the project is inconsistent with the San Benito County General Plan.
- The County has determined that the Draft EIR is consistent with the requirements of CEQA and the State CEQA Guidelines and that recirculation is not required under State CEQA Guidelines Section 15088.5.
- O4-4 The comment expresses frustration with the County's processing and tribal consultation for the project. It specifically notes that the timing of the environmental review process has hampered the tribal consultation process and the proper study and discussion tribal cultural resources.
- Draft EIR pages 3.16-7 through 3.16-10 document the extent of tribal consultation conducted before release of the Draft EIR and present a summary of the AMTB Integrative Survey, status of the Ethnographic Study, and all technical information on tribal cultural resources in the project area that was available when the Draft EIR was prepared.
- O4-5 The comment states that the project site should not have been designated for commercial development under the San Benito County General Plan and expresses concerns and frustrations regarding the Senate Bill 18 tribal consultation process during the General Plan update process.
- These comments are associated with the General Plan update process, which was concluded when the updated General Plan was adopted on July 21, 2015. They are not associated with the proposed project and its CEQA review.
- O4-6 The comment states that correspondence provided to the County Board of Supervisors in March 2020 regarding potential development of the project site was never responded to.
- This comment addresses communications before the release of the notice of preparation and does not address the adequacy of the Draft EIR.

- O4-7 The comment expresses concerns regarding the County's review (including CEQA review) and approval of the onsite farm stand under County Code Section 25.05.004. The comment further states that the farm stand construction was a pretense to the project.
- Draft EIR page 3.0-1 acknowledges the construction of the approved farm stand as part of the baseline conditions for the Draft EIR analysis, consistent with CEQA Guidelines Section 15125(a). (See *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 370-371.) The Draft EIR states that the farm stand was approved by the County as a separate project under an administrative permit and that the farm stand is not part of the proposed conditional use permit. The farm stand has independent utility because it is expected to operate regardless of whether the proposed project is constructed. The Draft EIR impact analysis generally identifies the existence of the farm stand because it would be incorporated into the site design.
- O4-8 The comment states that AMTB's August 2021 correspondence identified the need to prepare an archaeological report for the farm stand and an Integrative Survey for the site. The comment states that this request was not responded to until 7 months later.
- The reader is referred to response to comment O4-7, regarding the approved farm stand comments. As identified on Draft EIR pages 3.16-7 and 3.16-8, an Integrative Survey was prepared and was used in the preparation of the Draft EIR.
- O4-9 The comment states that the Integrative Survey was authorized to be completed but that the Ethnographic Study was not completed before the release of the Draft EIR. The comment states that the Ethnographic Study for the project site would assist to further understand tribal cultural resource impacts and identify appropriate mitigation.
- The Draft EIR impact analysis of tribal cultural resources was prepared using all the technical information that was available at the time of its preparation (see response to comment O4-16 for further details regarding timing of the Draft EIR release). This information included details on project area tribal cultural resource features and the JTCL (see Section 3.16, "Tribal Cultural Resources"). As further addressed in responses below, the County has incorporated the results of the Ethnographic Study into the Final EIR (see responses to comments O4-12 and O4-13).
- O4-10 The comment includes introductory remarks stating that the Draft EIR is inadequate under CEQA as it relates to tribal cultural resources.
- Specific comments are addressed in subsequent responses.
- O4-11 The comment outlines the definition of tribal cultural resources under Public Resources Code (PRC) Section 21084.2. No response is necessary.
- O4-12 The comment states that the Draft EIR does not address the individual tribal cultural resources identified in the Integrative Survey.
- As stated in comment O4-11, the definition of tribal cultural resources is outlined in PRC Section 21084.2. The individual resources identified in the Integrative Survey were not identified as tribal cultural resources, because they were not evaluated for CRHR or local register eligibility, nor did the County, as lead agency, use its discretion to identify these individual resources as tribal cultural resources.
- Based on the best information available to the County when the Draft EIR was prepared, including information shared by the AMTB during formal consultation and obtained from the Integrative Survey performed for this project by the AMTB, Section 3.16, "Tribal Cultural Resources," of the Draft EIR adequately, and in good faith, describes the range of tribal cultural resources on the project site that may be affected by the project. The tribal cultural resources described and analyzed include the JTCL as a whole, including specific areas of concern, such as the La Poza and the river confluence, the Medicine Man Hill Viewshed, the Mount Pajaro and Sargent Hills Viewshed, the riparian corridor

around the existing greenhouse, ethnobotanical resources, other character-defining natural features (such as the *Beteval* Bluff), native habitats and ethnobotanical resources (including native plants and live oaks), and other cultural resources (such as indigenous archaeological sites and ceremonial areas).

The Final EIR presents results of the Cultural Keystone Places and Tribal Connections: Ethnographic Study for the Betabel Project, San Benito County, California (Ethnographic Study), commissioned by the applicant and performed by an ethnographer of the AMTB's choosing (Albion 2022), as a confidential appendix at the AMTB's request; portions of the Ethnographic Study that are not confidential have been incorporated into the EIR.

The environmental setting for tribal cultural resources discussed in the Draft EIR is revised, beginning on page 3.16-8 as follows:

Ethnographic Study Report

At the AMTB's request the County contracted with Albion Environmental, Inc. to prepare an ethnographic study of the project location to supplement the Integrative Cultural Resources Survey which is intended to further inform the ongoing tribal consultation process. The ethnographic study report will be completed during the public comment period for the Draft EIR and incorporated in the confidential appendix for the EIR as part of the administrative record and will be reflected in the Final EIR for certification, and the Mitigation Measure Monitoring and Reporting Program which may be adopted in conjunction with any project approval.

Ethnographic and ethnohistoric studies provide insights into Native American cultures, lifeways, and cultural landscapes. In doing so, such studies provide an understanding into the nature of Tribal beliefs and cultures as they are expressed today. Archival research and interviews with the AMTB occurred concurrently and were guided by research themes. The Ethnographic Study was divided into four phases: archival research, project area visits, tribal interviews, and reporting. Four research themes were identified: (1) Tribal History, Traditional Knowledge, Tribal Resources, and Cultural Landscapes; (2) Colonialism and Historic Trauma; (3) Cultural Persistence and Culture Bearers; and (4) Periods of Significance for the Tribe. These data were used in the analysis of the Tribal resources as tribal cultural resources (Albion 2022: 56).

TRIBAL CULTURAL RESOURCES

During the AB 52 consultation process, AMTB shared that JTCL is a tribal cultural resource and that it had been evaluated and recommended eligible for listing in the CRHR. Subsequently, the Ethnographic Study investigated the potential presence of tribal cultural resources within and directly adjacent to the project site through archival research and interviews with the AMTB. The AMTB shared that the project is also located within the following tribal cultural resources (Albion 2022):

- ▶ Ascensión Solórsano's Historical Period Traditional Plant Gathering Area,
- ▶ Juristac and Isleta/Isleta Village Area,
- ▶ Sanchez Adobe (CA-SBN-149H),
- ▶ Medicine Man Hill and Layaani Medicine Man Pole Viewshed, and
- ▶ Mount Pajaro and Sargent Hills Viewshed.

As described in detail below, AMTB identified contributing elements of two of these resources. The California Blackberry Gathering Area is a contributing element of Ascensión Solórsano's Historical Period Traditional Plant Gathering Area, and the Juristac Ceremonial

Grounds, Dancing Grounds, and *La Poza* are contributing elements to the *Juristac* and *Islita/Isleta* Village Area (Albion 2022).

The Ethnographic Study also identified three additional resources that are located immediately adjacent to and outside the project site and that are of importance because of their close proximity to the project area: *Betevel* Bluff and indigenous archaeological sites CA-SCL-579 (P-43-000574) and P-35-000528.

The revisions are continued on page 3.16-10, after the description of the JTCL is complete and just before the beginning of Section 3.16.3.

Ascensión Solórsano's Historical Period Traditional Plant Gathering Area

This resource consists of an important historical period traditional plant gathering area that was frequented during the early 20th century by the Mutsun and the AMTB elder, healer, and culture bearer, Ascensión Solórsano. She plays a critical role in the Tribe's cultural persistence, identity, and revitalization. She is revered by the Tribe because she carried the traditions, practices, and ancestral history of the Tribe through her words, as shared with scholars. Her knowledge, her role as a traditional healer and a traditional food practitioner, and her dedication to preserving Tribal lifeways have been and will continue to be vital to the Tribe. The defining elements of Ascensión Solórsano's Historical Period Traditional Plant Gathering Area include plants and animals collected by precontact Mutsun, Ascensión Solórsano, her granddaughter, and other Mutsun. Based on the Integrative Survey, the California Blackberry Gathering Area, a dense patch of native plants that are important natural resources and that are used by the AMTB and other Native people for food, medicine, and dye, is a character-defining component of the resource (Albion 2022: 78–83).

Ascensión Solórsano's Historical Period Traditional Plant Gathering Area is eligible as an individual tribal cultural resource. It is recommended eligible under Criteria 2, 3, and 4 of the CRHR under the research themes Tribal History, Traditional Knowledge Tribal Resources, and Cultural Landscapes; Colonialism and Historic Trauma; Culture Bearers and Cultural Persistence; and Periods of Significance for the Tribe. The resource retains integrity of feeling, setting and location, association, materials, and workmanship; integrity of design is not applicable. Furthermore, this resource is also a contributing element to two existing tribal cultural resources: JTCL and *Betevel* Bluff (Albion 2022: 78–83).

***Juristac* and *Islita/Isleta* Village Area**

This resource includes several contributing elements, including the locations of *Islita/Isleta* Village, *Juristac* Village, the *Juristac* Ceremonial Grounds, the Dance Grounds, *La Poza*, CA-SCL-579 (P-43-000574), and P-35-000528. Together, these components constitute a distinct cultural and sacred spatial area. Of these contributing elements, two (CA-SCL-579 and P-35-000528) are located outside the project site and are not discussed further (Albion 2022: 83–90).

Islita/Isleta Village is the location of a historical period family ranch where Ms. Ascensión Solórsano lived with her family. The village of *Juristac* (distinct from the *Juristac* tribal cultural landscape) is an Indigenous village where people congregated at different times of the year for important ceremonies, including healing and renewal ceremonies, that were attended by *Kuksui* the Mutsun deity and spiritual leader. It is a place that has deep and strong connections with shaman, healers, and medicine men (Albion 2022: 83–90).

The *Juristac* Ceremonial Grounds and Dance Grounds were defined by the AMTB as one of the locations where ceremonies and ceremonial and cultural dances were conducted by the shaman, healers and medicine men, and individuals who were inducted into this practice (Albion 2022: 83–90).

La Poza is the sacred pond, and a natural feature, where the shaman, healers, and medicine men bathed before the ceremonies. It is also a place well known and present in Tribal memories, where families visited and gathered for social events (Albion 2022: 83–90).

The Juristac and Isleta/Isleta Village Area is eligible as an individual tribal cultural resource. It is recommended eligible under Criteria 1, 2, 3, and 4 of the CRHR under the research themes Tribal History, Traditional Knowledge, Tribal Resources, and Cultural Landscapes; Colonialism and Historic Trauma; Culture Bearers and Cultural Persistence; and Periods of Significance for the Tribe. It retains integrity of association, location, feeling, materials, and workmanship; integrity of design is not applicable. In addition, this resource is a contributing element to the existing JTCL tribal cultural landscape (Albion 2022: 83–90).

Sanchez Adobe

This resource is the historic-era archaeological site CA-SBN-149H (P-35-000143), also known as the Sanchez Adobe. Native Americans, including Mutsun people, worked as laborers and built the adobe for Juan Maria and Encarnacion Sanchez in 1844. These Native people were skilled builders and were ancestors of today's Mutsun, AMTB members, and other Indigenous people. In addition, the Native laborers lived near the adobe even after construction was completed because Native people worked at the adobe and also in the orchards and fields associated with the adobe (Albion 2022: 90–92).

The Sanchez Adobe is eligible as an individual tribal cultural resource. It is eligible under Criteria 1 and 4 of the CRHR under the research themes Tribal History, Traditional Knowledge, Tribal Resources, and Cultural Landscapes; Colonialism and Historic Trauma; and Periods of Significance for the Tribe. It retains integrity of association, setting, location, and feeling. Integrity of workmanship, integrity of materials, and integrity of design are not considered for these criteria (Albion 2022: 90–92).

Medicine Man Hill and Layaani Medicine Man Pole Viewshed

Medicine Man Hill and the location of the Layaani Medicine Man Pole together form a Tribal resource located outside the project site. Nevertheless, it plays a key role in the viewshed Tribal resources. Medicine Man Hill is a place of significance for the Tribe both because it serves as a landmark as a place of spiritual power associated with shamans and because it is located within JTCL. The Layaani Pole, which was located on Medicine Man Hill, lends additional importance to this resource because it was a cultural and spiritual landmark that was seen from a distance by Mutsun people. In addition, their viewshed and view of both of them is of great significance to the AMTB and the Mutsun people because they are "associated with traditional ceremonies and with Mutsun cultural memories of visiting La Poza and traditional ceremonial grounds" (Apodaca 2022: 23). The view of Medicine Man Hill and the location of Layaani are also of immense cultural importance because this view from the project site provides a "prominent line-of-sight vantage point" and an unobstructed view (Apodaca 2022: 24). Viewsheds from the project site provide excellent views of this resource (Albion 2022: 92–96).

The defining elements of the Medicine Man Hill and Layaani Medicine Man Pole Viewshed include the location of these places within the larger JTCL near La Poza, the Juristac Ceremonial and Dance Grounds, and Betevel Bluff (Albion 2022: 92–96).

The Medicine Man Pole, the location of the Layaani Medicine Man Pole, and their viewshed are eligible as an individual tribal cultural resource. It is recommended eligible under Criteria 1, 2, and 4 of the CRHR under the research themes Tribal History, Traditional Knowledge, Tribal Resources, and Cultural Landscapes; Colonialism and Historic Trauma; and Periods of Significance for the Tribe. It retains integrity of association, setting, location, and feeling.

Integrity of workmanship, integrity of materials, and integrity of design are not considered for these criteria (Albion 2022: 92–96).

Mount Pajaro and Sargent Hills Viewshed

The viewshed of Mount Pajaro and Sargent Hills is a panoramic view from the project site and stretches from the mountain peak in the distant west to the Sargent Hills (including the JTCL) to the west and the northwest. Sargent Hills are an integral component of the JTCL associated with traditional ceremonies, specific spirit beings, and ancestral routes of travel. The upper and lower benches at Betabel provide unique vantage points from which to view these culturally significant landforms. From a Tribal cultural standpoint, being in the presence of and within sight of sacred mountains confers spiritual wellness. The viewshed includes prominent geographical natural features that are important in the Tribe's worldview and culture. This viewshed of these important spiritual and ceremonial places bestows spiritual wellness to the Mutsun people and the AMTB. The resource has immense potential to provide important cultural information to the AMTB as part of the Tribe's revitalization efforts to teach and transfer traditional knowledge to the youth of the Tribe and to continue with their persistence and revitalization efforts. The viewshed of Mount Pajaro and Sargent Hills from the central and southern portions of the project site is excellent. The view of Mount Pajaro from the northern portion of the project site is obstructed but not that of the Sargent Hills. The defining elements of the viewshed of Mount Pajaro and Sargent Hills include a significant portion of the Ascensión Solórsano's Historical Period Traditional Plant Gathering Area, JTCL, *Betevel* Bluff, and Mount Pajaro (Albion 2022: 97–100).

The Mount Pajaro and Sargent Hills Viewshed is recommended eligible for the CRHR under Criterion 4 under the research themes Tribal History, Traditional Knowledge, Tribal Resources, and Cultural Landscapes; Colonialism and Historic Trauma; and Periods of Significance for the Tribe. The resource retains the integrity of location, setting, association, feeling and workmanship. The integrity of design is not a contributing aspect (Albion 2022: 97–100).

Betevel Bluff

The *Betevel* Bluff holds a special place and plays a central role in the Mutsun and the AMTB sacred ceremonies, spirituality, and oral history. It is a place of power because it is the route that the creator deity *Kuksui* took as he descended the slope to the nearby village of *Juristac* as part of the Big Head Dance, and it is also the location where an important Mutsun storyteller, *Noyola*, faced the Mutsun Evil Spirit. The shamans, healers, and medicine men of the village of *Juristac* and the JTCL used *Betevel* Bluff for their ceremonial events. Ascensión Solórsano collected medicinal plants at the base of the *Betevel* Bluff. It is important to the Mutsun and the AMTB for its place in different time periods, including Indigenous lifeways before colonialism, Indigenous resistance and survival, and the life and times of Ascensión Solórsano. The *Betevel* Bluff is a place of power in the Indigenous lives of the past and the present (Albion 2022: 100–101).

The *Betevel* Bluff has been previously evaluated and recommended eligible for listing as a tribal cultural resource under CRHR Criteria 1, 2, 3, and 4 under the research themes Tribal History, Traditional Knowledge, Tribal Resources, and Cultural Landscapes; Culture Bearers and Cultural Persistence; and Periods of Significance for the Tribe. This resource was evaluated as an individual tribal cultural resource and also as a contributing element to JTCL (Albion 2022: 100–101).

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O4-13

The comment points to the Ethnographic Study for the Betabel project to corroborate individual resources as tribal cultural resources.

At the time of preparation of the Draft EIR, the Ethnographic Study had not been completed. This is noted on page 3.16-8 of the Draft EIR. Nevertheless, the Draft EIR specifically analyzes how the project would affect the majority of each of these sites within the tribal cultural landscape. In general, Impact 3.16-1 describes how the project would avoid impacts on ethnobotanical resources and may cause minimal impacts on some of the viewsheds (Mount Pajaro and Sargent Hills) but how the project and some of the project alternatives may cause moderate to significant impacts on the Medicine Man Hill viewshed. No development would occur in the La Poza and river confluence area. As stated on pages 3.16-6 and 3.16-7 of the Draft EIR, as related to the village areas of *Juristac* and *Isleta/Isleta* and the associated ceremonial grounds and dance grounds, the precise location of these elements was stated as unconfirmed in the Integrative Survey. Additionally, the Sanchez Adobe, although not addressed in Section 3.16, "Tribal Cultural Resources," was addressed in Section 3.5, "Cultural Resources." Visual impacts related to *Betavel* Bluff were addressed under Impact 3.1-2 in Section 3.1, "Aesthetics."

The Ethnographic Study provides further detail regarding information identified in the Draft EIR and associated background reports. The features identified in the Ethnographic Study are part of the tribal cultural landscape that was already disclosed in the Draft EIR. The additional detail merely clarifies and amplifies the analysis in the Draft EIR and does not identify a new significant impact, nor does the additional detail show any increase in the severity of the impacts to those resources (refer to State CEQA Guidelines Section 15088.5[a] and [b]). The hypothetical presented by the comment is inapplicable here, as the Draft EIR here found impacts to the JTCL, including its affected constituent resources, to be significant and unavoidable. Impact 3.16-1, beginning on page 3.16-11 of the Draft EIR, is revised as follows:

Impact 3.16-1: Cause a Substantial Adverse Change in the Significance of a Tribal Cultural Resources

Consultation with AMTB identified JTCL as a tribal cultural resources that has been recommended eligible under CRHR criteria 1, 2, 3, and 4. JTCL therefore meets the definition of a tribal cultural resource for the purposes of CEQA under PRC Section 21074. Since release of the Draft EIR, five additional tribal cultural resources have been identified on the project site and within the boundaries of JTCL, pursuant to PRC Section 21074. Because development of the project (including project-related ground-disturbing activities) would result in damage to this these tribal cultural resources, the project could cause a **significant** impact.

The JTCL has been identified as a tribal cultural resource pursuant to PRC Section 21074. As described in the Integrative Cultural Resource Survey, JTCL constitutes a tangible place of connection with tribal ancestors, and place of reverence and remembrance. Development in this tribal cultural resources landscape and the associated traffic, noise, and visual obstruction of natural viewsheds, could alter the natural setting potentially causing a substantial adverse change in the significance of this tribal cultural resource. Specific areas of concern identified in the Integrative Survey included: 1) La Poza and the river confluence; 2) Medicine Man Hill Viewshed; 3) Mount Pajaro and Sargent Hills Viewshed; and 4) the Peninsula (riparian corridor, around the existing greenhouse).

No development is proposed in the La Poza and the river confluence area or the Peninsula; this area is of concern primary related to ethnobotanical resources in the area. Previous site plans had included public access trails in the La Poza area; however, after the AMTB expressed concerns, the project applicant removed these features. As described in Chapter 2, "Project Description," trails are no longer included in the proposed project. This area most

closely corresponds to the "Riparian Woodland" description provided in Section 3.4, "Biological Resources." As discussed in that section, only 0.2 acres of riparian woodland would be disturbed by project implementation. The Integrative Cultural Resource Survey provides recommendations related to ethnobotanical management in these areas, including the protection of mature elderberry (*Sambucus nigra*) trees and continued preservation of existing populations of California blackberry (*Rubus ursinus*), mugwort (*Artemisia douglasiana*), arroyo willow (*Salix lasiolepis*), California rose (*Rosa californica*).

Since release of the Draft EIR, the Ethnographic Study for the Betabel project site has been completed, as described above. The study identified five additional tribal cultural resources on the project site and within the boundaries of JTCL, pursuant to PRC Section 21074:

- ▶ Ascensión Solórsano's Historical Period Traditional Plant Gathering Area. The California Blackberry Gathering Area is a contributing element to this traditional plant gathering area. Together, they signify the strong relationship between the natural environment and the AMTB. The area includes a riparian corridor along the Pajaro River and at the base of the bluffs. This resource is also a contributing element to two existing tribal cultural resources: JTCL and Betevel Bluff.
- ▶ Juristac and Isleta/Isleta Village Area. Three additional contributing elements are located within the project site: the Juristac Ceremonial Grounds, the Dance Grounds, and La Poza. The village of Juristac is the location where people congregated for important ceremonies that were attended by Kuksui the Mutsun deity and spiritual leader. Isleta/Isleta Village is the location of a historical period family ranch where Ascensión Solórsano, the AMTB's elder, healer, and culture bearer lived with her family. In addition, this resource is a contributing element to the existing JTCL tribal cultural resource.
- ▶ Sanchez Adobe (CA-SBN-149H). The historic-era archaeological site is located within the traditional ancestral lands of the Mutsun. The adobe and its associated fields and orchard(s) have importance in oral tribal history given that Native people, including Mutsun, built the adobe and worked there. The resource is not a contributor to the JTCL tribal cultural resource.
- ▶ Medicine Man Hill and Layaani Medicine Man Pole Viewshed. Although Medicine Man Hill and the Layaani Medicine Man Pole are located outside the project site, their viewshed and the view of both of them are of great significance to the AMTB and the Mutsun people because they are associated with traditional ceremonies and cultural memories. The resource is a contributor to the JTCL tribal cultural resource.
- ▶ Mount Pajaro and Sargent Hills Viewshed. Although Mount Pajaro and Sargent Hills are located outside the project site, their viewshed is associated with traditional ceremonies, specific spirit beings, and ancestral routes of travel. These prominent geographical natural features are important in the Tribe's worldview and culture. The resource is a contributor to the JTCL tribal cultural resource.

Grading, excavation, and construction of the project would directly affect portions of the Juristac and Isleta/Isleta Village Area and Ascensión Solórsano's Historical Period Traditional Plant Gathering Area. As related to the Juristac and Isleta/Isleta Village Area, the contributing elements of the Ceremonial Grounds and La Poza would not be developed or disturbed. A small portion of the northern boundary of the village location's contributing element would be disturbed, as would the northern portion of the Dance Grounds. As related to Ascensión Solórsano's Historical Period Traditional Plant Gathering Area, the contributing element of the California Blackberry Gathering Area would not be developed or disturbed.

Development of the project could also affect the Sanchez Adobe because excavation would be required for underground fuel storage tanks and building foundations, as discussed in Section 3.5, "Cultural Resources." This would require deep soil excavations, which could encounter indigenous materials. During the Integrative Survey, two auger units were carried out in the area adjacent to the Betabel RV Resort storage parking lot fence line. These augers along the fence line were placed in an effort to encounter historical refuse deposits related to the location of the Sanchez Adobe. The survey did not identify any new indigenous archaeological sites on the project site. Isolated artifacts were encountered in one section of the southern portion of the disturbance area and near the existing greenhouse (Apodaca 2022).

As related to the Medicine Man Hill viewshed, portions of the proposed project that would be clustered around the existing development (Betabel RV Park, approved farm stand), the gas station, convenience store, restaurant, concession stand and visitors center, would result in only moderate impacts to the Medicine Man Hill viewshed. However, proposed structures on the southern portion of the site including the motel, outdoor movie screen, outdoor 500-seat event center and restroom building represent significant development of open space lands that would obstruct the Medicine Man Hill Viewshed from vantages including much of the surrounding open space area. Visual impacts to the landscape are also addressed in Section 3.1, "Aesthetics."

The Mount Pajaro and Sargent Hills viewshed is anticipated to be minimally impacted by the project, due to the concentration of proposed structures along Betabel Road. Unobstructed views of Mount Pajaro and the Sargent Hills of the JTCL will still be obtained from open space areas on the southern portion of the project site.

The project site is located immediately adjacent to the Betevel Bluff tribal cultural resource. Although the project would not directly affect the resource, given its nature as a place of sacred significance and power, development within the project site would have significant indirect adverse effects on the viewshed of the tribal cultural resource. AMTB has shared that the project would alter the view of Betevel Bluff, given that the project site is immediately adjacent to it; therefore, the indirect impacts would adversely affect the tribal cultural resource (Albion 2022: 100–101).

Historical records show that large portions of the project site have been used for intensive agricultural activities, including row crop and orchard cultivation, a railroad spur and packing and shipping facilities and operations which are likely to have disturbed older pre-existing Native American cultural resources on the site. The project site's inclusion in JTCL evidences a very high likelihood of locating, and potentially damaging or destroying, physical objects connected to the AMTB during development of the project. Implementation of the project would involve ground disturbing activities (e.g., excavation) to develop commercial buildings and associated utilities and infrastructure. Although the study area is largely disturbed by past agricultural activities and residential development, research in the area has demonstrated there is high potential for the presence of subsurface cultural resources, including objects and features that would qualify as tribal cultural resources.

Because development of the project would result in damage to tribal cultural resources, the potential impact would be **significant**.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

Footnote 3 of the comment also points to the Sargent Quarry Draft EIR (released in July 2022) as an example of how a lead agency should address landscape resources and its individual contributors. See response to comment O4-19, related to the Sargent Quarry Draft EIR.

O4-14

The comment states that the Draft EIR prematurely concluded that cumulative impacts would be significant and unavoidable without fully addressing the individual impacts and that discussion of cumulative impacts on a landscape level does not tell the public what impacts would affect individual resources.

A tribal cultural landscape, by definition, contains significant individual tribal cultural resources. Those individual tribal cultural resources are components of what makes a landscape a tribal cultural landscape. The whole of the tribal cultural landscape is greater than the sum of its individual parts (Caltrans 1999; NPS 1995). As discussed in response to comment O4-13, although the features had not been evaluated for CRHR eligibility or as individual tribal cultural resources at the time, they were analyzed under Impact 3.16-1 of Section 3.16, "Tribal Cultural Resources." The additional detail merely clarifies and amplifies the analysis in the Draft EIR and does not identify a new significant impact, nor does the additional detail show any increase in the severity of the impacts to those resources (refer to State CEQA Guidelines Section 15088.5[a] and [b]). Additionally, the project-level impacts on the JTCL were known to be significant and unavoidable because, as stated on page 3.6-13, "AMTB has communicated to the County that any development on the project site will cause a significant impact, and that only full avoidance will reduce the impacts to a less-than-significant level."

The evaluation of cumulative impacts is meant to address the impacts of other near-term projects in addition to those of the proposed project. Because the project-level impacts are significant and unavoidable, other projects being considered in the cumulative analysis, including the Sargent Quarry Project, would clearly contribute to this finding. Draft EIR Chapter 4, "Cumulative Impacts," specifically identifies the Sargent Quarry Project as part of the cumulative setting (Draft EIR page 4-4).

O4-15

The comment states that the treatment of the Ethnographic Study violates CEQA.

The County agreed to accommodate preparation of an Ethnographic Study, and its inclusion in the EIR, as part of good-faith consultations with and at the request of the AMTB. As stated in response to comment O4-13, the Ethnographic Study provides further clarity and detail regarding information identified in the Draft EIR and cited reports, but does not identify a new significant impact; nor does it identify any increase in the severity of impacts to the resources. The additional detail merely clarifies and amplifies the analysis in the Draft EIR (refer to State CEQA Guidelines Section 15088.5[a] and [b]).

O4-16

The comment states that the County should have delayed release of the Draft EIR until the Ethnographic Study was complete. The Ethnographic Study collects, synthesizes, and analyzes ethnographic data, including personal interviews with tribal members. The features identified in the study are part of the JTCL as disclosed in the Draft EIR. By presenting both the Ethnographic Study and the Integrative Survey, the EIR presents the fullest possible picture of the available data on tribal cultural resources related to the project site.

Further, delay of the release of the Draft EIR until completion of the Ethnographic Study would not have allowed decision makers and the public to gain a more accurate sense of the project's tribal cultural resource impacts. Because the Ethnographic Study is confidential, the County's analysis and summary of the Ethnographic Study are included in the Final EIR for the decision makers. The County's decision makers consider and adopt the Final EIR and mitigation measures for the Project before voting on Project approval. Similarly for the public, the AMTB has required that the Ethnographic Study remain confidential, so the public will never see it. Not including the Ethnographic Study in a confidential appendix to the Draft EIR but rather including it only in a confidential appendix to the Final EIR has no practical effect on the public's consideration of this topic.

- O4-17 The comment notes that the JTCL is home to *Kuksui* and important ceremonies, including Big Head dances.
- This information is included in the Draft EIR, on pages 3.16-5 through 3.16-6 of Section 3.16, "Tribal Cultural Resources."
- O4-18 The comment states that the Draft EIR fails to discuss impacts on spiritual and religious values and that these social changes must be addressed.
- CEQA Guidelines Section 15064 states that "[e]conomic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment." Development of the project, a physical change, is already addressed under Impact 3.16-1 on page 3.16-11 of the Draft EIR. This physical change would affect the spiritual and religious values of the project site; however, this does not constitute an additional physical change that must be addressed in the EIR in addition to the existing analysis of impacts on tribal cultural resources.
- Additionally, the AMTB has not had access to any of the features on the project site for many decades; thus, under existing conditions and during that time, dances and ceremonies have not been held at this location. The tribal cultural easement required to be granted under Mitigation Measure 3.16-1d would allow for dances and ceremonies at the project site to resume, thereby increasing legal tribal access to the property for ceremonial and cultural purposes, restoring spiritual and religious values to the site.
- O4-19 The comment states that the mitigation measures are inadequate because the Draft EIR was released before sufficient information obtained through the AB 52 process was available to inform the decisions.
- Consultation under AB 52 is considered to be an ongoing process and does not need to be completed before release of the Draft EIR. Consultation is considered concluded when either (1) the parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource, or (2) a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached (PRC Section 21080.3.2[b]).
- The comment also states that individual mitigation measures are needed for individual resources in the JTCL. However, information received after release of the Draft EIR, namely the Ethnographic Study, did not suggest additional or revised mitigation. It should be noted that the Draft EIR was available to the authors of the Ethnographic Study. During AB 52 meetings and discussions, the AMTB did not offer comments on the mitigation measures contained in the Draft EIR. Additionally, the Integrative Survey, as authored by the AMTB, did not propose mitigation measures. The comment also does not suggest any mitigation measures that could be incorporated. There are no known additional mitigation measures, or revisions to existing measures, that should be added to the EIR to address individual resources.
- It also should be noted that although the "Cultural and Tribal Cultural Resources" section of the Sargent Quarry Draft EIR has two impact discussions, one for the contributing features (Impact 3.5-4) and one for the JTCL as a whole (Impact 3.5-5), it does not contain individual mitigation measures for individual resources. The mitigation measure for the contributing features is a requirement for a conservation easement; the mitigation measure for the JTCL is for the preparation of a comprehensive list of plant species that contribute to the significance of the JTCL.
- O4-20 The comment states that Mitigation Measure 3.16-1d has not been fully developed in light of the Vegetation Management Plan mitigation measure (Mitigation Measure 3.18-2) and that the AB 52 process was rushed. The comment also states that Mitigation Measure 3.18-2, on page 3.18-12 of Section 3.18, "Wildfire," of the Draft EIR, contains no performance standards or other requirements for deferral.

Following release of the Draft EIR, the County and the AMTB continued consultation pursuant to AB 52. In those consultations, the parties discussed revisions to this mitigation measure, and the AMTB has now proposed changes to this measure. Mitigation Measure 3.16-1d on page 3.16-13 of the Draft EIR is revised as follows:

Mitigation Measure 3.16-1d: Establish a Tribal Cultural Resources Conservation Easement

~~The County, applicant, and AMTB shall enter into a Memorandum of Agreement (MOA) to implement authorized activities identified in a shall offer a grant of cultural conservation easement to AMTB and/or Amah Mutsun Land Trust (AMLT) prior to issuance of building permits. This The cultural conservation easement shall apply to the undeveloped area adjacent to the riparian corridor of the property of approximately 50-80 acres. The purposes of the proposed cultural conservation easement shall be to protect and preserve include, but not be limited to, protection and preservation of tribal cultural resources, and to facilitate of AMTB and AMLT's use of the area for cultural, ethnobotanical, restoration, stewardship, research, and education activities, in perpetuity. The MOA have to be compatible~~ The cultural conservation easement shall contain terms to ensure its compatibility with the vegetation management plan identified in Mitigation Measure 3.18-2.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

As described on Draft EIR pages 3.18-11 and 3.18-12, the project also would be required to comply with County Code and California Fire Code requirements that include roadway design standards, roadside vegetation management standards, water supply standards for firefighting, motor fuel dispensing design standards, and building standards for fire resistance (roofing design, attic ventilation, exterior wall design, and ancillary building standards). Mitigation Measure 3.18-2 specifically addresses the interface of the development area to the undeveloped area that would be placed in a tribal cultural resource conservation easement. This mitigation measure includes performance standards that require approval of the vegetation management plan by the San Benito County Fire Marshall, scheduling of maintenance, fire protection standards during vegetation removal activities, and vegetation clearing.

The County is nonetheless proposing modifications to Mitigation Measure 3.18-2 on Draft EIR page 3.18-12 to clarify its application to address the development area. Compliance with CCR Title, 14, Section 1299.03 would require defensible space managed in two distinct zones (Zone 1 and Zone 2). Zone 1 requires vegetation management from the building out to 30 feet (but not beyond the property line) that includes removal of all dead or dying vegetation and vegetation debris, removal of dead tree or shrub branches that overhang roofs, and removal of flammable vegetation and items that could catch fire adjacent to decks, balconies, and stairs. Zone 2 requires vegetation management in the area between 30 feet and 100 feet from the building (but not beyond the property line) that includes creation of horizontal and vertical spacing among trees and shrubs, as well as removal of dead and dying woody surface fuels and grass/forbs management.

Mitigation Measure 3.18-2: Implementation of Vegetation Management and Maintenance Plan for Undeveloped Area

Prior to project construction activities, the project applicant shall prepare a vegetation management and maintenance plan for the undeveloped area consistent with the requirements of PRC Section 4291. The vegetation management and maintenance plan outline shall address routine maintenance activities for the management of fuel loads and maintaining defensible space during project construction and operation to the satisfaction

of the San Benito County Fire Marshall. Implementation actions and performance standards that shall be considered as part of for the plan will include, but are not limited to:

- ▶ Establishment of a 100-foot defensible space for project buildings, structures, and water storage facilities within the development site, but not beyond the boundary of the development area as shown in Figure 2-1. This defensible space shall be maintained in two zones (Zone 1 and Zone 2) from each building, structure, and water storage facility. The vegetation treatment requirements for each zone will be consistent with the requirements of CCR Title 14, Section 1299.03:
 - Vegetation management techniques for fire hazard mitigation within the defensible space area, including thinning, pruning, removing or otherwise altering vegetation to reduce the potential for ignitions and to modify potential fire behavior; different vegetation management techniques shall be identified, depending on vegetation type, location, condition, and configuration;
 - Treatment actions will be limited to eradication or control of invasive plants, removal of uncharacteristic fuel loads (e.g., removing dead or dying vegetation), trimming of woody species as necessary, and select thinning of vegetation to restore densities that are characteristic of healthy stands of the vegetation;
- ▶ Fire protection measures for vegetation removal activities associated with construction of the project and vegetation management activities that may will include:
 - Fire watch personnel responsible for watching for the occurrence of fire during and after equipment use shall be identified.
 - Equipment shall not be refueled while in operation and not until after a cooldown period.
 - Water and tools dedicated to firefighting shall be on hand in the area of vegetation removal activities at all times.
- ▶ ~~Fuel management requirements, including clearing vegetation within 100 feet of structures;~~
- ▶ Schedule of vegetation management activities during the year;
- ▶ Identification of the funding source for vegetational management activities;
- ▶ Installation of fire-resistant fencing along the development perimeter of the open space development area to prohibit trespass into the undeveloped area (with the exception of access to the proposed livestock corral and greenhouse structures); and
- ▶ Best management practices required by the state and County standards (e.g., implementation of a stormwater pollution prevention plan) implemented to avoid and/or minimize impacts associated with soil erosion, biological resources, cultural resources, and tribal cultural resources. This will include implementation of applicable mitigation measures adopted for the project that address biological resources, cultural resources, and tribal cultural resources adopted for the project.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

- O4-21 The comment states that Mitigation Measure 3.16-1b should be revised to allow for 60 days' notice to the AMTB prior to earth-disturbing activities.
- To balance the AMTB's request for additional notice with the applicant's need for contractors to stay on schedule, this measure is amended to require 14 days' notice. Mitigation Measure 3.16-1b on page 3.16-13 of the Draft EIR is revised as follows:
- Mitigation Measure 3.16-1b: Implement Tribal Monitoring**
- All ground disturbing activities, including any preparatory grading, tree removal, or vegetation clearing, within the project site will be monitored by a paid tribal monitor provided by the AMTB. Notification shall be provided a minimum of ~~seven~~ 14 days prior to earth-disturbing activities; if AMTB does not respond in this time, activities may commence. The County shall contact the participating tribe a minimum of ~~seven~~ 14 days before beginning earthwork or other ground disturbing activities to ensure a tribal monitor is available; construction activities will proceed if no response is received 48 hours before ground disturbing activities. The tribal monitor shall complete daily monitoring logs that describe each day's activities, including construction activities, locations, soil, and any cultural materials identified. In the event that unanticipated archaeological or tribal cultural resources are discovered, including human remains, compliance with Mitigation Measure 3.16-1c would be required. The tribal monitor has the ability to halt work if a discovery occurs.
- This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.
- O4-22 The comment states that an alternative that eliminates or relocates the septic system at the southern end of the site should be evaluated.
- This is accomplished by Alternative 3, Modified Site Design Alternative, which eliminates the motel site and its parking lot. Elimination of the motel would remove the need for the septic system at the southern end of the site (Jerome, pers. Comm., 2022a). This is shown in Figure 6-1, on page 6-11 of the Draft EIR, as contrasted with Figure 6-2 on page 6-15, where the septic system is shown and labeled in the southern portion of the site.
- O4-23 The comment states that the Draft EIR fails to adequately analyze the Sanchez Adobe's significance or provide appropriate mitigation.
- Comment noted. See responses to comments O4-24 through O4-26.
- O4-24 The comment states that the Draft EIR did not consider the tribal importance of the Sanchez Adobe when analyzing the site's eligibility for the CRHR and that the site has additional archaeological value for what it might convey about indigenous laborers during this period.
- The comment is correct that tribal components were not evaluated for the resource in the cultural resources analysis when the Draft EIR was prepared. Although indigenous materials were located during the pedestrian survey, there was not enough information to draw any conclusions about the resource and components. Therefore, gaining knowledge about the Sanchez Adobe and related tribal components was added as part of the research design for the treatment plan. Consideration of tribal significance would not have changed the site's eligibility for the CRHR or impact analysis in the Draft EIR. Subsequently, the Ethnographic Study has evaluated the Sanchez Adobe for tribal importance. However, this evaluation merely clarifies and amplifies the Draft EIR's analysis.
- O4-25 The comment states that Mitigation Measure 3.5-1a is inadequate, the AMTB needs to be involved with development of the treatment plan, and CEQA requires preservation in place.

Treatment options under PRC Section 21083.2 to mitigate impacts on archaeological resources include activities that preserve such resources in place in an undisturbed state; however, preservation in place is not required. Specifically, PRC Section 21083.2(b) states, "If it can be demonstrated that a project will cause damage to a unique archaeological resource, the lead agency *may* require reasonable efforts to be made to permit any or all of these resources to be preserved in place or left in an undisturbed state [emphasis added]."

Mitigation Measure 3.5-1a, on page 3.5-13 of the Draft EIR, is revised to include the AMTB as follows:

Mitigation Measure 3.5-1a: Prepare and Implement a Treatment Plan for the Sanchez Adobe

Before ground disturbance associated with the project, the County and the applicant shall finalize a treatment plan specific to the Sanchez Adobe site. The plan shall be developed in collaboration with the Amah Mutsun Tribal Band and submitted to the Tribe for final approval 30 days prior to ground disturbance. If the Tribe does not reply within this time, work may commence. The treatment plan shall include, but is not limited to:

- ▶ A research design which includes both pre-contact and historic-era questions;
- ▶ excavation strategy;
- ▶ archaeological and tribal monitoring (as outlined in Mitigation Measure 3.16-1;
- ▶ resource significance assessment methods;
- ▶ discovery, preservation, and evaluation methods;
- ▶ acquisition of a curation agreement and identification of the party responsible for paying the fees,
- ▶ reporting requirements; and
- ▶ health and safety procedures.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O4-26

The comment requests that Mitigation Measures 3.5-1b and 3.5-1c be revised to incorporate the tribal importance of the Sanchez Adobe.

Mitigation Measure 3.5-1b does not need to cross reference Mitigation Measure 3.16-1b because tribal monitoring is addressed in Mitigation Measure 3.5-1a, as shown in response to comment O4-25. Mitigation Measure 3.5-1c currently cross-references Mitigation Measure 3.16-1c as requested by the comment; therefore, no revision is needed to that measure.

The following text changes are made to Mitigation Measure 3.5-1b on Draft EIR pages 3.5-13 and 3.5-14:

Mitigation Measure 3.5-1b: Archaeological Monitor

Before the start of ground disturbing activities, a qualified archaeologist meeting the United States Secretary of Interior guidelines for professional archaeologists shall be retained to monitor construction activities. The monitor shall complete daily monitoring logs that describe each day's activities, including construction activities, locations, soil, and any cultural materials identified.

Before any ground disturbing construction activities, the monitor shall develop a construction worker awareness brochure for all construction personnel and supervisors who will have the potential to encounter cultural resources. The brochure shall be prepared in collaboration with

the Amah Mutsun Tribal Band and submitted to the Tribe 14 days prior to ground disturbance for final approval. If the Tribe does not reply within this time, work may commence. The topics to be addressed in the Worker Environmental Awareness Program will include, at a minimum:

- ▶ types of cultural resources expected in the project area;
- ▶ what to do if a worker encounters a possible resource;
- ▶ what to do if a worker encounters bones or possible bones; and
- ▶ penalties for removing or intentionally disturbing cultural resources, such as those identified in the Archeological Resources Protection Act.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O4-27

The comment states that mitigation measures for Impact 3.5-1 do not reduce the impact to a less-than-significant level, because an archaeological resource's value comes from its provenance, which is undermined when it is removed from its original location.

An archaeological resource's value is primarily, although not solely, associated with Criterion 4 of the CRHR, which questions whether the resource "has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California, or the nation." A data recovery plan, as outlined by Mitigation Measure 3.5-1a, requires the preparation of a research design that includes both precontact and historic-era questions. If materials are encountered during excavation, implementation of the treatment plan, which includes the research design, would add to the Sanchez Adobe's historical significance by having qualified professionals gather, classify, and report on information learned through buried materials. This would add to the current understanding of the resource, from an archaeological perspective and from a tribal perspective.

Further, previous investigations into the Sanchez Adobe site place the structural remains of the adobe and associated buildings under the Betabel RV Resort. The existing site boundaries place the resource outside of the project site, although the current investigations expanded the known boundaries of the site. Therefore, the main components that give the Sanchez Adobe its significance would be retained, and the resource would remain eligible for the CRHR.

O4-28

The comment asserts that the County failed to consult with the Native American Heritage Commission (NAHC) as a responsible agency with discretionary approval power.

The assertion is both factually and legally unsupported. The County consulted with NAHC to obtain the list of tribal contacts as required by AB 52, PRC Section 21080.3.1; sent letters to all contacts provided by NAHC; and initiated consultation with the AMTB in response to its request for consultation. The County also requested a search of NAHC's sacred lands file database, which generated a negative result.

NAHC's jurisdiction over projects affecting tribal cultural resources is limited to projects located on public property, per PRC Sections 5097.97 and 5097.94(g). With respect to private lands, NAHC's authority relates to making recommendations for acquisition by the state or another public agency for the purpose of facilitating or ensuring access thereto by Native Americans, per Section 5097.4(b) or making "recommendations to the Legislature relative to procedures that will voluntarily encourage private property owners to preserve and protect sacred places in a natural state and to allow appropriate access to Native American religionists for ceremonial or spiritual activities." NAHC has no operational or regulatory oversight or permitting authority on private lands and therefore is not a "responsible agency" as defined under PRC Section 21069 for purposes of this project.

PRC Section 5097.95 provides: "Each state and local agency shall cooperate with the commission [NAHC] in carrying out its duties under this chapter. Such cooperation shall include, but is not limited to, transmitting copies, at the commission's expense, of appropriate sections of all environmental impact reports relating to property identified by the commission as of special religious significance to Native Americans *or which is reasonably foreseeable as such property* [emphasis added]."

The County can transmit appropriate sections of the Draft EIR to NAHC even though NAHC has not identified the project site as having special religious significance, because Section 3.16, "Tribal Cultural Resources," describes the project site as having special religious significance to the AMTB, based on the Integrative Survey and Ethnographic Study. Sending the sections of the EIR to NAHC does not make it a responsible agency under CEQA. Providing that information will only assist NAHC in maintaining its inventory of Native American sacred sites.

O4-29 The comment states that the AMTB has expressed concerns regarding the impacts on the sacred viewshed associated with the JTCL and that the Draft EIR tribal cultural resources and aesthetics analyses fail to fully address project impacts. The comment states that the individual elements of the JTCL (specifically noting Medicine Man Hill and Sargent Hills/Mount Pajaro) need to be addressed in the impact analysis.

The reader is referred to responses to comments O4-12 and O4-13, regarding the Draft EIR impact analysis of tribal cultural resources. Draft EIR page 3.1-4 describes the scenic resources in the area that includes the JTCL and specifically notes that *Betevel* Bluff and Medicine Man Hill features are within the project area. As shown in Draft EIR Viewshed 1 (Draft EIR page 3.1-5), views of Sargent Hills/Mount Pajaro in the development area of the project are obstructed and do not contribute to the scenic corridor. This conclusion was also made in the Integrative Survey (Apadoca 2022: 36). Draft EIR Impact 3.1-2 adequately identifies that the project would result in significant and unavoidable impacts on scenic resources in the project area that include features of the JTCL (Pajaro River corridor, *Betevel* Bluff, and Medicine Man Hill) (see Draft EIR page 3.1-14). No further analysis is required to adequately address this impact.

O4-30 The comment states that the AMTB disagrees with the visual character impact conclusions because they do not acknowledge impacts on tribal cultural resources.

Draft EIR Impact 3.1-1 addresses whether the project would substantially degrade the existing visual character of the project. Vegetation on the site is predominantly grassland with denser vegetation and trees located along agricultural field edges, adjacent to development, and within riparian zones associated with the Pajaro and San Benito Rivers. Existing development in the project vicinity consists of residential uses that are generally one to two stories in height, the Betabel RV Resort, and industrial and school uses south of the site at the US 101 and State Route 129 interchange. The Betabel RV Resort, located north of the project site, as well as its supporting solar photovoltaic facility and flagpole, is the most readily visible development in the vicinity of the project site, but it is largely screened from view by a mix of landscaping (trees and shrubs). As described on Draft EIR page 3.1-13, the proposed development would substantially alter the visual character of the project site from predominantly undeveloped agricultural land to commercial development. It is important to note that the project site is not unique or distinctive relative to the visual character of the surrounding region in terms of surrounding agricultural, residential, industrial, and school uses. Furthermore, the project would include landscaping, which would soften the commercial character of the site and provide a buffer between the site and neighboring uses, including views along US 101. In addition, the proposed onsite facilities would be designed and constructed in a manner consistent with San Benito County General Plan policies and County Code requirements.

Scenic resource impacts (including those associated with the JTLC) are addressed separately under Draft EIR Impact 3.1-2. The reader is also referred to response to comment O4-29.

- O4-31 The comment states that the Draft EIR noise analysis fails to address noise impacts associated with the JTCL and the associated use of the site for worship and ceremony uses that may be established under a cultural access easement.
- Consistent with the requirements of CEQA, Section 3.12, "Noise," addresses project noise impacts associated with adverse impacts from increased noise levels from existing noise conditions (e.g., traffic noise from US 101) and exceedance of County noise standards. As documented on Draft EIR page 3.12-11, existing noise levels during the daytime range from 66 to 68 dB L_{eq} and from 78 to 83 dB L_{max} , while nighttime noise level ranged from 62 to 65 dB L_{eq} and from 77 to 83 dB L_{max} . The undeveloped portion of the project site is not currently being used by the AMTB for ceremonies or worship, and the specifics of its future use had not been identified when the Final EIR was prepared. In addition, project construction activities, operation, and operation of the outdoor event center would not exceed County noise standards or result in a substantial increase in existing noise levels, as identified on Draft EIR pages 3.12-16 through 3.12-27. Implementation of Draft EIR Mitigation Measure 3.12-3 would offset project impacts to traffic noise along Betabel Road.
- O4-32 The comment states that the Draft EIR project description is flawed.
- Draft EIR Chapter 2, "Project Description," provides a complete and clear description of the proposed project and is consistent with the content requirements of State CEQA Guidelines Section 15124.
- O4-33 The comment references the description of the approved farm stand in Draft EIR Chapter 2, "Project Description," and states that the project description fails to address the proposed changed use of the approved farm stand on the project site.
- As identified in Draft EIR Chapter 2, "Project Description," the farm stand was approved under an administrative permit separate from the project. The proposed project and its proposed conditional use permit do not propose any changes to the operation of the approved farm stand. The farm stand was a separate project that has independent utility. It would operate whether or not the proposed project is approved. As such, it is not part of the proposed project.
- O4-34 The comment states that the Draft EIR failed to factor the approved farm stand into its analysis and relies on the farm stand septic system to conclude that no significant impacts related to septic system operation would occur.
- The comment misstates the extent of the impact analysis. As identified on Draft EIR page 3.7-12, septic systems within the County are required to obtain a permit from the County Environmental Health Division (consistent with County General Plan policy requirements); the applicant seeking the permit must demonstrate the ability of the onsite system to meet the operational demand with minimal maintenance. More specifically, General Plan Policy LU 1.10 prohibits the installation of septic systems within areas with unsuitable soils. Additionally, as part of compliance with California Water Code Section 13290 and SWRCB Water Quality Control Policy for Siting, Design, Operation and Maintenance of Onsite Wastewater Systems, the septic system would be required to demonstrate that onsite wastewater disposal is addressed efficiently and would not result in offsite pollution or nuisance. Percolation tests and analysis of the tests would also be conducted as part of the in-depth geotechnical review of the project site to be conducted for California Building Code-compliance purposes. In March 2022, the applicant submitted septic system percolation calculations based on the results of the geotechnical analysis (2019 Earth Systems Geotechnical Report) for the project that address the adequacy of the site soils to accommodate generated wastewater (C3 Engineering 2022). Further, that a proposed project makes use of existing infrastructure does not render the past activities to construct that infrastructure part of the proposed project.
- O4-35 The comment states that the Draft EIR GHG emission analysis of the project fails to include the approved farm stand.

- The reader is referred to responses to comments O4-7 and O4-33, regarding the approved farm stand. No changes in its operation are included in the project.
- O4-36 The comment states that the Draft EIR project objectives violate CEQA and published case law because they are too narrow regarding revenue generation and preclude any alternatives other than the project. The comment asserts that the Draft EIR immediately dismisses off-site alternatives.
- The project objective referenced by the comment is only one of the five identified. The remaining four are consistent with the implementation of the San Benito County General Plan's land use designations, land use and economic development policies (Policies LU-5.2, LU-5.5, LU-5.6, ED-5.3, and ED-5.4), and the 2035 Vision for San Benito County identified in the General Plan. The project objectives are as follows:
- ▶ Honor the memory of Errol McDowell by generating revenues for the applicant to be used 100 percent for funding children's cancer research to cure childhood brain cancer (the number one cause of death by cancer in kids).
 - ▶ Provide a one-stop roadside experience, with visitor-oriented commercial uses that promote the local history and local economy.
 - ▶ Provide retail, hospitality, automotive service/fuel station, and feature local events to passengers driving on US 101.
 - ▶ Create destination attractions that celebrate San Benito County's unique heritage, including contemporary and performing arts, winemaking culture, agritourism, and San Benito history.
 - ▶ Create new employment opportunities within the County for residents, which are vital to the economic health of the community, allowing the County to make the most of the commercial and tax potential of the only portion of the County through which US 101 passes.
- Unlike *We Advocate*, these objectives do not merely describe the proposed project, but accurately reflect its underlying purpose. As was appropriate, these objectives were relied on to develop the range of alternatives. As identified in Draft EIR Chapter 6, "Alternatives," five alternatives are evaluated for the project. Draft EIR page 6-5 evaluates potential off-site alternatives and states that there are two other General Plan-designated regional commercial nodes beyond the project site. The analysis concludes that these alternative sites are either unavailable (westernmost node is currently proposed for conservation) or not controlled by the applicant and do not avoid the significant and unavoidable impacts identified for the project. These off-site alternatives would not avoid or substantially lessen the significant effects of the project consistent with State CEQA Guidelines Section 15126.6(a) and therefore were not evaluated further in the Draft EIR. The comment provides no suggestions of additional off-site alternatives that need to be evaluated.
- O4-37 The comment states that the Draft EIR biological analysis improperly addresses impacts on wildlife corridors (including for the mountain lion) and refers to information regarding this issue. The comment also states that the 80 acres of retained, underdeveloped area may not ultimately be restricted from development.
- The reader is referred to response to comment O6-3, regarding mountain lion concerns, and responses to comments O6-5 and O6-12, regarding wildlife movement impacts. The undeveloped area is General Plan designated and zoned for agricultural uses and is not planned for development. The reader is referred to response to comment O4-20, regarding the tribal cultural resources easement mitigation measure that would cover this area.
- O4-38 The comment states that the Draft EIR biological analysis failed to provide details on future permitting requirements and that the County did not consult with the California Department of Fish and Wildlife (CDFW).

The County provided the notice of preparation to CDFW to obtain input on biological resource issues to be addressed in the Draft EIR and subsequently provided a copy of the Draft EIR to CDFW for input on the adequacy of the Draft EIR. No comments or request for further consultation has been received from CDFW. Draft EIR pages 3.4-1 through 3.4-3 describe applicable federal and state regulations and permitting processes that could apply to the project. In addition, Draft EIR Mitigation Measures 3.4-1, 3.4-2a, 3.4-2e, 3.4-2f, 3.4-2i, 3.4-3, and 3.4-4 identify performance standards and/or permitting requirements consistent with resource agency requirements; consultation requirements; riparian protection and restoration standards associated with the potential need for a streambed alteration agreement; and permitting for impacts on waters of the United States and/or state that would involve CDFW, the U.S. Fish and Wildlife Service (USFWS), the RWQCB, and the U.S. Army Corps of Engineers.

O4-39 The comment requests that the corral be moved out of the riparian corridor.

The reader is referred to response to comment O6-34, which identifies changes to Draft EIR Mitigation Measure 3.4-3 that require that the final design of the corral place it 50 feet outside of the riparian corridor.

O4-40 The comment states that the Draft EIR fails to disclose water quality conditions in the project area and inadequately relies on compliance with regulations to address water quality.

Draft EIR page 3.10-8 (as noted in the comment) provides information regarding existing water quality conditions for the Pajaro and San Benito Rivers, which are located in the project area. In addition, Draft EIR page 3.10-1 specifically notes that the Pajaro and San Benito Rivers are currently designated impaired waters for sediment, metals, pathogens, pesticides, turbidity, and salinity. Draft EIR page 3.10-11 states that project construction would be subject to compliance with the NPDES Construction Stormwater General Permit (Order No. 2010-0014 DWQ). This permit requires the development of a site-specific SWPPP that would have to comply with established regulatory standards and would include site-specific BMPs that would reduce the potential for impacts on water quality resulting from stormwater runoff. Additionally, a hazardous materials spill response plan is a required component of the SWPPP and would reduce the potential that construction-related hazardous material spills would directly or indirectly affect water quality. The SWPPP would be prepared by a Qualified SWPPP Practitioner and would be designed to meet the stormwater control needs of the project. Anticipated BMPs are also identified on Draft EIR page 3.10-11 and are based on practices described in the California Stormwater Quality Association's Best Management Practice Handbook Portal, which includes data on the effectiveness of BMPs in addressing specific pollutants of concern. Operational water quality impacts would be addressed through project design features in compliance with Central Coast RWQCB compliance guidelines. The project site would be required to incorporate BMPs and LID stormwater management principles. This includes development of a new retention pond located west of the outdoor event area that would have a retention volume of 76,500 cubic feet, ensuring that the post-development 100-year runoff would not exceed the predevelopment 10-year runoff as required by San Benito County. These features would assist in the infiltration of water and removal of pollutants through vegetation and soil filtering. For example, proper design and use of infiltration and detention features have been documented in the City of South Lake Tahoe to remove fine sediment load by 96 percent (City of South Lake Tahoe 2017). The project would also include the following LID features (Draft EIR page 3.10-12):

- ▶ design the site so that impervious surfaces are disconnected,
- ▶ preserve native vegetation, and
- ▶ direct runoff to landscape.

The comment provides no technical analysis to counter the Draft EIR analysis or information presented on the California Stormwater Quality Association's Best Management Practice Handbook Portal.

- O4-41 The comment states that the Draft EIR's flooding impact and mitigation discussion fails to consider that 100-year flood events are occurring more frequently based on information provided in Exhibit 3 of the comment letter and that the County should address changing conditions related to climate change.
- Draft EIR pages 3.8-4 through 3.8-6 provide a summary of the environmental impacts of climate change globally, as well as in California. Project impacts involving increases in GHG emissions are addressed in Draft EIR Impact 3.8-1 (see Draft EIR pages 3.8-8 through 3.8-10). The project's potential to contribute to climate change through increases in GHG emissions would be mitigated by implementing Mitigation Measures 3.8-1a through 3.8-1f.
- Exhibit 3 of the comment letter provides no analysis of climate change impacts on Pajaro River flooding conditions. There is currently no detailed analysis of possible changes to flood events on the segments of the Pajaro River in the project area. Appendix L (Climate Assessment) of the Pajaro River Flood Risk Management Project, Santa Cruz and Monterey Counties, California concludes that large runoff events would be more likely because of climate change, but the impact these events would have on future flooding in the Pajaro River Basin is uncertain because the Hydrology Assessment Tool did not detect any trends in the recorded peak flow data (U.S. Army Corps of Engineers 2018). As documented in the *Open Water Journal* article "Analyzing the Effect of CMIP5 Climate Projections on Streamflow within the Pajaro River Basin," the changes in streamflow identified by the analysis were associated with a high degree of uncertainty. The conclusions of this study identified a noticeable increase in mean monthly streamflow during January months that could indicate more flooding; however, no specific changes in floodplain conditions or duration were identified (Bhandari et al. 2020).
- Flooding impacts identified in Draft EIR Impact 3.10-4 would be mitigated through implementation of Mitigation Measure 3.10-4, which would ensure that the final design of the project would offset the project's contribution to flooding conditions through retention, grading, and other appropriate measures (see Draft EIR pages 3.10-13 and 3.10-14) and would not alter the floodplain conditions in a way that would result in offsite floodplain, consistent with the requirements of General Plan Policies LU-1.8, LU-1.10, and HS-2.1 and County Code of Ordinances Chapter 23.31.
- Pursuant to State CEQA Guidelines Sections 15126.2(a) and 15126.4(a)(4), EIR impacts and mitigation measures are focused on impacts of the project and not impacts of the environment on the project, such as climate change. Environmental impact analyses under CEQA generally are not required to analyze the impact of existing environmental conditions on a project's future users or residents unless the proposed project might create environmental hazards or conditions or risk exacerbating existing environmental hazards or conditions (State CEQA Guidelines Section 15126.2[a]). In those specific instances, it is the project's impact on the environment and not the environment's impact on the project that compels an evaluation of how future residents or users may be affected by exacerbated conditions (*California Building Industry Association v. Bay Area Air Quality Management District* [2015] 62 Cal. 4th 369).
- O4-42 The comment states that the Draft EIR's GHG impact analysis understates the project's GHG contribution and incorrectly concludes that the project impacts would be mitigated.
- Project GHG emissions are documented in Draft EIR Impact 3.8-1 (pages 3.8-8 and 3.8-9), as well as Draft EIR Appendix C. The project's increase in GHG emissions would be mitigated by implementing Mitigation Measures 3.8-1a through 3.8-1f, which would offset all project emissions. The reader is referred to responses to comments O4-44 and O-45 for revisions to Mitigation Measures 3.8-1a and 3.8-1f.
- O4-43 The comment states that the Draft EIR's GHG impact analysis fails to address GHG emissions from the use of gasoline from the proposed onsite gas station.

As identified on Draft EIR pages 3.8-8 and 3.8-9, mobile source emissions from project vehicle trips would include those from customers using the proposed gas station. This analysis is appropriately limited to emissions attributable to the proposed project. GHG emissions related to the production of gasoline are not associated with the project and are addressed through the California Air Resources Board's Cap-and-Trade Program, while GHG emissions from vehicle use of gasoline in the state is addressed under the California Air Resources Board's Mobile Source Strategy.

O4-44 The comment states that Draft EIR Mitigation Measure 3.8-1a improperly defers consideration of photovoltaic feasibility.

The following edits are made to Mitigation Measure 3.8-1a on Draft EIR page 3.8-9 to refine the performance standard. While Draft EIR Table 3.6-1 provides an estimate of project electrical demand, the final design of project buildings and energy is not currently known. The total development area is constrained (26 acres) for the placement of photovoltaic panels. The mitigation measure commits the project to include solar in its design. Draft EIR Mitigation Measure 3.8-1d would also require that the project obtain electrical service from Central Coast Community Energy and select the least GHG-emitting option (e.g., currently 100 percent renewable [3Cprime]).

Mitigation Measure 3.8-1a: Install Photovoltaics

As part of site development, the project applicant shall include solar photovoltaics onsite capable of generating at least the equivalent of electricity required for project consumption per year based on final project design and electrical demand as part of the building permit submittal. The amount of megawatt hours that would be installed to offset electricity consumption would be based on feasibility of siting solar on the project site as part of the building permit submittal. If complete offset is not feasible because of final building and site design, electrical demand, and the area required to accommodate photovoltaic panels, the project applicant shall provide documentation demonstrating infeasibility to the satisfaction of the County and identify the extent of solar power generation that can be accommodated. Solar photovoltaics may be installed on building rooftops and ground-mounted over parking areas and other areas. As noted above, evidence of solar generation shall be included in final overall site plans and building plans to the County prior to issuance of building permits.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O4-45 The comment states that the offset GHG mitigation approach under Mitigation Measure 3.8-1f of the Draft EIR is invalid because it is similar to the mitigation approach used in the San Diego County Subsequent EIR for its Climate Action Plan as found in the *Golden Doors Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467. Specifically, the comment identifies issues associated with inadequate performance standards related to the confirmation of third-party registry offsets, geographic location of offsets (County, state, and out-of-state), and lack of identification of offsets required. The comment also states that the project would require out-of-state offset credits.

The *Golden Doors Properties, LLC v. County of San Diego* case addressed a proposed mitigation measure (M-GHG-1) identified in the San Diego County Climate Action Subsequent EIR that would programmatically address proposed general plan amendments not covered under the Climate Action Plan. This circumstance differs from the proposed project, which consists of a proposed conditional use permit for a specific development project that does not propose amendments to the San Benito County General Plan. While the comment states that out-of-state offsets would be required, a recent review (September 2022) of the California Action Reserve carbon market directory identifies carbon offsets being used in California by Bluesource/Anew (McCloud River Conservation-Based Forest Management Project and J. B. Hunt Transportation Efficient Project) and 3Degrees (Willits Woods Improved Forest Management).

Further, unlike the offset protocol found inadequate in *Golden Doors Properties, LLC v. County of San Diego*, Mitigation Measure 3.8-1f requires offsets to meet AB 32 standards, be additional, be subject to emissions programs equivalent to or stricter than California's if originating outside of the state, and the measure does not allow for international offsets or grant agency decisionmakers discretion with respect to feasibility without providing objective criteria to guide that discretion.

Nonetheless, the following edits are made to Draft EIR Mitigation Measure 3.8.1f on page 3.8-10 to refine performance standards:

Mitigation Measure 3.8-1f: Purchase Carbon Offset Credits

To reduce the remaining emissions after Implementation of Mitigation Measures 3.8-1a through 3.8-1e, the applicant shall compensate by purchasing offset GHG reduction credits for the remaining mass emissions associated with construction and operations after implementation of onsite GHG reductions associated with Mitigation Measure 3.8-1a through 3.8-1e. The level of GHG offsets needed to achieve the threshold may be calculated prior to approval of final construction drawings, so long as GHG estimates are prepared by a qualified GHG specialist retained by the County and based on substantial evidence. Further, to comply with this measure, any GHG offset purchased shall comply with the following parameters.

The GHG reductions achieved through an offset or through the purchase of a carbon credit must meet the following criteria:

- ▶ Real: They represent reductions actually achieved (not based on maximum permit levels).
- ▶ Additional/surplus: They are not already planned or required by regulation or policy (i.e., not double counted).
- ▶ Quantifiable: They are readily accounted for through process information and other reliable data.
- ▶ Enforceable: They are acquired through legally binding commitments/agreements.
- ▶ Validated: They are verified through the accurate means by a reliable third party.
- ▶ Permanent: They will remain as GHG reductions in perpetuity.

The purchase of GHG offsets shall prioritize implementation of offsets generated within or as close to San Benito County as possible but may also include offsets from the rest of California and from other states with offset validity laws at least as strict as California's, in order of preference. All carbon offsets must be purchased from programs verified by a major third-party registry; examples include, but are not limited to, Climate Action Reserve (CAR), American Carbon Registry, and Verra (formally the Verified Carbon Standard). The County will retain designated third party individual or consultant, qualified and versed in the GHG offset industry (this may include the use of CARB Accredited Offset Verifiers) to facilitate the procurement, purchase, and retirement of GHG Offsets for the purpose of CEQA mitigation funded by the applicant to confirm the calculation of the GHG offset required for the project after factoring final site design and compliance with Mitigation Measures 3.8-1a through 3.8-1e and ensure that the offsets purchased are derived using protocols that meet the same criteria (i.e., real, additional, permanent, enforceable, quantifiable, verifiable), as described in CCR, Title 14, Sections 95972 and 95973(a)(1). The purchase and retirement of the GHG offsets consistent with the requirements of this mitigation measure must be demonstrated to the satisfaction of the County prior to construction activities and issuance of any building permits.

- This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.
- O4-46 The comment states that the Draft EIR fails to provide adequate technical analysis supporting the conclusion that the septic system would operate properly.
- The reader is referred to response to comment O4-34.
- O4-47 The comment states that the septic system identified in Alternative 4 should be moved near the proposed motel and that the analysis regarding impacts on tribal cultural resources is inaccurate.
- Based on consultation with the project engineer, the septic system would need to be located at its current location under this alternative (Jerome, pers. Comm., 2022b).
- The following are edits are made to Draft EIR page 6-19 under "Tribal Cultural Resources:"
- The project would result in significant impacts to tribal cultural resources that would remain significant and unavoidable with mitigation incorporated. While the extent of site development, building massing and operation would be less, the Reduced Intensity Alternative would also impact tribal cultural resources under project and cumulative conditions because of the occurrence of development within the tribal cultural resources landscape. Overall, impacts under this alternative would be **less** because it would reduce the overall extent of site development, building massing reductions would lessen the visual extent of the impact to the viewshed of elements of the Juristac Tribal Cultural Landscape, and operations associated with the elimination of the outdoor event center in the southern portion of the site. Elimination of the outdoor event center would partially ~~also~~ address the tribal concern related to the entertainment atmosphere that would be prevalent under the proposed project, but would not mitigate significant and unavoidable impacts on the JTCL and associated tribal cultural resources.
- This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.
- O4-48 The comment states that the Draft EIR cumulative impact analysis fails to address the extent and severity of impacts on tribal cultural resources.
- Draft EIR page 4-17 references the extent of the project's impacts on tribal cultural resources as described in Section 3.16, "Tribal Cultural Resources." As noted in this section, implementing the project would result in significant and unavoidable impacts on the JTCL that include impacts on the viewshed associated with Medicine Man Hill. The Mount Pajaro and Sargent Hills viewshed, in contrast, is anticipated to be minimally affected by the project. Cumulative projects, including Strada Verde Innovation Park Project, Traveler's Station, and Sargent Quarry Project, would each have a different level of impact on the individual resources within the JTCL.
- O4-49 The comment states that the project conflicts with the San Benito County General Plan and its policy provisions, which were not adequately addressed in the Draft EIR.
- State law and published case law state that perfect conformity between a proposed project and the applicable general plan is not required because "it is nearly, if not absolutely, impossible for a project to be in perfect conformity with each and every policy set forth in the applicable plan" (*Pfeiffer v. City of Sunnyvale City Council* [2011] 200 Cal.App.4th). As identified on Draft EIR page 3.11-5, the project area is designated in the County General Plan as part of one of the Commercial Regional nodes, which encourages the development of local and regional commercial uses that acknowledge and enhance the history and character of the County. With respect to County planning provisions, the portion of the project site that would be developed with local and regional commercial uses is

currently zoned C-1 and would be consistent with General Plan Policies LU-5.2, LU-5.5, LU-5.6, ED-5.3, and ED-5.4. Project application materials and this EIR address environmental conditions for development suitability consistent with General Plan Policies LU-1.8 and LU-1.10. As part of the project, a conditional use permit would be required for the local and regional commercial uses, including the outdoor event area, consistent with County Code Chapter 25.16, Section 25.16.023, applicable to the C-1 District. The remaining undeveloped areas (approximately 80 acres) of the project site are zoned AR/FP (Agricultural Rangeland/Floodplain) and would remain in their current state or be used for agricultural/open space uses (including the proposed animal/livestock corral).

Project consistency with applicable General Plan policies and/or implementation of mitigation measures that address General Plan policy consistency is addressed in Draft EIR Section 3.1, "Aesthetics"; Section 3.2, "Agricultural Resources"; Section 3.4, "Biological Resources"; Section 3.6, "Energy"; Section 3.8, "Greenhouse Gas Emissions"; Section 3.10, "Hydrology and Water Quality"; Section 3.12, "Noise"; Section 3.14, "Public Services and Recreation"; Section 3.15, "Transportation"; and Section 3.17, "Utilities and Service Systems."

The following responds to the General Plan policies identified in the comment:

- ▶ Policy LU-3.2 (Agricultural Integrity and Flexibility): The comment fails to state that the project site is designated under the General Plan for commercial development. In addition, the comment fails to note General Plan Policy LU-3.10 (Agricultural Mitigation), which requires mitigation for conversion of Prime Farmland. Draft EIR Mitigation Measure 3.2-1 is consistent with Policy LU-3.10. (Draft EIR pages 3.2-3 through 3.2-7).
- ▶ Policy NRC-1-1 (Maintenance of Open Space): The comment fails to identify that the project site is designated under the General Plan for commercial development. The proposed project design would retain approximately 80 acres as undeveloped land, and implementation of Draft EIR Mitigation Measure 3.16-1d would also preserve this area from project development.
- ▶ Policy NRC-2-4 (Maintain Corridors for Habitat): The comment fails to state that the project site is designated under the General Plan for commercial development. The proposed project design would retain approximately 80 acres as undeveloped land, and implementation of Draft EIR Mitigation Measure 3.16-1d would also preserve this area from project development. The reader is referred to responses to comments O6-5 and O6-12, regarding wildlife movement corridors.
- ▶ Policy PFS-5-5 (Individual Septic Systems): The reader is referred to response to comment O4-34.
- ▶ Policy NCR-4.15 (Septic Systems): The reader is referred to response to comment O4-34.
- ▶ Policy NCR-4.16 (Develop Existing Areas): The comment misidentifies this General Plan policy as NCR-4.15. The comment fails to state that the project site is designated under the General Plan for commercial development.
- ▶ Policy HS-5.7 (Greenhouse Gas Emission Reductions): The reader is referred to response to comment O4-45.

O4-50

The comment states that the project cannot be approved in its present form and that the Draft EIR is inadequate.

The issues identified in the comment are responded to above. The comment is included in the record for consideration by the decision makers as part of the project approval process.

**Letter
05**

From: [Indigenous Solidarity](#)
To: [Abraham Prado](#)
Subject: Public Comment Regarding Betabel Commercial Development Project
Date: Tuesday, September 6, 2022 3:47:29 PM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Abraham Prado,

My name is Louis Chiaramonte, Jr. I am a citizen resident of the State of California; my address is 10065 East Zayante Road, Felton, CA 95018. This is a public-comment written in regard to the Betabel Commercial Development draft environmental impact report (APN # 013-150-030, 013-150-025, 013-150-033, 013-150-031) (hereafter referred to as the 'dEIR'). The opinions expressed are my own, and are largely based on my own experience working in the field of cultural resource management locally.

I currently see several problems regarding the format of this dEIR. The 'cultural resource' portions of the dEIR (Section 3.5 and Section 3.16) as it appears at <https://www.cosb.us/departments/resource-management-agency/planning-and-land-use-division/betabel> seems overly-light, considering the assertions which the Amah Mutsun Tribal Band is making regarding the geographic project area's importance in its/their own cultural/religious worldview. I am personally unsure what 'cultural resource' sections of the dEIR have not been posted to <https://www.cosb.us/departments/resource-management-agency/planning-and-land-use-division/betabel>. So my comments are directed only at the information contained on the links to that website.

O5-1

1.) The publication of a dEIR should have waited until the completion of the ethnographic study (regarding Betabel) which the Amah Mutsun Tribal Band was in the process of completing at the time of the dEIR's release (July 22, 2022). I am unaware if any sections from that comprehensive study were retroactively included in the dEIR (I do not see any text specifically indicating that such has been the case).

O5-2

2.) Juristac (described as the Juristac Tribal Cultural Landscape or JTCL) is a primary religious site of an existing Tribe. Although I cannot speak toward what the Amah Mutsun Tribal Band (either as an entity or in terms of its individual members) holds as its particular religious/spiritual beliefs regarding the Betabel project area, I will point out that in an 'animistic' worldview, the land itself (the rocks, the soil, the vegetation, the watercourses, etc.) actually are the existing 'features' that make up a 'sacred site'. In that sense, damage or change to any of those features would constitute a 'desecration'. In that regard, the 'damages' caused by the construction of the Betabel Commercial Project do not have any potential 'mitigations'.

O5-3

The existing dEIR does cite certain definable geographic/landscape features of the JTCL. The existing dEIR also does cite the potential for physical 'cultural resources' (artifacts, artifact assemblages, human burials, etc.) that may be located in the project area. The reasoning for citing such specifics appears to be to create some framework for 'mitigation' of potential damage/change to those particular features/resources. However, the dEIR does not seem to adequately address the fact that if the entire project area is itself a 'sacred' feature/element. To that end, I do not believe that all of the aspects of CEQA are being addressed in the dEIR, namely how the project area relates to an existing definable population, which will be impacted by the proposed project.

Although the Amah Mutsun Tribal Band does not hold title to the parcels at which this project is taking place, it is also true that populations indigenous to the project area never formally ceded the territory. Although it is not currently listed as a Federally-recognized Tribe, the Amah Mutsun Tribal Band is a historically recognized Tribe with clear Ancestral claims to the project area. Targeted destruction of a site of primary religious, cultural, or economic importance/necessity for a particular population can be defined as a form of genocide (according to the framework regarding 'genocide' as defined by the United Nations). The rationale for using the label 'genocide' has to do with the fact that the targeted destruction of a particular human population's primary religious site greatly impacts the ability of that population to exist as a distinct entity. The United Nations defines genocide as: "acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such." (*Article 2, Convention on the Prevention and Punishment of the Crime of Genocide*).

O5-3
cont.

3.) That sub-surface analysis for cultural materials should be carried out, with the participation of Tribal archeological monitors, prior to construction commencing any further. I am suggesting this in relation to the alluvial deposits which are likely unevenly deposited on portions of the project site. As alluvial deposits are not always uniform in depth, I am presently unaware of the potentiality of planned excavations disturbing older deposits of cultural materials in the area. The design of any preliminary test excavations should be determined with input from the Amah Mutsun Tribal Band, since that is the Tribal entity which is claiming the cultural/religious importance of the Betabel project area.

O5-4

4.) It is unclear if either Betabel Site 1 or Betabel Site 2 are referring to the area which was referenced as a 'landfill' at <https://betabelproject.com/news/threatened-trout-return-to-san-benito-river/>. It is problematic that construction or cleanup efforts at the Betabel project site did not automatically stop when such a large amount of cultural materials was come across in 2019/2020. It would seem that the provisions of CEQA and similar laws would have required the stopping of work and the calling of relevant archaeological and ecological professionals to assess such a situation, both to consider its potential historicity and to assess potential toxicity of materials present at the site.

I would like to know if the potential toxins or potential historic cultural resources associated with the 'landfill' described at <https://betabelproject.com/news/threatened-trout-return-to-san-benito-river/> are addressed by the existing dEIR. An excerpt from that website is included below:

"We didn't even extrapolate how bad it would be further back in the watershed," McDowell said. "It was a landfill down there. There was so much junk. People had been using it as a dumping ground." It was around this time McDowell met Garcia, who gave him access to the property to begin the arduous task of restoring the polluted river.

"I started deep diving into the brush," Garcia recalled. "I'm discovering all this garbage. I mean, tonnage of garbage. Down the river banks, in the river channels, in the floodplain. It was a mess. I said, 'Rider, you bought a landfill, man.'"

Garcia, who called the confluence "just about the heart of the watershed," said when it rains, much of the waste from as far north as Cochrane Road in Morgan Hill finds its way downstream to Watsonville and the Monterey Bay.

The volunteers went to work, pulling out roughly 3,000 to 5,000 pounds of trash every day, according to Garcia."

O5-5

5.) Regarding "Mitigation Measure 3.16-1b: Implement Tribal Monitoring." Because contact with a particular Tribe is sometimes delayed and emails are sometimes lost or incorrectly classified as SPAM, it would be ideal that this section include requirement of multiple points/methodologies of contact in regard to notifying the Amah Mutsun Tribal Band of the activities described in this section. If the particular actions that are being described through such notification are information that is available to the public, I am suggesting that provision for a public announcement be made prior to such activities taking place.

O5-6

6.) Regarding "Mitigation Measure 3.16-1c: Halt Ground Disturbance Upon Discovery of Subsurface Tribal Cultural Resources and Evaluate Discovered Resource." The phrase 'a distance agreed upon by the tribal monitor, archaeological monitor, the County, and the construction foreman based on the location and nature of the find and type of work occurring' needs clarification. Is the decision regarding such a distance based on a majority opinion of all of the parties listed, or would the '100 foot' rule apply if one of the listed parties insisted on the application of the '100 foot' rule?

O5-7

Likewise, the term 'curation' needs to be better defined in this section. The language as it exists would seem to indicate that cultural materials could be disposed of without Tribal consultation, if a Tribal archaeological monitor was not present at the time of their discovery.

7.) To my knowledge, the hills located across US 101 were previously referred to as the 'Hills of the Dead' in Mutsun tradition. This information was not listed in Section 3.16.

O5-8

Respectfully,
 Lou Chiaramonte, Jr.
 Member, Santa Cruz County Democratic Central Committee
 Lead Organizer, South Bay Indigenous Solidarity
 408-402-2796

Letter O5 South Bay Indigenous Solidarity

Lou Chiaramonte, Jr.

- O5-1 The comment provides introductory remarks and questions whether sections of the Draft EIR were missing from the County's website.
- The entirety of the Draft EIR was uploaded to the County's website at:
<https://www.cosb.us/departments/resource-management-agency/planning-and-land-use-division/betabel>.
- O5-2 The comment states that the publication of the Draft EIR should have been delayed until the Ethnographic Study was complete.
- The reader is referred to response to comment O4-16.
- O5-3 The comment states that the project would affect a landscape sacred to the indigenous community.
- Draft EIR Section 3.16, "Tribal Cultural Resources," addresses project impacts on the JTCL associated with the AMTB under Impact 3.16-1. Impact 3.16-1 identifies Mitigation Measures 3.16-1a through 3.16-1d, which partially address, but do not fully mitigate, impacts on the JTCL (Draft EIR pages 3.16-11 through 3.16-13). The Draft EIR does conclude that this impact would be significant and unavoidable because development of the project, including its associated traffic, noise, visual obstruction of natural viewsheds, and amusement-oriented atmosphere, would substantially alter the feeling and setting of the project site, a cornerstone feature of the JTCL. As documented on Draft EIR page 3.16-7, the County and the AMTB have been in consultation regarding the parameters of potential additional measures to avoid or mitigate significant effects of the project with regard to tribal cultural resources.
- O5-4 The comment states that a subsurface investigation should be conducted with tribal participation.
- As described beginning on page 3.16-7 of Section 3.16, "Tribal Cultural Resources," of the Draft EIR, the AMTB conducted an Integrative Survey of the project site, which consisted of a visual pedestrian survey, a "catch-and-release" dry screen processing of topsoil at systematic intervals to identify artifacts, and auger testing to a target depth of 1 meter using placements at approximately 50-meter intervals. Additionally, Mitigation Measure 3.16-1b on page 3.16-13 of the Draft EIR requires a tribal monitor for any ground-disturbing activities.
- O5-5 The comment references a website related to the project, where the project site is referred to as a "landfill." The comment also asks about the CEQA process during the cleanup process.
- The comment is correct that the term "landfill" is used on the website maintained by the project applicant (<https://betabelproject.com/news/threatened-trout-return-to-san-benito-river/>):
- "We didn't even extrapolate how bad it would be further back in the watershed," McDowell said. "It was a landfill down there. There was so much junk. People had been using it as a dumping ground."
- It should be noted that Mr. McDowell's reference to a "landfill" was meant to emphasize the amount of debris that had accumulated on the site while people used it as a dumping ground illegally; however, the site was never an actual permitted landfill. Additionally, the cleanup process that occurred in 2019–2020 was not subject to CEQA, because there was no discretionary action involved. Hazards are discussed in Section 3.9 of the Draft EIR. As stated on page 3.9-7 of the Draft EIR, regulatory agencies identified no sites of known contamination on or near the project site.
- O5-6 The comment is concerned that multiple methods to reach the Tribe for monitoring coordination are necessary because coordination can be challenging.

Tribal monitoring coordination efforts outlined in Mitigation Measure 3.16-1b are industry standard. Both the County and the applicant have been in contact with the Tribe throughout the EIR process and have multiple methods to contact representatives. No revisions to Mitigation Measure 3.16-1b beyond those identified in response to comment O4-21, which gives the AMTB additional notice time, are necessary.

O5-7

The comment requests clarification to Mitigation Measure 3.16-1c related to the distance for stopped work and possible curation of indigenous materials.

Curation, removal, cataloguing, and storage at approved facilities, of indigenous materials would occur only with approval of the tribal monitor, as outlined in Mitigation Measure 3.16-1c. Additionally, as required by Mitigation Measure 3.16-1a, a tribal monitor would be present onsite during all ground-disturbing activities, when indigenous materials might be encountered.

Regarding the stop work distance, Mitigation Measure 3.16-1c on page 3.16-12 of the Draft EIR is revised as follows:

Mitigation Measure 3.16-1c: Halt Ground Disturbance Upon Discovery of Subsurface Tribal Cultural Resources and Evaluate Discovered Resource

If any suspected tribal cultural resources or unique archaeological resources are discovered during ground disturbing construction activities, all work shall cease within 100 feet of the find, or a distance agreed upon by the tribal monitor, archaeological monitor, the County, and the construction foreman based on the location and nature of the find and type of work occurring. If no agreement can be reached, all work shall cease within 100 feet of the find. The tribal monitor shall determine if the find is a tribal cultural resource. The tribal monitor will make recommendations for further evaluation and culturally appropriate treatment of discovered tribal cultural resources as necessary in consultation with the archaeological monitor. No data recovery or curation of any physical tribal cultural resource will be allowed unless this is the preference of the tribe, as confirmed in writing. Preservation in place is the preferred mitigation. If the County determines that preservation in place is not feasible, reburial if culturally appropriate will take place on site in a location not subject to further disturbance. The reburial site will be agreed upon in advance by the tribe and the project applicant.

Work at the discovery location cannot resume until all necessary investigation, evaluation, and treatment of the discovery under the requirements of the CEQA, including AB 52, have been satisfied.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O5-8

The comment questions why the hills located across US 101 were not identified as the "Hills of the Dead" in Section 3.16, "Tribal Cultural Resources," of the Draft EIR.

The AMTB has not indicated that the hills are known by that name. As described in the Integrative Survey and Ethnographic Study: "Medicine Man Hill, also referred to as *Loma Hechicera*, is located on the Lomerias Muertas mountains immediately east of the Project, and east of Highway 101" (Albion 2022: 52).



CENTER for BIOLOGICAL DIVERSITY

Because life is good.

Letter
06

Sep 6, 2022

Sent via email

San Benito County Resource Management Agency
Attn: Abraham Prado
2301 Technology Parkway Hollister, California 95023
aprado@cosb.us

**Re: Betabel Commercial Development Use Permit Draft Environmental Impact Report
(SC NO. 2022040455)**

Dear Abraham Prado,

On behalf of the Center for Biological Diversity (“Center”), we are submitting comments on the Draft Environmental Impact Report (“DEIR”) for the proposed Betabel Commercial Development Project (“Project”). The DEIR fails to adequately disclose, assess, and mitigate the Project’s impacts to special-status species (including local threatened mountains), wildlife connectivity, and wildfire risk. The Project is located within the southern reach of the Amah Mutsun Tribal Band’s sacred lands of Juristac and within the last remaining artery of ecosystem connectivity between the Santa Cruz Mountains, the Gabilan Range, and the Diablo Range. The proposed Project would encroach on this critical connectivity area by significantly increasing human presence and activity in the area. In addition, the DEIR fails to adequately acknowledge and address the Project’s cumulative impacts in combination with the development plans in the vicinity, including the Hwy 129 commercial node (i.e., Travelers Station and the Betabel Ag Center), the Strada Verde Innovation Park Project, and the Sargent Ranch Quarry Project, which would result in compounding negative impacts to local threatened mountain lions and other sensitive and imperiled species, wildlife connectivity, biodiversity, resilience to climate change, and wildfire risk. The Center urges the County to revise and recirculate an EIR that complies with the California Endangered Species Act (CEQA) and adequately discloses, assesses, and mitigates the Project’s significant impacts to sensitive species, habitats, and wildfire risk.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.7 million members and online activists throughout California and the United States. The Center and its members have worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in San Benito County and throughout the state.

O6-1

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BiologicalDiversity.org

I. The DEIR fails to adequately disclose and evaluate the impacts to mountain lions (*Puma concolor*).

The DEIR fails to adequately describe, assess, and mitigate impacts to the Central Coastal and Southern California Evolutionarily Significant Unit (ESU) of mountain lions (*Puma concolor*), a candidate species provisionally listed as threatened under the California Endangered Species Act (CESA). There is no discussion provided in the DEIR regarding mountain lions except for in Table 3.4-3 (DEIR at 3.4-18), in which the protection status of local mountain lions is improperly described. Although the DEIR correctly states that the Project site is located within the ESU, it incorrectly states that local mountain lions “were granted emergency listing status in April of 2020 and CDFW is currently reviewing a petition to list these ESUs as threatened under CESA” (DEIR at 3.4-18). CDFW has reviewed the listing petition; in Feb 2020 CDFW provided a report stating that listing may be warranted (CDFW, 2020), and in April 2020 the CA Fish and Game Commission unanimously voted to grant Central Coast and Southern California mountain lions candidacy status under CESA.¹ Therefore, local mountain lions are afforded the same protections as state-listed endangered and threatened species, and the DEIR’s erroneous statements about the species’ listing status downplay the Project’s potential impact on this species.

O6-2

Although the DEIR acknowledges that mountain lions are likely to use open space and riparian corridors surrounding the Project site, it concludes that mountain lions are not expected to occur in the Project area (DEIR at 3.4-18) without providing substantive evidence to support such claims. In fact, there is no discussion regarding mountain lions provided in the DEIR outside of Table 3.4-3, nor is the species even mentioned in the Draft Biological Resources Report. In addition, impact assessments cannot be limited to just the Project site, as activities in the Project area do not occur in a vacuum—they will affect surrounding habitats and environmental resources. It is common practice for Environmental Impact Reports to include occurrence data of special-status species and habitats within five miles of the Project area to adequately disclose the Project area’s existing conditions and the potential impacts due to the Project. Multiple qualified researchers have documented mountain lions in the vicinity of the proposed Project (e.g., Diamond et al., 2022; Wilmers, 2019), yet the DEIR fails to disclose this critical information and ultimately fails to assess and mitigate the Project’s impacts to mountain lions. The DEIR’s inadequate description of the baseline environmental conditions on the Project site and vicinity undermine its effectiveness as an informational document.

O6-3

There is ample scientific evidence that indicates mountain lion populations in and around the Project area are struggling to survive and that human activities and land use planning that does not integrate adequate habitat connectivity can have adverse impacts on mountain lions. Continued habitat loss and fragmentation has led to 10 genetically isolated populations within California. There are six identified mountain lion populations in the ESU, and several are facing an “extinction vortex” due to high levels of inbreeding, low genetic diversity, and high human-caused mortality rates from car strikes on roads, depredation kills, rodenticide poisoning, poaching, disease, and increased human-caused wildfires (Benson et al., 2016, 2019; Ernest et

¹ See https://biologicaldiversity.org/w/news/press-releases/california-moves-protect-imperiled-mountain-lion-populations-2020-04-16/email_view/

al., 2003, 2014; Gustafson et al., 2018, 2021; Riley et al., 2014; Vickers et al., 2015). The primary driver of this extinction vortex is lack of connectivity (Yap et al., 2019).

A recent study (Gustafson et al. 2021) indicates that local mountain lions in the Project vicinity are in a trajectory similar to that of mountain lions in Southern California, where scientists have documented physical and reproductive signs of inbreeding depression due to being boxed in by roads and development (Huffmeyer et al., 2021). Scientists predicted that if inbreeding depression occurs, pumas in the Santa Monica and Santa Ana mountains (CC-S and SA, respectively) have a 99% chance of becoming locally extinct within 50 years (Benson et al., 2019).

O6-3
cont.

Gustafson et al. (2021) found that mountain lions in the CC-N population, which includes mountain lions in and around the Project area, have genetic diversity estimates as low as the CC-S and SA populations. The authors suggest that the CC-N population is experiencing genetic drift due to dispersal barriers to the north and limited gene flow to the south and east (Gustafson et al., 2021). The authors state, “if dispersal is limited by continued development southeast of the Central Coast North population, rapid genetic drift and inbreeding may ensue (Mills & Allendorf, 1996; Wang, 2004) and local extinctions may occur as predicted in the Central Coast South and Santa Ana populations (Benson et al., 2016; 2019)” (Gustafson et al., 2021). The proposed Project is located in the precise area where connectivity is critical to the long-term survival of the CC-N puma population.

The proposed Project has the potential to amplify the barrier effects of Hwy 101 and other nearby roads and development given its location immediately adjacent to critical riparian corridors (the Pajaro River and San Benito River) and an undercrossing with high quality riparian habitat where numerous species have been documented (Diamond et al., in press). High numbers of native wildlife, including deer, mountain lions’ main prey, are known to use the undercrossing often (Diamond et al., 2022). And scientists found evidence of mountain lions (i.e., mountain lion tracks) on the southwest side of the undercrossing immediately adjacent to the Project area (Diamond et al., 2022). Any development near such a vital undercrossing and some of the last-remaining high quality riparian corridors will have significant impacts to mountain lions. The DEIR fails to adequately disclose, assess, and mitigate the Project’s impacts to mountain lions.

O6-4

The Project’s impacts to mountain lions (and other special-status species and sensitive habitats) extend beyond its physical footprint. There is evidence documenting the effects of human activity specifically on mountain lions. One study found that mountain lions are so fearful of humans and noise generated by humans that they will abandon the carcass of a deer and forgo the feeding opportunity just to avoid humans (Smith et al., 2017). The study concluded that even “non-consumptive forms of human disturbance may alter the ecological role of large carnivores by affecting the link between these top predators and their prey” (Smith et al., 2017). In addition, mountain lions have been found to respond fearfully upon hearing human vocalizations, avoiding the area and moving more cautiously when hearing humans (Smith et al., 2017; Suraci et al., 2019). Other studies have demonstrated that mountain lion behavior is negatively affected when exposed to other evidence of human presence, such as lighting or vehicles/traffic (Smith et al., 2015; Y. Wang et al., 2017; Wilmers et al., 2013). Therefore, both physical and behavioral

O6-5

barriers drive genetic isolation, and continued land use that further fragments mountain lion habitat in the CC-N region without adequately minimizing impacts to functional connectivity will drive pumas in the area to extinction. The Project will result in increased traffic, light, noise, etc. in the last-remaining connectivity area between the region's three prominent mountain ranges where mountain lions are known to occur. The Project will significantly impact how mountain lions navigate the landscape by fortifying existing human-made barriers and decreasing opportunities for them to move freely between mountain ranges.

Yovovich et al. (2020) further documented the impacts of human activities on local mountain lions, specifically on communication and reproductive behaviors important for their survival. Males use scrapes to delineate territories as well as attract potential mates (Allen et al., 2015, 2016), and the males in the study preferred to use relatively flat areas away from human influence as scrape habitat (Yovovich et al., 2020). Similarly, when nursing females (with kittens less than 8 weeks old) shrank their home ranges to an average of 9 km² while their young were most vulnerable, they also selected undeveloped lands away from human disturbance, opting for habitat with protective cover and sufficient water and prey availability (Yovovich et al., 2020). The loss of adequate undisturbed communication and nursery habitat could disrupt important communication and reproductive behaviors that facilitate social structure and overall survival. The authors predicted that future development within the Santa Cruz Mountains could reduce nursery and communication habitat by 20% and 50%, respectively, while further fragmenting the landscape. Thus, continued habitat loss and fragmentation due to roads and development like the proposed Project that extend into mountain lion habitat with little regard for their movement and behavioral needs threaten the long-term survival of local mountain lions.

O6-5
cont.

In addition, Riley et al. (2021) found that, although pumas had some flexibility to navigate urbanized landscapes, they spent more than 95% of their time away from developed areas and actively avoided open areas like golf courses, cemeteries, and other altered landscaped spaces. Mountain lions consistently selected native vegetation types with dense cover, like chaparral, riparian woodland, and coastal sage scrub, with shrublands being their preferred habitat. This highlights the importance of intact and connected natural heterogeneous landscapes to the long-term health and persistence of constrained mountain lion populations. The authors state, "An important requirement for the effective conservation of at-risk mountain lion populations in southern California is preserving and enhancing connectivity between larger natural areas." (Riley et al., 2021). This applies to other genetically isolated puma populations like the CC-N population.

Mountain lions are a key indicator species of wildlife connectivity and healthy ecosystems. As the last remaining wide-ranging top predator in the region, the ability to move through large swaths of interconnected habitat is vital for genetic connectivity and their long-term survival. In addition, impacts to mountain lions in the region could have severe ecological consequences; loss of the ecosystem engineer could have ripple effects on other plant and animal species, potentially leading to a decrease in biodiversity and diminished overall ecosystem function. Many scavengers, including California condors, kit foxes, raptors, and numerous insects, would lose a reliable food source (Barry et al., 2019; Ruth & Elbroch, 2014). Fish, birds, amphibians, reptiles, rare native plants, and butterflies would potentially diminish if this apex predator were lost (Ripple et al., 2014; Ripple & Beschta, 2006, 2008). In fact, a recent literature

O6-6

review found that mountain lions are important ecosystem engineers and have been documented to have ecological interactions with at least 485 plant and animal species (Labarge et al., 2022). Adequate assessment and mitigation of the Project's impacts to mountain lions is necessary to ensure their long-term survival as well as the long-term health of the area's biodiversity and ecosystems. The DEIR falls short and fails to comply with CEQA.

O6-6
cont.

Wildlife connectivity in this region is paramount for the survival of the CC-N mountain lions. Any project that does not adequately assess and address impacts to mountain lions and wildlife connectivity using the best available science, like the proposed Project, could lead to the extirpation of mountain lion populations in the ESU and severe loss of biodiversity and ecosystem function in the region. See further discussion below regarding the DEIR's failure to adequately describe, assess, and mitigate impacts to wildlife movement and connectivity.

O6-7

II. The DEIR fails to adequately disclose, assess, and mitigate the impacts to wildlife connectivity.

To comply with CEQA, the DEIR must adequately disclose the existing conditions of the site and adequately assess and mitigate the Project's impacts to wildlife connectivity. As detailed in a 2021 Center Report (Yap, Rose, Anderson, et al., 2021), roads and development create barriers that lead to habitat loss and fragmentation, which harms native wildlife, plants, and people. As barriers to wildlife movement, poorly-planned development and roads can affect an animal's behavior, movement patterns, reproductive success, and physiological state, which can lead to significant impacts on individual wildlife, populations, communities, landscapes, and ecosystem function (Brehme et al., 2013; Ceia-Hasse et al., 2018; Haddad et al., 2015; Marsh & Jaeger, 2015; Mitsch & Wilson, 1996; Trombulak & Frissell, 2000; van der Ree et al., 2011). For example, habitat fragmentation from roads and development has been shown to cause mortalities and harmful genetic isolation in mountain lions in Southern California and along the Central Coast (Ernest et al., 2014; Gustafson et al., 2018, 2021; Riley et al., 2014; Saremi et al., 2019; Vickers et al., 2015). Habitat fragmentation has also been found to increase local extinction risk in amphibians and reptiles (Brehme et al., 2018; Cushman, 2006; Delaney et al., 2021), cause high levels of avoidance behavior and mortality in birds and insects (Benítez-López et al., 2010; Kantola et al., 2019; Loss et al., 2014), and alter pollinator behavior and degrade habitats (Aguilar et al., 2008; Goverde et al., 2002; Trombulak & Frissell, 2000).

O6-8

Habitat fragmentation also severely impacts plant communities. An 18-year study found that reconnected landscapes had nearly 14% more plant species compared to fragmented habitats, and that number is likely to continue to rise as time passes (Damschen et al., 2019). The authors conclude that efforts to preserve and enhance connectivity will pay off over the long-term (Damschen et al., 2019). In addition, connectivity between high quality habitat areas in heterogeneous landscapes is important to allow for range shifts and species migrations as climate changes (Cushman et al., 2013; Heller & Zavaleta, 2009; Krosby et al., 2018). Loss of wildlife connectivity decreases biodiversity and degrades ecosystems while reducing climate change resilience.

Edge effects of development in and adjacent to critical linkage areas, like the proposed Project, will likely impact key, wide-ranging predators, such as mountain lions and bobcats

O6-9

(Crooks, 2002; Delaney et al., 2010; Lee et al., 2012; Riley et al., 2006; Smith et al., 2015, 2017; Vickers et al., 2015; Y. Wang et al., 2017), as well as smaller species with poor dispersal abilities, such as song birds, small mammals, and herpetofauna (Benítez-López et al., 2010; Cushman, 2006; Delaney et al., 2010; Gray, 2017; Kociolek et al., 2011; Slabbekoorn & Ripmeester, 2008). Limiting movement and dispersal can affect species' ability to find food, shelter, mates, and refugia after disturbances like fires or floods. Individuals can die off, populations can become isolated, sensitive species can become locally extinct, and important ecological processes like plant pollination and nutrient cycling can be lost. Negative edge effects from human activity, such as traffic, lighting, noise, domestic pets, pollutants, invasive weeds, and increased fire frequency, have been found to be biologically significant up to 300 meters (~1000 feet) away from anthropogenic features in terrestrial systems (Environmental Law Institute, 2003).

O6-9
cont.

The proposed Project will result in habitat loss and induced human presence, traffic, and growth that will further degrade the last remaining connectivity area between the Santa Cruz Mountains, Diablo Range, and Gabilan Range. The DEIR fails adequately disclose, assess, and mitigate impacts to wildlife connectivity and therefore fails to comply with CEQA. In addition, the DEIR/Project violates several policies of the San Benito County General Plan (and fails to alert the public that the Project is inconsistent with them), including the following (DEIR at 3.4-3-3.4-4):

O6-10

- Policy NCR-1.1: Maintenance of Open Space
- Policy NCR-2.4: Maintain Corridors for Habitat
- Policy NCR 4.4: Open Space Conservation
- Policy NCR-2.5: Mitigation for Wetland Disturbance or Removal

A. The DEIR fails to adequately describe and assess existing conditions and impacts to general wildlife connectivity.

As mentioned previously, the Project area is within areas identified as important for wildlife connectivity between the Santa Cruz Mountains, the Diablo Range, and the Gabilan Range (Diamond et al., 2022; Penrod et al., 2013)². In fact, it is within the last remaining hub for wildlife movement between these mountain ranges. Yet the DEIR fails to acknowledge this and instead dismisses the Project area's importance to wildlife connectivity. After comparing the area only to a 2010 assessment by the California Department of Fish and Wildlife (CDFW) and the California Department of Transportation (Caltrans), the DEIR states without further analysis that "it is unlikely that the project site currently functions as a critical habitat linkage" (DEIR at 3.4-20) and concludes that impacts to connectivity would be less than significant and no mitigation is required (DEIR at 3.4-37). These erroneous statements ignore the current available evidence, including updated data and information provided by CDFW that shows the Project area is within a high priority connectivity area identified as a "Conservation Planning Linkage" (CDFW 2018). The DEIR must permit the public and decisionmakers to understand the Project area's value and role in local, regional, and continental wildlife connectivity and how the Project could have a significant impact on such connectivity. Yet the DEIR fails to even mention the surrounding mountain ranges and nearby open space.

O6-11

² Also see CDFW Areas of Conservation Emphasis Version 3.0. Available at <https://apps.wildlife.ca.gov/ace/> (Accessed August 8, 2022).

The DEIR also downplays the Project's importance for wildlife connectivity by emphasizing the Project area's proximity to Hwy 101, itself a significant barrier to wildlife movement. However, the DEIR fails to disclose the fact that the Project area is immediately adjacent to the San Benito River Bridge, an important undercrossing on Hwy 101 that abuts the southern edge of the Project area and facilitates safe passage of numerous species. Researchers have found that many native wildlife, including deer, bobcats, and raccoons, use this undercrossing regularly, likely because it has a wide riparian corridor with high quality habitat (Diamond et al., 2022). In addition, the researchers detected signs of mountain lion presence (i.e., mountain lion tracks) along the entire southwest portion of the bridge (Diamond et al., 2022). This underscores the important wildlife connectivity value of the habitat in and immediately adjacent to the Project area. Yet there is no acknowledgement of the immediately adjacent San Benito River Bridge or its importance to wildlife movement.

The County made no effort to adequately assess or analyze the area's importance to wildlife connectivity. The County failed to conduct any studies to determine local species movement patterns or use of the nearby crossing, and there is no mention of wildlife connectivity in the Draft Biological Report. The DEIR should have included an analysis of wildlife movement in and near the Project area and the adjacent undercrossing. The County should have sought expertise, knowledge, and data from Pathways for Wildlife, an NGO that is active in conducting wildlife movement studies in the region and has been studying the area and could have provided more information for the County's assessment (Diamond et al., 2022). Instead, the DEIR dismisses and downplays the Project area's importance in this critical wildlife connectivity area and ultimately misleads the public and decisionmakers regarding the existing conditions and the Project's impacts to wildlife connectivity.

O6-12

The proposed Project would further fragment habitat in this important linkage area by destroying open space and increasing traffic and other human activities in an already-constrained linkage, which will fortify existing barriers to movement and diminish the ability to enhance much needed connectivity within the last-remaining connectivity area for the Santa Cruz Mountains, Diablo Range, and Gabilan Range. Mountain lions and other special-status species, like California tiger salamander, tricolored blackbird, and Monarch butterflies, rely on wildlife connectivity to keep their populations healthy. They are known or likely to occur in and near the Project area and are likely to be significantly impacted by the proposed Project. The DEIR fails to adequately disclose, assess, and mitigate the Project's impacts to wildlife connectivity.

B. The DEIR fails to adequately describe, assess, and mitigate impacts to sensitive riparian habitats and corridors.

The DEIR fails to adequately assess and mitigate direct and cumulative impacts to riparian ecosystems. The Project area is located immediately adjacent to the San Benito and Pajaro rivers, and there are 25 acres of riparian woodland within the Project area. Natural riparian systems are critically important because they provide live-in habitat as well as local, regional, and global connectivity for the area's rich biodiversity. Constructing buildings, fueling stations, livestock corrals, and wells with associated pipelines near the riparian areas will significantly alter the form and function of these sensitive habitats. Therefore, the DEIR should

O6-13

include an in-depth analysis of the Project's impacts to riparian habitats to adequately describe existing conditions and assess and mitigate the Project's impacts to special-status species that rely on the area's hydrology as well as wildlife movement and habitat connectivity. Although the DEIR correctly states the impacts to riparian areas are significant, the DEIR does not provide sufficient information or analyses to adequately depict existing conditions or substantiate that the proposed mitigation would reduce the impacts to less than significant.

It is estimated that 90-95% of historic riparian habitat in the state has been lost (Bowler, 1989; Riparian Habitat Joint Venture, 2009). Using 2002 land cover data from CalFire, the Riparian Habitat Joint Venture estimated that riparian vegetation makes up less than 0.5% of California's total land area at about 360,000 acres (Riparian Habitat Joint Venture, 2004). This is alarming because riparian habitats perform a number of biological and physical functions that benefit wildlife, plants, and humans, and loss of what little is left will have severe, harmful impacts on special-status species, overall biodiversity, wildlife connectivity, and ecosystem function. California cannot afford to lose more riparian corridors.

Riparian ecosystems have long been recognized as biodiversity hotspots performing important ecological functions in a transition zone between freshwater systems and upland habitats. Many species that rely on these aquatic habitats also rely on the adjacent upland habitats (e.g., riparian areas along streams, and grassland habitat adjacent to wetlands). In fact, 60% of amphibian species, 16% of reptiles, 34% of birds and 12% of mammals in the Pacific Coast ecoregion depend on riparian-stream systems for survival (Kelsey and West 1998).

Connectivity among and between natural waterways and upland riparian habitat is essential for native fish species like the federally threatened south-central California coast DPS of steelhead, the Monterey hitch, Pacific lamprey, and riffle sculpin, to survive. The shade and erosion control from riparian vegetation provide cool and clear streams that are ideal for spawning and rearing (Lohse et al., 2008; Moyle et al., 2011). Encroachment and over-aggressive removal and degradation of riparian areas have been identified as major drivers of declines in California's freshwater and anadromous fish (Grantham et al., 2012; Lohse et al., 2008; Moyle et al., 2011; Opperman et al., 2005; Pess et al., 2002). In addition, many other species known or likely to occur in the Project area, including mountain lions and bobcats, often use riparian areas as migration corridors or foraging habitat (Dickson et al., 2005; Hilty & Merenlender, 2004; Jennings & Lewison, 2013; Jennings & Zeller, 2017). And other sensitive species that are known or are likely to occur in the area, like the and California red-legged frog (federally threatened), yellow warblers (species of special concern), California tiger salamander (federally threatened), and western pond turtles (species of special concern) inhabit and move through riparian areas.

O6-13
cont.

i. *The proposed riparian setbacks are insufficient and inadequate mitigation.*

The DEIR's mitigation to implement riparian setbacks of 50 feet for project activities like construction and staging (MM 3.4-3), 60 feet for refueling, maintenance, and staging of equipment and vehicles (MM 3.4-2a), and 200 feet for silt fencing around the project disturbance area (MM 3.4-2b) are unclear and insufficient. The DEIR does not explain how a 200-foot buffer

O6-14

for silt fencing will prevent potential contamination from construction, staging, refueling, and other activities only 50 or 60 feet from riparian habitat. In addition, those buffer sizes are insufficient to minimize impacts. A literature review found that recommended buffers around aquatic resources for wildlife often far exceeded 100 meters (~325 feet) (Robins, 2002). For example, Kilgo et al. (1998) recommend more than 1,600 feet of riparian buffer to sustain bird diversity. In addition, amphibians, which are considered environmental health indicators, have been found to migrate over 1,000 feet between aquatic and terrestrial habitats through multiple life stages (Cushman, 2006; Fellers & Kleeman, 2007; Semlitsch & Bodie, 2003; Trenham & Shaffer, 2005). For example, California red-legged frogs have been found to migrate about 600 feet between breeding ponds and non-breeding upland habitat and streams, with some individuals roaming over 4,500 feet from the water (Fellers & Kleeman, 2007). Newts have been documented traveling up to a mile from breeding ponds (Trenham, 1998). Western pond turtle nests have been found up to 1,919 feet from aquatic habitats and individuals have been documented to move regularly between aquatic habitats with long-distance movements of up to 2,018 feet (Sloan, 2012). Accommodating the more long-range dispersers is vital for continued survival of species populations and/or recolonization following a local extinction (Cushman, 2006; Semlitsch & Bodie, 2003).

O6-14
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In addition, more extensive buffers provide resiliency in the face of climate change-driven alterations to these habitats. Riparian habitats can also provide some resilience to climate change. The canopy cover of riparian trees and the availability of groundwater have a cooling effect for both air and water temperatures, which creates a cooler microclimate for species to find refuge from a warming climate (Gray et al., 2020; A. T. H. Keeley et al., 2018; Knouft et al., 2021). Such connectivity also helps animals and plants adjust to shifts in resource availability and maintain a suitable climate space as climate change alters habitats and ecological processes and causes shifts in species' ranges (Cushman et al., 2013; Heller & Zavaleta, 2009; Román-Palacios & Wiens, 2020; Scheffers et al., 2016; Warren et al., 2011; Wiens, 2016). This emphasizes the need for sizeable upland buffers around streams and other aquatic resources, as well as connectivity corridors between heterogeneous habitats.

ii. *The proposed mitigation ratios are too low to be effective.*

The DEIR's proposed mitigation ratios are grossly insufficient and are not based on substantial evidence. For significant impacts, CEQA requires that all feasible mitigation measures be adopted (CEQA Guidelines § 15126.4(a)), and that the effectiveness of those measures is supported by substantial evidence. (*See Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1116-17 [An agency's finding that a mitigation measure will be effective will not be granted deference if the finding is not supported by substantial evidence].) Mitigation Measure 3.4-3 provides a 1:1 mitigation ratio of equal or better value to compensate the loss of riparian habitat and habitat function. In addition, while there is mention in the DEIR of potentially restoring riparian habitat on- and off-site, there is no mitigation ratio provided for restored riparian areas. Restoration and preservation should be treated differently because it is much more challenging to repair functionality to degraded ecosystems.

O6-15

Avoidance of impacts to sensitive habitats like riparian areas and other sensitive natural communities should be prioritized, after which in-kind mitigation should be a minimum of 3:1

given that these habitats support numerous special-status species and high levels of biodiversity, can be important for wildlife connectivity and climate change resilience, and so much of these habitats have already been lost, and 5:1 for habitat restoration or creation with continued monitoring, adaptive management strategies, and well-defined success criteria, to be funded in perpetuity.

Multiple scientific studies specifically address the need for higher mitigation ratios (along with long-term monitoring, identified and measurable success criteria, and adaptive management strategies) to improve chances of adequately mitigating impacts to habitats and species (Matthews & Endress, 2008; Mitsch & Wilson, 1996; Moilanen et al., 2009; Stein et al., 2018; Sudol & Ambrose, 2002; Windmiller & Calhoun, 2007; Zedler & Callaway, 1999). Moilanen et al. (2009) found that “very high offset ratios may be needed to guarantee a robustly fair exchange” and that “considerations of uncertainty, correlated success/failure, and time discounting should be included in the determination of the offset ratio to avoid a significant risk that the exchange is unfavorable for conservation in the long run.” The preservation of high-quality riparian habitat in and near the Project area should be prioritized, the minimum acreage of riparian habitat mitigation should be greater if habitat is being restored or created, and mitigation should be planned in a way that is protective from edge effects and fragmentation to improve the probability of ecologically functional mitigation. Created and restored habitat mitigation ratios should be much higher than preservation mitigation ratios, and they should be coupled with extended years of effective monitoring and adaptive management strategies (Ambrose et al., 2006; Moilanen et al., 2009; Sudol & Ambrose, 2002). Scientists recommend 15-20 years or more of monitoring and adaptive management to determine the success, or lack thereof, of enhanced, restored, or created habitat (Mitsch & Wilson, 1996; Zedler & Callaway, 1999). If higher mitigation ratios are not feasible, the DEIR must provide evidence and analysis supporting that conclusion.

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cont.

iii. The proposed mitigation is improperly deferred.

The DEIR points to the preparation and implementation of a Streambed Alteration Notification and Compensatory Mitigation Plan (MM 3.4-3) if project implementation adversely affects riparian habitat (DEIR at 3.4-34). However, the DEIR provides insufficient detail and these measures amount to improperly deferred mitigation. The DEIR states that loss of riparian habitat and habitat function will be compensated with habitat restoration within or outside of the project site, by purchasing credits from a CDFW-approved mitigation bank, or preserve existing riparian habitat (unclear whether it would be on- or off-site) at a 1:1 ratio. Mitigation ratios are not provided for the restored habitat (see above discussion for more detail), and potential available compensatory lands and mitigation banks are not identified, making it difficult to determine if compensatory lands would be appropriate for mitigation. Similarly, details are lacking and vague for the compensatory mitigation plan. There is no clear, realistic, and guaranteed plan for mitigating damages. “Success criteria” and “long-term” management and monitoring of restored or enhanced habitat are not defined, which makes it impossible to determine if such measures are adequate to mitigate the Project’s impacts. And although legal and funding mechanisms are mentioned, current and future funding to protect and manage preserved or restored habitat in perpetuity is not guaranteed. The DEIR provides insufficient

O6-16

detail for the public and decision makers to ascertain whether such measures would adequately mitigate the Project's impacts to riparian habitat.

The proposed mitigation is unenforceable and amounts to improperly deferred mitigation (see *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670 [EIR inadequate where the success or failure of mitigation efforts "may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR"]). In the limited circumstances in which deferred mitigation is appropriate, the agency must meet all of the following elements: (1) practical considerations prevented the formulation of mitigation measures during the planning process; (2) the agency committed itself to developing mitigation measures in the future; (3) the agency adopted specific performance criteria prior to project approval; and (4) the EIR lists the mitigation measures to be considered, analyzed, and possibly incorporated into the mitigation plan. (See *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 736-37 [review denied].) Here, the DEIR fails to meet these criteria. The lack of adequate details regarding mitigation measures being readily provided for riparian habitat and wildlife connectivity does not allow the public and decisionmakers to evaluate the mitigation measures being taken; the DEIR violates CEQA

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C. The DEIR fails to adequately describe existing conditions, and describe, assess, and mitigate impacts to special-status birds within an identified Important Bird Area.

The DEIR fails to adequately disclose, assess, and mitigate impacts to important connectivity for resident and migratory birds. In fact, the DEIR fails to mention that the Project area is located within an area designated by California Audubon as an Important Bird Area (IBA) for resident and migratory birds within the Pacific Flyway, a north-south migratory corridor that extends from Alaska to Patagonia.³ IBAs are critical for regional, state, and global connectivity particularly for migratory birds that require habitat along their migratory path to find food, shelter, and nesting habitat. According to California eBird, 300 to 500 different bird species have been documented in the region where the Project area is located.⁴ Of particular importance are the riparian areas in and immediately adjacent to the Project area that likely provide critical nesting and resting habitat for both resident and migratory birds.

O6-17

As mentioned previously, edge effects like noise and light from Project construction and operation could have impacts on wildlife and wildlife movement. Negative edge effects from human activity, traffic, lighting, noise, domestic pets, pollutants, and invasive weeds have been found to be biologically significant up to 300 meters (~1000 feet) away from anthropogenic features in terrestrial systems (Environmental Law Institute, 2003). This is important to consider when open space is immediately adjacent to the Project area, as birds and other wildlife have been found to be sensitive to edge effects. For example, field observations and controlled laboratory experiments have shown that traffic noise can significantly degrade habitat value for migrating songbirds (Ware et al., 2015). Subjects exposed to 55 and 61 dBA (simulated traffic noise) exhibited decreased feeding behavior and duration, as well as increased vigilance behavior

³ Audubon Important Bird Areas of California, available at https://www.audubon.org/important-bird-areas/state/california?field_iba_status=1&priority=2 (Accessed August 31, 2022).

⁴ California eBird, developed by Audubon California, Cornell Lab of Ornithology, and Point Blue Conservation Science. Available at <https://ebird.org/region/US-CA> (Accessed August 31, 2022).

(Ware et al. 2015). Such behavioral shifts increase the risk of starvation, thus decreasing survival rates. This should be assessed and analyzed for both the construction and the operation of the Project, yet the DEIR does not provide any analyses regarding impacts

The proposed Project would increase human activity and traffic in the IBA, which could have significant impacts to resident and migratory birds. Simply conducting pre-construction nesting bird surveys and implementing insufficient buffers (20 feet or less for non-raptor species, according to MM 3.4-2f) does not reduce the Project's impacts on special-status birds, raptors, and other native nesting birds to less than significant. The DEIR must conduct analyses to determine the Project's impacts to the IBA and devise appropriate mitigation.

O6-17
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III. The DEIR fails to adequately assess fire history and impacts to wildfire risk.

The Project is located in and immediately adjacent to moderate and high fire hazard severity zones. Wildfires due to lightning strikes and Indigenous cultural burning have occurred on California's landscapes for millennia. They're a natural and necessary process for many of California's ecosystems. But some of the recent fires have been exceptionally harmful to communities. In the past 200 years since European colonization, forced relocation and cultural genocide of Native Tribes, fire suppression and poor land management combined with poor land-use planning that places more people in fire-prone landscapes have shifted historical fire regimes throughout the heterogeneous ecosystems of the state. In addition, hotter, drier and more extreme weather conditions due to climate change make the landscape more conducive to wildfire ignitions and spread. Yet the DEIR fails to adequately consider how disrupted fire regimes and climate change worsening wildfire conditions will affect the Project's impacts to wildfire risk.

O6-18

Almost all (95-97%) contemporary wildfires in California have been unintentionally caused by people, including powerlines, car sparks, arson, etc. (Balch et al., 2017; J. E. Keeley & Syphard, 2018). The proposed Project will place a gas station with convenience store, a restaurant, amusement building, a motel, an outdoor event center, and an animal/livestock corral that will bring more people and increased human activity into fire-prone landscapes and increase ignition risk. Such a Project requires careful and comprehensive analyses of the area's fire history, the various ecosystems' fire ecology, and potential mitigation measures to reduce risk of ignition and fire within and adjacent to the Project area and spreading to nearby communities.

A. The County needs to make a concerted effort to incorporate traditional ecological knowledge and Indigenous science into their analyses.

The DEIR fails to mention or discuss the area's historical fire regimes and the role Indigenous communities likely played in shaping the fire ecology of habitats in and adjacent to the Project area. Indigenous communities should be more included in climate change and wildfire discourse. They are disproportionately impacted by wildfire. Native Americans were found to be six times more likely than other groups to live in high fire-prone areas, and high vulnerability due to socioeconomic barriers makes it more difficult for these communities to recover after a large wildfire (Davies et al., 2018). In addition, farmworkers, who are majority people of color and often include migrant workers that come from Indigenous communities, often have less access to healthcare due to immigration or economic status. They are more

O6-19

vulnerable to the health impacts of poor air quality due to increased exposure to air pollution as they work. Yet farmworkers often have to continue working while fires burn, and smoke fills the air, or risk not getting paid (Herrera, 2018; Kardas-Nelson et al., 2020; Parshley, 2018).

Ramos (2022) states, “Indigenous communities have often been marginalized in the sciences through research approaches that are not inclusive of their cultures and histories.” Traditional ecological knowledge (“TEK”) is often excluded from analyses or distilled to conform to Western science (Ramos, 2022). EIRs often fail to acknowledge that Indigenous communities and cultural burning played a role in California’s historical fire activity and often only mention previous wildfires in the area in CalFire records. This perpetuates the exclusion and marginalization of Indigenous communities and TEK. Consultation with local Native Tribes and incorporation of Indigenous science, including but not limited to oral histories, ethnographies (that may include burn scars and charcoal records), and archeological data should be incorporated in fire history analysis. As a society, we need to work towards integrative research that “transcends disciplinary boundaries” and employs a range of methodological options to get a deeper understanding of the relationship between people and ecosystems (Ramos, 2022). Doing so will help inform fire management strategies and mitigation measures that work towards reducing harms of wildfire to people while facilitating beneficial fire for the appropriate ecosystems.

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B. The DEIR fails to adequately assess and mitigate impacts to wildfire risk.

As detailed in a 2021 Center Report (Yap, Rose, Broderick, et al., 2021), development in highly fire-prone areas increases unintentional ignitions, places more people at risk (within and downwind of the Plan area), and destroys native shrubland habitats that support high levels of biodiversity. Almost all contemporary wildfires in California (95-97%) are caused by humans in the wildland urban interface (Balch et al., 2017; Radeloff et al., 2018; Syphard et al., 2007; Syphard & Keeley, 2020). For example, the 2019 Kincade Fire, 2018 Camp and Woolsey fires, and 2017 Tubbs and Thomas fires were sparked by powerlines or electrical equipment. And although many of the 2020 fires were sparked by a lightning storm, the Apple Fire was caused by sparks from a vehicle, the El Dorado Fire was caused by pyrotechnics at a gender-reveal celebration, the Blue Ridge Fire was likely caused by a house fire, and electrical equipment is suspected to have ignited the Silverado and Zogg fires. The Project would increase the potential for wildfire ignitions to occur.

O6-20

Recent wildfires have been exceptionally harmful to people. Between 2015 and 2020 almost 200 people in the state were killed in wildfires, more than 50,000 structures burned, hundreds of thousands of people had to evacuate their homes and endure power outages, and millions were exposed to unhealthy levels of smoke and air pollution. Human-caused wildfires at the urban wildland interface that burn through developments are becoming more common with housing and human infrastructure extending into fire-prone habitats, and homes and structures can add fuel to fires and increase spread (Knapp et al., 2021). This is increasing the frequency and toxicity of emissions near communities in and downwind of the fires. Buildings and structures often contain plastic materials, metals, and various stored chemicals that release toxic chemicals when burned, such as pesticides, solvents, paints, and cleaning solutions (Weinhold, 2011). This has been shown with the 2018 Camp Fire that burned 19,000 structures; the smoke

caused dangerously high levels of air pollution in the Sacramento Valley and Bay Area and CARB found that high levels of heavy metals like lead and zinc traveled more than 150 miles (CARB, 2021).

In addition, there are significant economic impacts of wildfires on residents throughout the state. One study estimated that wildfire damages from California wildfires in 2018 cost \$148.5 billion in capital losses, health costs related to air pollution exposure, and indirect losses due to broader economic disruption cascading along with regional and national supply chains (D. Wang et al., 2021). Meanwhile the cost of fire suppression and damages in areas managed by the California Department of Forestry and Fire (Cal Fire) has skyrocketed to more than \$23 billion during the 2015-2018 fire seasons.

Although the DEIR acknowledges that the Project would have significant impacts, reliance on the implementation of a vague vegetation management plan for undeveloped area (MM 3.18-2) that could do more harm than good and concluding such mitigation would reduce impacts to less than significant is irresponsible and out of compliance with CEQA. The measure also states that the plan would outline “routine maintenance activities for the management of fuel loads and maintaining defensible space” without providing details regarding what those activities would be or how much and where defensible space will be implemented (DEIR at 3.18-12). This is insufficient and improperly deferred mitigation.

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Development in and near high fire-prone areas should be avoided. If unavoidable, mitigation measures should require structures to have ember-resistant vents, fire-resistant roofs, and irrigated defensible space immediately adjacent to structures. External sprinklers with an independent water source could reduce structures’ flammability. Rooftop solar and clean energy microgrids could reduce fire risk from utilities’ infrastructure during extreme weather. In addition mitigation measures should include equitably retrofitting existing communities near the Project area with similar fire-resilient measures and providing wildfire personal protective equipment (e.g., N95 masks, air purifiers) to nearby communities. Education and awareness for residents, visitors, and nearby communities should be provided and include how to reduce ignition risk. The DEIR’s analysis and mitigation measures are insufficient. Even with such mitigation, the Project’s impacts to wildfire would be significant and unavoidable.

In addition, the DEIR’s analysis regarding whether the Project would substantially impair an adopted emergency response plan or evacuation plan is insufficient. Relying on evacuation details to be developed and directed in real time when a wildfire occurs is not a plan. The Project should require wildfire mitigation that includes emergency services and evacuation plans that are inclusive and consider diverse populations and vulnerable groups. Wildfire impacts disproportionately affect low-income and minority communities. As discussed in the Center’s 2021 Built to Burn report (Yap, Rose, Broderick, et al., 2021):

O6-21

Past environmental hazards have shown that those in at-risk populations (e.g., low-income, elderly, disabled, non-English-speaking, homeless) often have limited resources for disaster planning and preparedness (Richards, 2019). Vulnerable groups also have fewer resources to have cars to evacuate, buy fire insurance, implement defensible space around their homes, or rebuild, and they

have less access to disaster relief during recovery (Davis, 2018; Fothergill & Peak, 2004; Harnett, 2018; Morris, 2019; Richards, 2019).

In addition, emergency services often miss at-risk individuals when disasters happen because of limited capacity or language constraints (Richards, 2019). For example, evacuation warnings are often not conveyed to disadvantaged communities (Davies et al., 2018). In the aftermath of wildfires and other environmental disasters, news stories have repeatedly documented the lack of multilingual evacuation warnings leaving non-English speakers in danger. (Axelrod, 2017; Banse, 2018; Gerety, 2015; Richards, 2019). Survivors are left without resources to cope with the death of loved ones, physical injuries and emotional trauma from the chaos that wildfires have inflicted on their communities.

Health impacts from wildfires, particularly increased air pollution from fine particulates (PM_{2.5}) in smoke, also disproportionately affect vulnerable populations, including low-income communities, people of color, children, the elderly and people with pre-existing medical conditions (Delfino et al., 2009; Hutchinson et al., 2018; Jones et al., 2020; Künzli et al., 2006; Reid et al., 2016).

Increased PM_{2.5} levels during wildfire events have been associated with increased respiratory and cardiovascular emergency room visits and hospitalizations, which were disproportionately higher for low socioeconomic status communities and people of color (Hutchinson et al., 2018; Jones et al., 2020; Liu et al., 2017; Reid et al., 2016). Similarly, asthma admissions were found to have increased by 34% due to smoke exposure from the 2003 wildfires in Southern California, with elderly and child age groups being the most affected (Künzli et al., 2006).

Farmworkers, who are majority people of color, often have less access to healthcare due to immigration or economic status. They are more vulnerable to the health impacts of poor air quality due to increased exposure to air pollution as they work. Yet farmworkers often have to continue working while fires burn, and smoke fills the air, or risk not getting paid (Herrera, 2018; Kardas-Nelson et al., 2020; Parshley, 2018).

The DEIR fails to adequately assess and mitigate the Project's impacts on wildfire risk, including safe evacuation.

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IV. The DEIR fails to adequately assess and mitigate cumulative and growth inducing impacts.

The DEIR fails to adequately assess and mitigate significant cumulative impacts associated with the Project. For example, there is no mention of the cumulative impacts to wildlife connectivity despite the numerous projects being planned in this critical connectivity area between the Santa Cruz Mountains, Diablo Range, and Gabilan Range. The DEIR erroneously concludes that the mitigation measures provided in the Biological Resources section

O6-22

would “offset the project’s contribution to cumulative biological resource impacts” (DEIR at 4-8) without providing substantive evidence to support such claims. Already tenuous, the remaining connectivity in this area is vital to the long-term survival of local mountain lions and other wildlife. Given the region’s importance as the last remaining connectivity hub between those three mountain ranges, the DEIR must analyze cumulative impacts to connectivity.

CEQA requires the analysis of a project’s growth inducing impacts, including a discussion of “the ways in which the proposed project could foster economic or population growth . . . either directly or indirectly, in the surrounding environment.” Guidelines § 15126.2(d). The Guidelines stress an analysis of projects that “would remove obstacles to population growth” and “encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively.” *Id.* With a gas station with convenience store, a restaurant, amusement building, a motel, an outdoor event center, and an animal/livestock corral, the Project directly facilitates general traffic for both locals and tourists as well as large diesel truck traffic that would serve much of the Peninsula and South Bay. In addition, nearby road-widening projects (e.g., SR 156) will induce more traffic (Milam et al., 2017) and other projects, including the Travelers Station, the Strada Verde Innovation Park Project, the Sargent Ranch Quarry Project, and the San Benito Ag Center, will also induce traffic and growth and further encroach on this last-remaining critical linkage between the Santa Cruz Mountains, Diablo Range, and Gabilan Range. These projects will cause significant cumulative impacts to mountain lions, wildlife connectivity, and wildfire risk.

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The DEIR fails to adequately assess and mitigate the Project’s cumulative impacts. The County is violating CEQA and misleading the public and decisionmakers about the impacts of the Project.

V. Conclusion

We are in the midst of a global extinction crisis, with species going extinct at a rate of over 1,000 times the background rate and more than one million species on track to become extinct over the coming decades (Pimm et al., 2014). The County should work to safeguard the region’s biodiversity and remaining wildlife habitat. The DEIR fails to adequately disclose, assess, and mitigate impacts to mountain lions, wildlife connectivity, and wildfire risk. In addition, the DEIR erroneously concludes that cumulative impacts would be less than significant without providing substantive evidence to support this conclusion. The Center urges the County not to approve the project without an EIR that complies with CEQA and adequately discloses, assesses, and mitigates the Project’s significant impacts to sensitive species, habitats, and wildfire risk.

O6-23

Thank you for the opportunity to submit comments on the Project. Please include the Center on your notice list for all future updates to the Project and do not hesitate to contact the Center with any questions at the email addresses listed below.

O6-24

Sincerely,



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Letter O6 Center for Biological Diversity (Comment Letter Attachments Provided in Appendix A)

Tiffany Yap and Peter Broderick

O6-1 This comment provides introductory comments regarding the project location and the history and background of the Center for Biological Diversity, and it states that the Draft EIR fails to adequately acknowledge cumulative impacts.

Specific concerns identified in this comment letter are responded to in comments O6-2 through O6-24.

O6-2 This comment states that the Draft EIR does not adequately address impacts on the Central Coastal and Southern California Evolutionarily Significant Unit (ESU) of mountain lion (*Puma concolor*). The comment states that the current listing status was defined incorrectly in the Draft EIR.

The description of the current listing status of mountain lions in the Central Coast and Southern California ESU in Table 3.4-3 on page 3.4-18 of the Draft EIR has been revised as follows:

Mountain lion <i>Puma concolor</i>	–	SC	Mountain lions inhabit a wide range of ecosystems, including mountainous regions, forests, deserts, and wetlands. Mountain lions establish and defend large territories and can travel large distances in search of prey or mates. <u>In April 2020, the California Fish and Game Commission found that listing of the Central Coast and Southern California Evolutionarily Significant Units (ESUs) may be warranted and designated mountain lion within these ESUs as a candidate species. Were granted emergency listing status in April of 2020, and CDFW is currently completing a 12-month status review and, following the status review, will make its recommendation on listing. Reviewing a petition to list these ESUs as threatened under CESA.</u> The project site is located within the Central Coast ESU.	Not expected to <u>May</u> occur. The region surrounding the project site contains relatively undeveloped open space and riparian corridors that are likely used by mountain lions. <u>Den habitat suitable for mountain lions is not present on the project site.</u> <u>Although</u> However , the project site is disturbed and adjacent to significant sources of human disturbance (e.g., US 101) which would likely prevent mountain lions from using the site more than very rarely, <u>mountain lions have been detected during camera trapping surveys along US 101 approximately 3 miles south of the project site, and mountain lion tracks have been detected approximately 1 mile south of the project site near the San Benito River undercrossing (Diamond et al. 2022). Mountain lions use movement corridors in the vicinity of the project site and could periodically move through the project site.</u>
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This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O6-3 This comment states that although the Draft EIR ruled out the presence of mountain lions in the project area, mountain lions have been documented in the vicinity of the project site. References to these sources were provided with the comment letter. One reference (Diamond et al. 2022) is a study regarding wildlife movement in the vicinity of the project area. It was published in August 2022, after the Draft EIR was published. The other reference is a set of comments on the San Benito County General Plan EIR provided by Chris Wilmers. Chris Wilmers also provided comments on this project (see comment letter I18).

Based on this new information, Table 3.4-3 on page 3.4-18 of the Draft EIR has been edited (in response to comment O6-2) to state that mountain lions may occur in the project area, and an analysis of mountain lion impacts has been added to Impact 3.4-2 on pages 3.4-23 and 3.4-24 of the Draft EIR, as shown below. This comment also provides a summary of literature regarding mountain lion population dynamics and threats to the species. This portion of the comment provides background information and is noted.

Mountain Lion

Den habitat suitable for mountain lions is not present on the project site or adjacent to the project site. Mountain lions have been detected during camera trapping surveys along US 101 approximately 3 miles south of the project site, and mountain lion tracks have been detected approximately 1 mile south of the project site near the San Benito River undercrossing (Diamond et al. 2022). Although mountain lions may periodically use the project site as a movement corridor, it has been demonstrated that wildlife moving through the vicinity of the project site use the existing riparian corridors west, north, and south of the disturbance area (Diamond et al. 2022), and these riparian corridors provide much better movement habitat (e.g., cover, connectivity) than the disturbed habitat on the project site. The project site does not contain any bridges or culverts large enough to facilitate wildlife movement to the east over or under US 101. Project implementation would not result in removal of riparian habitat within these corridors, because the development footprint completely avoids this habitat.

The majority of the development area has been regularly disked or is otherwise disturbed (e.g., buildings, roadways) and has been farmed and disked regularly since at least 1993. The Betabel RV Resort and US 101, directly adjacent to the project site to the north and east, respectively, provide an existing level of human activity, noise, and artificial light. Mountain lions typically avoid human development when selecting nursery sites and communication sites, and mountain lions moving through developed areas experience a greater metabolic demand (e.g., travel greater distances, expend more calories) (Wang et al. 2017; Yovovich et al. 2020). The Diamond et al. 2022 study developed cost surface models to describe the relative cost associated with a species' movement across the landscape. The mountain lion cost surface model designated the project site as unsuitable or poor habitat for movement with high movement costs (Diamond et al. 2022).

Because the project site is disturbed and located adjacent to significant existing sources of human disturbance (e.g., US 101, Betabel RV Resort) and because the project site has been identified as unsuitable or poor habitat for movement, mountain lions likely would be present on the project site very rarely. Project implementation would not result in injury or mortality of individual mountain lions or substantial loss of mountain lion habitat, because the project site is already disturbed and unsuitable for this species. Impacts on mountain lion would therefore be **less than significant**.

Mitigation Measures

No mitigation is required for this impact.

This modification, based on new information, clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O6-4

This comment introduces information from the Diamond et al. 2022 study regarding wildlife movement in the vicinity of the project site and states that development near some of the undercrossings identified in the study would have a significant impact on mountain lions. The comment also states that the Draft EIR did not adequately address impacts on mountain lions.

The reader is referred to response to comment O6-3.

O6-5

This comment provides a summary of literature regarding human impacts (e.g., habitat loss, habitat fragmentation) on mountain lions. The comment states that project implementation would result in increased traffic, light, and noise and would adversely affect wildlife and wildlife movement. Impact 3.4-5 on page 3.4-37 of the Draft EIR has been revised to describe potential impacts resulting from increased traffic, light, and noise, as follows:

Impact 3.4-5: Interfere with Wildlife Movement Corridors or Impede the Use of Wildlife Nurseries

While the project site contains some riparian woodland habitat that may provide habitat for roosting bats and provide some habitat connectivity for wildlife, the project site is largely disturbed and located adjacent to significant barriers to wildlife movement (e.g., US 101). Further, there are no modeled ECAs or natural landscape blocks on the project site. As a result, the project site likely does not currently function as a significant wildlife nursery site or wildlife movement corridor. Therefore, the impact related wildlife movement corridors or wildlife nurseries would be **less than significant**.

The riparian woodland habitats on the project site may provide roosting habitat potentially suitable for common bat species. However, based on the number and size of the trees on the project site, it is unlikely that the project site would support a large colony of common bats. Further, as discussed above in Impact 3.4-2, while implementation of the project may affect special-status birds and bats, mitigation measures, including preconstruction surveys and avoidance of active bird nests and bat roosts, would be implemented to reduce impacts to less than significant. These mitigation measures would also result in protection of active bat roosts that would be considered nursery sites.

The project site does not contain any portion of a modeled ECA or natural landscape block. Although the project site is located adjacent to the Santa Cruz Mountains-Gabilan Range critical linkage, it is not included within this linkage (Penrod et al. 2013). ~~While~~ The project site contains some natural habitat (e.g., riparian woodland); however, most of the development area of the project site is disturbed and is located adjacent to US 101 to the east, which is a significant barrier to wildlife movement. Wildlife moving through the vicinity of the project site ~~would likely have been demonstrated to~~ use the existing riparian corridors (Diamond et al. 2022) and undisturbed habitat in the undeveloped area (approximately 80 acres) on the project site that would not be developed. The retention of the 80 acres of undeveloped area would be consistent with General Plan policies NCR-2.1, NCR-2.4, and NCR-4.4.

Although project implementation could result in increased traffic, human activity, and artificial lighting in the project site compared to current conditions, the Betabel RV Resort north of the project site and US 101 east of the project site provide an existing level of human activity, noise, and artificial light. Section 3.12, "Noise," on pages 3.12-1 through 3.12-28 of the Draft EIR, describes the potential noise impacts resulting from project construction and operation and notes that existing ambient noise in the vicinity of the project site is dominated by traffic on US 101. As noted in Section 3.12, maximum noise generated during daytime project construction activities and operation is not predicted to substantially exceed baseline maximum noise levels currently experienced in the vicinity of the project site. Additionally, as described in Section 3.1, "Aesthetics," on pages 3.1-1 through 3.1-16 of the Draft EIR, the project would be required to comply with the County's Dark Sky Ordinance, and all lighting would be consistent with International Dark Sky Standards, which include

standards that would reduce impacts from artificial lighting on wildlife (e.g., minimizing blue light, fully shielding lights).

Project construction activities are not expected to significantly impede wildlife movement in the vicinity of the project site or the region, and this impact would be **less than significant**.

Mitigation Measures

No mitigation is required for this impact.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

- O6-6 This comment provides a summary of literature describing mountain lions as an indicator species and states that loss of mountain lions could result in impacts on other species and the ecosystem as a whole. This portion of the comment provides background information and is noted. The comment also states that the Draft EIR did not adequately assess the impact of the project on mountain lions. The reader is referred to response to comment O6-3.
- O6-7 This comment states that wildlife connectivity is important for the survival of the Central Coast ESU of mountain lions. Specific concerns regarding wildlife connectivity identified in this comment letter are addressed in responses to comments O6-10 through O6-12.
- O6-8 This comment provides background information and a summary of literature regarding the effects of habitat loss and fragmentation on wildlife, plants, and people in general, as well as on mountain lions specifically. The comment does not raise any environmental issues related to the adequacy of the EIR analysis of the proposed project's impacts or the existing environmental setting; therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.
- O6-9 This comment provides background information and a summary of literature regarding edge effects and adverse effects of limiting movement and dispersal on wildlife. The comment does not raise any environmental issues related to the adequacy of the EIR analysis; therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.
- O6-10 This comment states that the Draft EIR failed to address wildlife connectivity and that the Draft EIR and project violate several policies of the San Benito County General Plan: General Plan Policies NCR-1.1, NCR-2.4, NCR-4.4, and NCR-2.5. Section 3.4.1, "Regulatory Setting," on pages 3.4-3 through 3.4-5 includes the full text of these General Plan policies and identifies them as relevant to biological resources. Impact 3.4-5 on page 3.4-37 of the Draft EIR addresses General Plan Policies NCR-1.1, NCR-2.4, and NCR 4.4 in relation to wildlife movement corridors. The comment fails to state that the project site is designated under the General Plan for commercial development. The proposed project design would retain approximately 80 acres as undeveloped land, and implementation of Draft EIR Mitigation Measure 3.16-1d would also preserve this area from project development, which would be consistent with General Plan Policies NCR-1.1, NCR-2.4, and NCR-4.4. Mitigation Measure 3.4-3 would be consistent with General Plan Policies NCR-2.8 and NCR-2.10, whereas Mitigation Measure 3.4-4 would be consistent General Plan Policies NCR-2.5 and NCR-4.1. The reader is also referred to responses to comments O6-3, O6-5, and O6-12.

O6-11 This comment states that the Draft EIR did not acknowledge the importance of the project site for wildlife connectivity, as described in studies, including Diamond et al. 2002. The comment states that the data used in the Draft EIR wildlife movement corridor analysis were not sufficient.

The reader is referred to responses to comments O6-3 and O6-12.

O6-12 This comment states that the Draft EIR did not disclose information regarding important undercrossings for wildlife near the project site, as described in the Diamond et al. 2002 study.

As noted above, the Diamond et al. 2022 study was published in August 2022, after the Draft EIR was published. The reader is referred to response to comment O6-3. Based on this new information, the wildlife movement corridor discussion on page 3.4-20 in Section 3.4.2, "Environmental Setting," has been edited to include a summary of the Diamond et al. 2002 study, as shown below. The comment also refers to *Critical Linkages: Bay Area & Beyond* (Penrod et al. 2013). This report addresses the Conservation Lands Network, a project that identified land in the Bay Area that supports key biodiversity targets. The wildlife movement corridor discussion on page 3.4-20 in Section 3.4.2, "Environmental Setting," also has been revised to include a summary of this report, as follows. Information from both reports have been incorporated into Impact 3.4-5 on page 3.4-37 of the Draft EIR. See also response to comment O6-5.

Wildlife Movement Corridors

A wildlife movement corridor is generally a topographical/landscape feature or movement zone that connects two or more natural habitat areas. Wildlife corridors link areas of suitable wildlife habitat that are separated by variation in vegetation, rugged terrain, human disturbance and habitat fragmentation, or other biophysical factors. Movement corridors may provide favorable locations for wildlife to travel between different habitat areas, such as foraging sites, breeding sites, cover areas, and preferred summer and winter range locations. They may also function as dispersal corridors allowing animals to move between various locations within their range. Therefore, wildlife movement and migration corridors are considered an important ecological resource by CDFW and other agencies and are protected by many local governments in California.

Some of the important areas for habitat connectivity in California were mapped as Essential Connectivity Areas (ECA) for the California Essential Habitat Connectivity Project, which was commissioned by the California Department of Transportation and CDFW with the purpose of making transportation and land-use planning more efficient and less costly, while helping reduce dangerous wildlife-vehicle collisions (Spencer et al. 2010). The ECAs were not developed for the purposes of defining areas subject to specific regulations by CDFW or other agencies. The project site does not contain any portion of a modeled ECA or natural landscape block. Natural landscape blocks have been identified west of the project site (i.e., within the rolling hills west of the railroad tracks) and a modeled ECA is present along the Pajaro River north of the project site.

The *Critical Linkages: Bay Area & Beyond* (Penrod et al. 2013) effort identified 14 landscape-level connections or critical linkages in California. Critical linkages were designed to accommodate the full range of target species and ecosystem functions to provide habitat (including movement habitat), support metapopulations, ensure availability of key resources, buffer against edge effects, reduce contaminants in streams, and allow natural processes to operate (Penrod et al. 2013). The Santa Cruz Mountains-Gabilan Range critical linkage was identified adjacent to the project site (Penrod et al. 2013). The project site was included in an "adjacent linkage" because it falls within the riparian buffer zone surrounding the San Benito and Pajaro Rivers adjacent to the project site (Penrod et al. 2013).

A recent study examined the ecological connectivity between the Santa Cruz Mountains, the Gabilan Range, and the Diablo Range using motion-activated cameras at several highway undercrossings (Diamond et al. 2022). The San Benito River Bridge undercrossing and Pajaro River Bridge undercrossing are located approximately 1.1 miles north of the project site and approximately 0.3 mile south of the project site, respectively (Diamond et al. 2022). These two undercrossings accounted for the highest number of native species passages of six total US 101 undercrossings in the Pajaro Valley; primarily consisting of deer (Diamond et al. 2022). Both of these crossings provide a wide riparian corridor through which wildlife may cross under US 101, and this study suggests that wildlife moving from the southern Santa Cruz Mountains to the Gabilan Range and Diablo Range are primarily using riparian habitat associated with the San Benito River and Pajaro River to do so.

Audubon identifies Important Bird Areas (IBAs) throughout the United States, which are distinct areas that provide essential habitat for one or more species of birds for breeding, wintering, or migration. The project site is located on the western edge of the Upper Pajaro River IBA (Audubon 2022). This IBA was designated because it includes San Felipe Lake (approximately 7.5 miles northeast of the project site), Pacheco Creek (approximately 7.5 miles northeast of the project site), and riparian habitat along Llagas Creek (approximately 5 miles northeast of the project site) and the Pajaro River (adjacent to the project site and extending to the northeast) (Audubon 2022).

The project site contains some natural habitat (e.g., riparian woodland) and is adjacent to natural habitat to the west (i.e., San Benito River, Pajaro River), which, as described above, functions as wildlife movement corridors. ~~likely function as wildlife movement corridors.~~ However, the project site is also adjacent to development to the north and US 101 to the east; a significant barrier to wildlife movement. Additionally, the disturbance area within the project site is disturbed or disked and has been farmed and disked regularly since at least 1993. It has been demonstrated that wildlife moving through the vicinity of the project site would likely use the existing riparian corridors west, north, and south of the project site disturbance area (Diamond et al. 2022), and these riparian corridors provide much better movement habitat (e.g., cover, connectivity) rather than the disturbed habitat on the project site. Further, the project site does not contain any bridges or culverts large enough to facilitate large wildlife movement to the east over or under US 101. Therefore, it is unlikely that the project site currently functions as a critical habitat linkage; however, it likely functions as a movement corridor for some wildlife species.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O6-13

This comment states that the Draft EIR does not adequately address direct and cumulative impacts on riparian habitat. It states that construction of buildings, fueling stations, livestock corrals, and wells near this habitat would significantly alter the form and function of the riparian habitat. The comment agrees with the conclusion in the Draft EIR that impacts on riparian habitat would be significant but states that the Draft EIR does not adequately describe the existing conditions or substantiate that mitigation would reduce impacts to a less-than-significant level.

Specific concerns regarding riparian habitat identified in this comment letter are addressed in responses to comments O6-14 through O6-16.

The comment provides background information regarding historic riparian habitat loss in California; the role of riparian habitat in biodiversity and ecological function; and the importance of riparian habitat for wildlife species, including anadromous fish.

The comment does not raise any environmental issues related to the adequacy of the EIR analysis; therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.

O6-14

This comment states that the riparian habitat buffers identified in the Draft EIR are insufficient to minimize impacts. The comment cites literature to support implementing larger buffers around riparian habitat to protect wildlife, including birds, California red-legged frogs, other amphibians, and western pond turtle.

Mitigation Measure 3.4-3 on pages 3.4-34 and 3.4-35 of the Draft EIR requires implementation of a setback around riparian habitat of at least 50 feet in consultation with a qualified biologist and CDFW. This setback is intended to prevent inadvertent crushing of plants and soil compaction such that riparian vegetation would not be adversely affected. Most of the development area is greater than 100 feet away from the riparian woodland habitat. The additional buffers recommended in this comment apply to wildlife. Mitigation Measure 3.4-2f on page 3.4-31 of the Draft EIR describes the survey and avoidance requirements for nesting birds through which avoidance buffers of 500 feet to 0.25 mile for active raptor nests would be implemented. Mitigation Measure 3.4-2a on pages 3.4-25 through 3.4-27 of the Draft EIR includes conservation measures that would be implemented prior to the start of project activities and that would minimize the likelihood of take of California red-legged frogs in the project area (e.g., amphibian exclusion fencing). Mitigation Measure 3.4-2d on pages 3.4-28 and 3.4-29 of the Draft EIR describes survey and avoidance requirements for western pond turtle through which avoidance buffers of at least 100 feet would be implemented around active nest sites or overwintering sites. Riparian woodland habitat adjacent to the project site would be completely avoided, and no-disturbance buffers would be applied. Riparian woodland habitat on the project site would be largely avoided, and any unavoidable impacts (i.e., from installation of pipelines associated with new wells) would be compensated for as described in Mitigation Measure 3.4-3.

O6-15

This comment states that the mitigation ratio proposed in Mitigation Measure 3.4-3 on pages 3.4-34 and 3.4-35 of the Draft EIR is too low. The comment letter recommends a mitigation ratio of 3:1. The comment also provides literature references supporting higher mitigation ratios for riparian habitat.

Mitigation Measure 3.4-3 requires mitigation for direct impacts on riparian habitat at a ratio of a minimum of 1:1. As described in Mitigation Measure 3.4-3, if riparian habitat would be adversely affected, the project applicant would be required to notify CDFW and obtain a Streambed Alteration Agreement, as required under California Fish and Game Code Section 1602. Through this process, the appropriate mitigation ratio would be determined such that any loss of riparian habitat function would be offset. This ratio may be greater than 1:1. Mitigation Measure 3.4-3 does not limit the ratio to 1:1. The commenter did not provide any regulatory basis (e.g., California Fish and Game Code) that a 1:1 mitigation ratio would not be adequate, and the County is not aware of any official guidance regarding mitigation ratios for riparian habitat other than reducing impacts to less than significant under CEQA and complying with a Streambed Alteration Agreement, if required. The precise mitigation ratio that would be required by CDFW is not known at this time and will be determined once CDFW has determined whether a Lake and Streambed Alteration Agreement is required. However, when this detail can feasibly be defined, it must meet the performance standards established in Mitigation Measure 3.4-3.

O6-16

This comment states that Mitigation Measure 3.4-3 on pages 3.4-34 and 3.4-35 does not provide enough information about compensatory mitigation for impacts on riparian habitat. It states that mitigation ratios are not provided for habitat preserved onsite and for offsite compensation. The comment also states that success criteria and long-term management and monitoring of restored or enhanced habitat are not defined. In addition, the comment states that because these details are missing, mitigation for riparian habitat is deferred.

The reader is referred to responses to comments O7-35 and O7-36.

- O6-17 This comment states that the Draft EIR does not adequately address impacts on connectivity for resident and migratory birds. It states that the Draft EIR does not mention that the project area has been documented by California Audubon as an Important Bird Area.
- Information regarding this designation has been added to the wildlife movement corridor discussion in Section 3.4.2, "Environmental Setting," on page 3.4-20 of the Draft EIR. The comment states that noise, light, and other anthropogenic disturbance sources may result in adverse effects on birds. The reader is referred to response to comment O6-5, regarding human disturbances.
- The comment also states that buffers of 20 feet or less for nonraptor species would not reduce impacts on special-status birds, raptors, or other native nesting birds to less than significant.
- Mitigation Measure 3.4-2f on page 3.4-31 of the Draft EIR states that protective buffers for non-special-status, nonraptor birds would be at least 20 feet, but not less than 20 feet. Mitigation Measure 3.4-2f has been edited in response to comment O7-11 to specify that buffers shall be at least 100 feet for special-status birds not otherwise specified currently in the mitigation measure.
- O6-18 The comment states that the Draft EIR fails to address how changes in fire regimes and climate change have worsened wildfire conditions and the project's impact on wildfire risk. The comment also notes that the analysis should address the area's fire history, ecology, and landscape conditions of the area and identify mitigation to reduce the project's risk of wildfire events.
- Draft EIR Section 3.18, "Wildfire," identifies the current designated fire hazard severity zones on and adjacent to the project site (see Draft EIR Figure 3.18-1), as well as fire history of the region between 1911 and 2019 (see Draft EIR Figure 3.18-2). As shown in Draft EIR Figure 3.18-2, historic wildfire activity in the northern portion of the County (where the project site is located) has been limited. Draft EIR page 3.18-6 addresses the impact of climate change on wildfire hazards. As identified in response to comment O4-20, Mitigation Measure 3.18-2 has been refined and determined acceptable by the Hollister Fire Department (Bedolla, pers. comm., 2022).
- Pursuant to State CEQA Guidelines Sections 15126.2(a) and 15126.4(a)(4), EIR impact and mitigation measures are focused on impacts of the project and not impacts of the environment, such as climate change. Environmental impact analyses under CEQA generally are not required to analyze the impact of existing environmental conditions on a project's future users or residents unless the proposed project might create environmental hazards or conditions or risk exacerbating existing environmental hazards or conditions (State CEQA Guidelines Section 15126.2[a]). In those specific instances, it is the project's impact on the environment and not the environment's impact on the project that compels an evaluation of how future residents or users may be affected by exacerbated conditions (*California Building Industry Association v. Bay Area Air Quality Management District* [2015] 62 Cal. 4th 369).
- O6-19 The comment states that the Draft EIR fails to discuss historic fire regimes and the role of indigenous communities in the role of shaping fire ecology. The comment further states that indigenous communities should be included in discussions regarding climate change and wildfire because they are disproportionately affected by wildfire.
- Consistent with CEQA Guidelines Section 15125(a), the Draft EIR uses April 20, 2022 (release of the notice of preparation) as the baseline point of comparison for determining the significance of a proposed project's environmental effects rather than land use conditions that no longer exist. The reader is referred to response to comment O6-18, regarding information on historic wildfire conditions in the region.
- O6-20 The comment provides information regarding the potential for development in highly fire-prone areas to increase the likelihood for ignition and provides a summary of recent large fire events in the state, as well as air pollution impacts from fires. The comment states that Mitigation Measure 3.18-2 would do more harm than good and that it does not provide details on the activities required for

maintaining defensible space. The comment further recommends mitigation for making structures fire resistant, using solar energy, and equipping nearby communities with personal protective equipment.

Draft EIR pages 3.18-6 through 3.18-10 provide information regarding the extent of wildfire events in the region, wildfire risk reduction efforts in the region, and the air quality impacts that have been experienced from fire events in the state. Draft EIR Impact 3.18-2 acknowledges that project site development adjacent to the undeveloped area could increase wildfire risk in the project area. As identified in response to comment O4-20, Mitigation Measure 3.18-2, which relates to vegetation management, has been refined and has been determined acceptable by the Hollister Fire Department (Bedolla, pers. comm., 2022). Implementation of this mitigation measure would offset the project's potential to increase wildfire hazards in the region by requiring vegetation management that would avoid and/or minimize fire events at the site (Draft EIR page 3.18-12). As identified on Draft EIR page 3.18-11, the project structures would be subject to the California Fire Code (Title 24 CCR, Part 2, Section 701A.3), which requires fire-resistant building design (see Draft EIR pages 3.18-1 and 3.18-2).

O6-21

The comment states that Draft EIR's analysis of impairment of an adopted emergency response plan or evacuation plan is insufficient (addressing evacuation in real time is not a plan) and notes impacts on low-income and minority groups associated with disaster planning and evacuation planning, as well as health impacts from air pollution from wildfires.

The comment mischaracterizes the information provided in Draft EIR Section 3.18, "Wildfire," and Impact 3.18-1. Emergency response in the County is implemented through the San Benito County Operational Area Emergency Operations Plan. This plan identifies the methods for carrying out emergency operations, the process for rendering mutual aid, the emergency services of governmental agencies, how resources are mobilized, how the public will be informed (including information on evacuation routes to be used), and the process to ensure continuity of government during an emergency or disaster. No specific evacuation routes are designated under the San Benito County Operational Area Emergency Operations Plan. Pursuant to this plan, the San Benito County Sheriff's Office is the lead department for determining when an evacuation is recommended or required based on the parameters of the emergency. This includes identification of the evacuation routes, designation of areas to be evacuated, and communication. Evacuation details are developed and directed in real time in response to the unique conditions of the emergency.

As identified on Draft EIR page 3.18-11, project visitors and employees would use US 101 as the primary evacuation route and may be directed to use State Routes 25, 129, and 156 or other local roadways depending on direction from the Sheriff's Office. These highways and local roadways provide multiple north-south and east-west escape routes. Project construction would not alter or obstruct US 101 but would add traffic to anticipated congestion on these highways associated with the potential evacuation of other communities (e.g., unincorporated areas of the San Benito and Monterey Counties and the cities of San Juan Bautista and Hollister). Evacuation details are developed and directed in real time in response to the unique conditions of the emergency and would reflect consideration of the length of time to adequately evacuate areas through implementation of the San Benito County Area Emergency Operations Plan. The reader is referred to response to comment O6-20, regarding the Draft EIR's discussion of air quality impacts associated with wildfire events.

O6-22

The comment states that the Draft EIR cumulative impact analysis fails to adequately address wildlife connectivity, biological resource impacts, and wildfire. The comment also states that the project would induce growth in travel along US 101, including an increase in large diesel truck traffic.

As discussed in responses to comments O6-3, O6-5, and O6-12, the project would not result in significant impacts, under either project or cumulative conditions, on mountain lion and wildlife movement. Draft EIR page 4-8 and Section 3.4, "Biological Resources," state that Mitigation

Measures 3.4-1, 3.4-2a, 3.4-2b, 3.4-2c, 3.4-2d, 3.4-2e, 3.4-2f, 3.4-2g, 3.4-2h, 3.4-2i, 3.4-3, and 3.4-5 would offset the project's contribution to cumulative biological resource impacts by avoiding impacts on these species and habitats or compensating for habitat and species impacts. As discussed in response to comment O6-20, implementation of Mitigation Measure 3.18-2 would offset the project's potential to increase wildfire hazards in the region by requiring vegetation management that would avoid and/or minimize fire events at the site. The comment provides no technical analysis to counter the Draft EIR conclusions regarding cumulative impact conclusions.

The comment states that the project would result in growth inducement, including induced growth in local, tourist, and large diesel truck traffic, in combination with other cumulative projects in area. The project is intended to capture local and regional traffic using the US 101 corridor but because of the proposed outdoor event center would also be a destination for events.

Draft EIR pages 5-1 and 5-2 state that the project's increase in employment could lead to population growth in the area if employees relocated from outside of the area. Given that most jobs generated by the project would require skill levels that could be provided by existing residents of the region (i.e., San Benito County), induced employment is not anticipated to have a substantial effect on population growth. As identified in Draft EIR Section 3.13, "Land Use and Planning," the project site is consistent with the San Benito County 2035 General Plan and zoning and is part of the planned growth of the unincorporated area of the county. The environmental impacts of this growth were addressed in the San Benito County 2035 General Plan EIR.

The project would not induce large diesel truck traffic because the proposed gas station is designed to accommodate passenger vehicles and trucks (see Draft EIR Figure 2-3, regarding fuel station design).

O6-23 The comment restates comments made earlier in the comment letter.

These comments are responded to in responses to comments O6-1 through O6-22.

O6-24 The commenter thanks the County for the opportunity to comment and requests receipt of future notices and notification of future updates.

This comment is noted. The comment is included in the record for consideration by the decision makers as part of the project approval process. The County will provide notices and updates on the project on the County's website.



September 6, 2022

By E-Mail

San Benito County Resource Management Agency
 Attn: Abraham Prado
 2301 Technology Parkway
 Hollister, CA 95023
aprado@cosb.us

Re: Draft Environmental Impact Report for Betabel Commercial Development Use Permit

Dear Mr. Prado:

On behalf of Protect San Benito County (“PSBC”), a non-profit 501(c)(3) organization, please accept and consider the following points concerning the above-referenced draft environmental impact report (“EIR”) for the subject commercial development project (“Project”). PSBC is an all-volunteer coalition of local residents and environmental organizations dedicated to protecting the County’s agricultural heritage, cultural heritage, natural heritage, and rural quality of life. As explained in further detail below, the DEIR in its current form fails to meet the standards for information disclosure and analysis required by the California Environmental Quality Act (“CEQA”). The County should update and amend the DEIR to correct these informational deficiencies, and recirculate a revised draft for further public and agency review and comment.

O7-1

Following are specific comments organized by topic area.

I. Impacts to Biological Resources

Environmental Setting

Data used for the DEIR’s analysis was derived (in part) from “Ascent Environmental 2022” and a reconnaissance-level survey of the Project site by an Ascent Environmental wildlife biologist on May 16, 2022. However, the County has not provided a copy of “Ascent Environmental 2022” (which is not listed in the References section of the DEIR), nor does it provide a survey report or other information pertaining to Ascent’s survey. Although the County has provided a copy

O7-2

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of the Draft Biological Resources Report prepared by Denise Duffy & Associates (2020), that report was prepared for a project with a smaller footprint.

1. Please provide a copy of “Ascent Environmental 2022” and any other reports that contain information pertaining to the 16 May 2022 survey of the Project site.

O7-2
cont.

Sensitive Natural Communities

The Project site contains approximately 25 acres of riparian woodland. Although the DEIR states that the tree species in the woodland “do not make up a sufficient percentage of the woodland canopy to be considered sensitive natural communities pursuant to the membership rules outlines in the Manual of California Vegetation (Sawyer et al. 2009),” it does not identify the Alliance(s) and Association(s) that occur in the woodland (based on the Manual of California Vegetation classification scheme). This precludes the ability to validate the DEIR’s conclusion that there are no sensitive natural communities at the Project site.

1. Please identify the vegetation alliances and associations that occur at the Project site.
2. Please provide completed copies of the “Combined Vegetation Rapid Assessment and Relevé Field Forms” that were used to classify the vegetation communities at the Project site.

O7-3

Special-Status Animals

The DEIR states: “[s]pecial-status species are defined as species that are legally protected or that are otherwise considered sensitive by federal, state, or local resource agencies.” The DEIR then lists various categories of special-status wildlife species (e.g., species listed under the Endangered Species Act, species listed as California Species of Special Concern). The U.S. Fish and Wildlife Service (“USFWS”) maintains a list of Birds of Conservation Concern. This list consists of migratory nongame birds, that without additional conservation action, are likely to become candidates for listing under the Endangered Species Act. The “Special Animals List” maintained by the California Natural Diversity Database (“CNDDB”) includes USFWS Birds of Conservation Concern. Thus, USFWS Birds of Conservation Concern are classified as special-status species.

1. Please provide analysis of the Project’s direct, indirect, and cumulative impacts on USFWS Birds of Conservation Concern.

O7-4

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Page 3

DEIR Table 3.4-3 lists 54 special-status wildlife species “known to occur within the vicinity of the Project site.” The table omits the grasshopper sparrow, which is a California Species of Special Concern that is known to occur in the vicinity of the Project site.

O7-5

2. Please provide analysis of the Project’s direct, indirect, and cumulative impacts on the grasshopper sparrow.

California Red-legged Frog

The USFWS’s Guidance on Site Assessments and Field Surveys for the California Red-legged Frog states:

“the surveyor shall describe the upland and aquatic habitats within the project site and within 1.6 kilometers (1 mile) of the project boundary. The aquatic habitats should be mapped and characterized (e.g., ponds vs. creeks, pool vs. riffle, ephemeral vs. permanent (if ephemeral, give date it goes dry), vegetation (type, emergent, overhanging), water depth at the time of the site assessment, bank full depth, stream gradient (percent slope), substrate, and description of bank)... Upland habitats should be characterized by including a description of upland vegetation communities, land uses, and any potential barriers to CRF movement”

O7-6

The DEIR fails to provide this information, which precludes the ability to substantiate the DEIR’s subsequent analysis (e.g., “conversion of habitat would not result in significant loss of habitat in the vicinity of the project site.”).

1. Please provide the site assessment information described in the USFWS’s Guidance on Site Assessments and Field Surveys for the California Red-legged Frog.

California Tiger Salamander

The USFWS’s Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander state: “The surveyor should note in their report all known CTS localities within the project site and within 3.1 miles of the project boundaries... Describe the upland and aquatic habitats within the project site and within 1.24 miles of the project boundaries... Use of aerial photographs is necessary to characterize potential breeding habitats that are not part of the project site under consideration. The aquatic habitats should be mapped and characterized (e.g., natural vernal pools, stockponds, drainage ditches, creeks, types of vegetation, surface area, depth, approximate drying date). Suitable

O7-7

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upland habitat, including locations of underground refugia, for CTS should be mapped as well...”

The DEIR fails to provide this information. For example, the DEIR states: “[w]hile California tiger salamander individuals could enter the site, they would use the site for moving between unknown off-site aquatic habitats that could support breeding, such as standing bodies of fresh water, pond, or vernal pools.” The DEIR’s failure to provide adequate information on the abundance and distribution of off-site aquatic habitats precludes the ability to assess the importance of upland habitat at the Project site to the California tiger salamander.

O7-7
cont.

1. Please provide the information discussed in the USFWS’s Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander including: (a) a description of the upland and aquatic habitats within 1.24 miles of the Project boundaries; (b) a map of potential off-site aquatic habitats; and (c) a map of underground refugia at the Project site.

Wildlife Movement Corridors

The DEIR states: “[s]ome of the important areas for habitat connectivity in California were mapped as Essential Connectivity Areas (ECA) for the California Essential Habitat Connectivity Project... The project site does not contain any portion of a modeled ECA or natural landscape block.” The maps produced for the California Essential Habitat Connectivity Project (Spencer et al. 2010) were based on coarse ecological condition indicators, rather than the needs of particular species. Spencer et al. (2010) stated: “[g]iven the coarse nature of the Essential Habitat Connectivity Map and the difficulties inherent to prioritizing conservation across such a diverse landscape, this Report provides guidance for mapping connectivity networks at regional and local scales.” This regional level of analysis was subsequently conducted for the Critical Linkages: Bay Area & Beyond project (Penrod et al. 2013). Penrod et al. (2013) identified the Project site as a critical linkage between the southern Santa Cruz Mountains and the Diablo Range. In addition, the Project site is identified as a conservation planning linkage in CDFW’s Areas of Conservation Emphasis Project.

O7-8

1. Please revise the DEIR’s discussion of the Project’s environmental setting to reflect the linkages identified in Penrod et al. (2013) and CDFW’s Areas of Conservation Emphasis Project.

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Conflict with Conservation Plans

One of the CEQA significance thresholds used in the DEIR is: “[a]n impact on biological resources is considered significant if implementation of the project would conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.” The DEIR provides the following analysis of this issue: “The project site is not located within the plan area of any adopted habitat conservation plan, NCCP, or other approved local, regional, or state habitat conservation plan. The San Benito County Conservation Plan, a proposed HCP/NCCP, is in development; however, this plan has not been adopted and will not be adopted through the life of this project. Therefore, this impact is not discussed further.”

07-9

California’s State Wildlife Action Plan (“SWAP”) is a comprehensive, statewide plan for conserving the state’s fish and wildlife and their vital natural habitats. As such, it qualifies as a statewide plan that needs to be considered when evaluating the CEQA significance threshold.

1. Please discuss the Projects conflicts with the SWAP, including the SWAP conservation targets for (a) California Grassland and Flowerfields; and (b) American Southwest Riparian Forest and Woodland.

Golden Eagle

The DEIR states:

“While golden eagle may forage within the project site, there is no suitable nesting habitat on the project site (e.g., large trees in open areas). Project implementation would not result in significant loss of foraging habitat or a substantial change in the character of the foraging habitat in the vicinity of the project area. Because project implementation would not result in direct loss of golden eagles because nesting habitat is not present on the project site, this species is not discussed further.”

07-10

The DEIR’s analysis is insufficient because it fails to consider the potential for the Project to result in indirect loss (“take”) of golden eagles.

1. Please discuss any survey data that were obtained, or reviewed, to identify golden eagle nest sites within one mile of the Project site.

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2. Please provide evidence to substantiate the statement that: “[p]roject implementation would not result in significant loss of foraging habitat or a substantial change in the character of the foraging habitat in the vicinity of the project area.”
3. Please analyze how noise and human activity associated with the Project would indirectly impact golden eagles and their habitat (nesting and foraging).

O7-10
cont.

Impacts/Mitigation

The mitigation measures proposed in the DEIR defer collection of baseline data on sensitive biological resources at the Project site until after CEQA review period terminates. Instead, the DEIR proposes collection of these data through implementation of pre-construction surveys when ground disturbance activities are imminent. The mitigation measures require the surveyor to document the results in a report to the Applicant and San Benito County if no sensitive resources (e.g., special-status plants) are detected during the surveys. However, the mitigation measures do not require submittal of a report if sensitive resources are detected. This approach precludes the public from knowing the actual impacts of the Project.

O7-11

1. Please explain why a survey report is not required if sensitive resources (e.g., special-status plants or animals) are detected during the pre-construction surveys.
2. Please incorporate a mechanism for disclosing the results of the pre-construction surveys to the public prior to implementation of Project construction activities.

Special-Status Plants

Mitigation Measure 3.4-1 requires that a qualified botanist conduct protocol-level surveys for special-status plants prior to commencement of project construction activities. According to the mitigation measure, the botanist shall “be familiar with plants of the Sierra Nevada region.”

1. Please revise Mitigation Measure 3.4-1 such that it requires a botanist with experience identifying plants that occur in the Project region.

O7-12

Mitigation Measure 3.4-1 states:

“If special-status plants are found during special-status plant surveys and cannot be avoided, the applicant shall, in consultation with CDFW, develop and implement a site-specific mitigation strategy to compensate for loss of

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occupied habitat or individuals. Mitigation measures shall include, at a minimum, preserving and enhancing existing populations (e.g., offsite), establishing populations through seed collection or transplantation from the site that is to be affected, and/or restoring or creating habitat in sufficient quantities to offset loss of occupied habitat or individuals. Potential mitigation sites could include suitable locations within or outside of the development area. Habitat and individual plants lost (e.g., direct removal, trampling, root damage) shall be mitigated at a minimum 1:1 ratio through implementation of the above measures, considering acreage as well as function and value.”

The proposed mitigation is vague and does not demonstrate that impacts on special-status plants would be reduced to less-than-significant levels.

2. The Project has the potential to cause significant impacts on special-status plants (e.g., due to edge effects) even if those plants are not directly eliminated by construction activities. Therefore, please provide: (a) a quantitative standard for “avoided” (e.g., set-back distance), and (b) scientific evidence that the proposed standard would be sufficient to avoid significant indirect impacts to special-status plants. In addition, please incorporate performance standards that would demonstrate successful avoidance of direct and indirect impacts to special-status plants.
3. Please provide evidence that the specific plant species that might be impacted by the Project can be successfully transplanted or established through seed collection.
4. Please identify the locations “within the development area” that might be “suitable” for the proposed mitigation.
5. Please incorporate a mechanism that would ensure the on-site or off-site mitigation area is preserved and appropriately managed in perpetuity.
6. Please clarify the monitoring and reporting requirements for Mitigation Measure 3.4-1.

**07-12
cont.**

In most instances, a ratio greater than 1:1 is required to mitigate impacts to rare plants. The DEIR fails to provide the scientific basis for the 1:1 ratio proposed in Mitigation Measure 3.4-1.

7. Please provide the scientific basis for the 1:1 mitigation ratio proposed in Mitigation Measure 3.4-1.

07-13

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California Red-legged Frog

The DEIR makes the unsubstantiated statement that: “[c]onversion of disturbed habitat on the project site would not result in significant loss of habitat in the vicinity of the project site or preclude California red-legged frogs from occurring in the vicinity of the project site.”

O7-14

1. Please quantify “vicinity” and provide scientific analysis that supports the DEIR’s determination that the Project would not result in significant loss of habitat in the vicinity of the Project site.

Mitigation Measure 3.4-2a states:

“The approved biologist shall survey the development area for California red-legged frog and California tiger salamander no more than 48 hours before the start of project construction work. If California red-legged frogs or California tiger salamanders are detected during the survey, all project construction activities shall cease, and CDFW and USFWS shall be notified.”

O7-15

2. Please establish standards for the pre-construction survey methods. In addition, please explain the purpose of notifying the CDFW and USFWS if a California red-legged frog or California tiger salamander is detected during the survey. For example, would this notification trigger additional mitigation measures?

Coast Horned Lizard, Northern California Legless Lizard, and San Joaquin Coachwhip

The Project site provides potential habitat for the coast horned lizard, Northern California legless lizard, and San Joaquin coachwhip. The DEIR states: “[p]roject activities (i.e., vegetation clearing, ground disturbance, staging, heavy equipment use) may result in direct loss of these species if present on the project site. This would be a significant impact.” However, the DEIR fails to address the significance of the Project’s impacts on habitat for these three species.

O7-16

1. Please provide analysis of the Project’s impacts on habitat for the coast horned lizard, Northern California legless lizard, and San Joaquin coachwhip. In addition, please provide the County’s determination on the significance of impacts to that habitat and provide the scientific basis for that determination.

Mitigation Measure 3.4-2c states:

O7-17

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“Within 48 hours of project construction activities (e.g., vegetation removal, ground disturbance), a qualified biologist would conduct a focused visual survey of habitat suitable for coast horned lizard, northern California legless lizard, and San Joaquin coachwhip within the development area, which would include walking linear transects of the development area.”

Linear transect surveys are not an effective survey technique for the coast horned lizard, northern California legless lizard, and San Joaquin coachwhip due to the life history of those species (e.g., cryptic behavior and lack of surface activity during certain times of year).

1. Please revise Mitigation Measure 3.4-2c to incorporate effective survey techniques for the coast horned lizard, northern California legless lizard, and San Joaquin coachwhip.

Mitigation Measure 3.4-2c further states:

“If coast horned lizard, northern California legless lizard, and San Joaquin coachwhip are detected, a qualified biologist would be present during initial ground disturbance activities and would inspect the development area before initiation of project activities. If coast horned lizard, northern California legless lizard, and San Joaquin coachwhip are detected, the qualified biologist would move individuals into nearby habitat and out of harm’s way.”

The proposed mitigation would not be effective. Horned lizards and legless lizards are sedentary species. San Joaquin coachwhips overwinter in mammal burrows. Therefore, if these species are detected during pre-construction surveys, and the intent of the mitigation is to move individuals out of harm’s way (to minimize fatalities), there is no basis for making translocation contingent on the biologist’s ability to detect the individuals during subsequent ground disturbance activities. In addition, relocation of lizards can be a lengthy process. For example, it took Kuhn et al. (2005) 1,572 hours to locate and remove all legless lizards within a 1.57-ha (3.88-ac) construction site in Moss Landing, California. Therefore, relocating lizards while ground disturbance is occurring is not an effective mitigation strategy.

2. Please revise Mitigation Measure 3.4-2c to incorporate an effective strategy for minimizing direct impacts to the coast horned lizard, northern California legless lizard, and San Joaquin coachwhip.
3. Please identify the relocation (translocation) protocol and the “nearby habitat” that would serve as the receptor site.

Western Pond Turtle

**O7-17
cont.**

O7-18

O7-19

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The DEIR has determined that the Project site provides potential habitat for the western pond turtle, and that the Project would have a significant impact if it causes direct loss of western pond turtles and occupied burrows. However, the DEIR fails to analyze the significance of the Project's impacts on habitat for the western pond turtle.

O7-19
cont.

1. Please provide analysis of the Project's impacts on habitat for the western pond turtle. In addition, please provide the County's determination on the significance of impacts to that habitat and provide the scientific basis for that determination.

Mitigation Measure 3.4-2d states:

"If western pond turtles are detected, a no-disturbance buffer of at least 100 feet shall be established around any identified nest sites or overwintering sites until the nest is no longer active as determined by a qualified biologist, and no project activities shall occur within the no-disturbance buffer."

As reported in the DEIR: (a) pond turtles travel up to 1,600 feet between aquatic habitat and upland habitat, (b) the rivers adjacent to the Project site provide aquatic habitat for pond turtles, (c) and most of the Project site provides potential upland habitat for pond turtles. Therefore, if the nest or overwintering site is located within the interior portion of the disturbance area (i.e., more than 100 feet from the southern or western boundary of the disturbance area), turtles would need to travel through the construction zone to reach their aquatic habitat. These turtles would be subject to being killed or injured by construction activities.

O7-20

2. Please provide an effective mitigation strategy for preventing impacts to turtles associated with nests or overwintering sites.

Burrowing Owl

Mitigation Measure 3.4-2e provides contradictory information on the buffer requirement for burrows occupied by burrowing owls. It first states that the Applicant shall establish and maintain a minimum protection buffer of 164 feet (50 meters) around the occupied burrow(s), unless a qualified biologist verifies through noninvasive means that either: (1) the birds have not begun egg laying, or (2) juveniles from the occupied burrows are foraging independently and are capable of independent survival (in which case no buffer would be required). However, the mitigation measure then states that the buffer shall adhere to guidance provided in the CDFW Staff Report on Burrowing Owl Mitigation ("Staff Report"). The Staff Report does not include a provision for allowing disturbance if owls have not begun

O7-21

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egg laying (or have juveniles capable of independent survival), and it requires buffers > 50 meters, except for low levels of disturbance between Oct 16-Mar 31.

1. Please clarify the breeding season and non-breeding season buffer sizes required under Mitigation Measure 3.4-2e.
2. Please revise MM 3.4-2e to reflect the mitigation guidelines provided in CDFW's 2012 Staff Report on Burrowing Owl Mitigation. If the Applicant would be allowed to disturb owls that have not begun egg laying or that have juveniles capable of independent survival, the DEIR must disclose and analyze the associated impacts to those owls.

O7-21
cont.

Mitigation Measure 3.4-2e states:

"If burrowing owls are evicted from burrows and the burrows are destroyed by implementation of project construction activities, the applicant shall mitigate the loss of occupied habitat in accordance with guidance provided in the CDFW Staff Report, which states that permanent impacts on nesting, occupied and satellite burrows, and burrowing owl habitat (i.e., grassland habitat with suitable burrows) shall be mitigated such that habitat acreage and number of burrows are replaced through permanent conservation of comparable or better habitat with similar vegetation communities and burrowing mammals (e.g., ground squirrels) present to provide for nesting, foraging, wintering, and dispersal."

O7-22

3. Please explain why habitat mitigation would not be required if owls are evicted from burrows, but those burrows are not destroyed by construction activities.
4. Please explain how the amount of "occupied habitat" requiring compensation would be determined.

According to Mitigation Measure 3.4-2e:

"Mitigation lands shall be selected based on comparison of the habitat lost to the compensatory habitat, including type and structure of habitat, disturbance levels, potential for conflicts with humans, pets, and other wildlife, density of burrowing owls, and relative importance of the habitat to the species throughout its range. If feasible, mitigation lands shall be provided adjacent or proximate to the development area so that displaced owls can relocate with reduced risk of injury or mortality. Feasibility of providing mitigation adjacent or proximate to the development area depends on availability of sufficient habitat to support displaced owls that may be preserved in perpetuity."

O7-23

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5. Please clarify any prohibitions the Project would have against pets.
6. Please explain the rationale for allowing the mitigation lands to be located adjacent to the development area given the potential for conflicts with humans, vehicles, and (potentially) pets.
7. Please discuss the analysis that would be conducted to determine whether there is “sufficient habitat to support displaced owls.”
8. Please identify the mechanism that would ensure onsite mitigation land (if selected) would be preserved and appropriately managed in perpetuity.

O7-23
cont.

The DEIR concludes: “[i]mplementation of Mitigation Measure 3.4-2e would reduce potential impacts on burrowing owl to a less-than-significant level.” This conclusion is not justified because Mitigation Measure 3.4-2e defers formulation of key components of the mitigation plan for permittee-responsible conservation.

O7-24

9. Please establish a mechanism (e.g., CDFW approval) for ensuring adequacy of the burrowing owl mitigation plan.
10. The DEIR fails to establish that it was impractical for the County to identify critical components of the mitigation plan (for permittee-responsible conservation). Therefore, please provide:
 - a. the site selection factors;
 - b. site management roles and responsibilities;
 - c. financial assurances and funding mechanisms;
 - d. specific performance standards (or success criteria);
 - e. the monitoring and reporting requirements; and
 - f. contingency measures if the mitigation is unsuccessful.

O7-25

Other Special-Status Birds

The DEIR has determined that six special-status bird species (other than burrowing owl) have the potential to occur at the Project site, and that the Project would have a significant impact on these species if it causes direct loss of individuals or their nests. However, the DEIR fails to analyze the significance of the Project’s impacts on habitat for these special-status birds.

O7-26

1. Please provide analysis of the Project’s impacts on habitat for special-status birds. In addition, please provide the County’s determination on

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the significance of impacts to that habitat and provide the scientific basis for that determination.

07-26
cont.

Mitigation Measure 3.4-2f states:

“[I]f active nests are found, impacts on nesting birds shall be avoided by establishing appropriate buffers... Generally, buffer size for these species shall be at least 20 feet... Periodic monitoring of the nest by a qualified biologist during project activities shall be required if the activity has potential to adversely affect the nest...” The DEIR acknowledges that noise or visual stimuli associated with construction activities could result in nest abandonment and potential loss of eggs or chicks. Disturbance stimuli associated with the Project would not attenuate to insignificant levels at 20 feet. In addition, the provision for “periodic monitoring” is vague and lacks a compliance mechanism.

07-27

1. Please provide scientific evidence that a 20-foot buffer is effective in preventing significant impacts to nesting birds.
2. Please establish the monitoring schedule (e.g., frequency) for the “periodic monitoring” and identify a mechanism for ensuring efficacy of the nest buffers established by the biologist.

American Badger

The Project site provides potential habitat for the American badger. The DEIR fails to analyze the significance of the Project’s impacts on habitat for the American badger.

07-28

1. Please provide analysis of the Project’s impacts on habitat for the American badger. In addition, please provide the County’s determination on the significance of impacts to that habitat and provide the scientific basis for that determination.

Mitigation Measure 3.4-2h requires preconstruction surveys for badger dens “within 30 days before commencement of project construction activities.” Badgers have relatively large home ranges, and some badgers dig a new den each night. Therefore, a survey up to 30 days prior to commencement of project construction activities does not ensure impact avoidance.

07-29

2. Please revise Mitigation Measure 3.4-2h to account for the fact that badgers may construct burrows on the Project site in the 30-day period

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between the pre-construction survey and initiation of ground disturbance.

O7-29
cont.

Bats

The DEIR states:

“Three special-status bat species have potential to occur on the project site: pallid bat, western mastiff bat, and western red bat. Roosting habitat potentially suitable for these species on the project site is present within large trees in riparian woodland habitat on and adjacent to the project site (i.e., crevices, cavities, exfoliating bark, foliage). Project activities (i.e., tree removal, either direct or indirect) may result in direct loss of roosting special-status bats if present on the project site. This would be a significant impact.”

O7-30

1. Please clarify whether the DEIR’s significant impact determination pertains to the loss of roosting bats, the loss of roosting habitat, or both.

Mitigation Measure 3.4-2i states:

“[p]rior to the start of project construction activities, a qualified biologist familiar with bats and bat ecology, and experienced in conducting bat surveys, shall conduct surveys for bat roosts in suitable habitat (e.g., large trees, crevices, cavities, exfoliating bark, foliage) within and adjacent to the development area.” This measure is insufficient because it does not establish standards for the survey techniques or timing. Although detection of roosts may be difficult (or impossible) without bat detectors, the DEIR suggests bat detectors would only be used if “evidence of bat roosts is observed.”

O7-31

2. Please identify any requirements the County is imposing on the timing of the pre-construction bat surveys in relation to Project impacts.
3. Please identify the pre-construction bat survey area.
4. Please identify the survey techniques that must be implemented for the pre-construction bat surveys.

The mitigation measure states: “[a] no-disturbance buffer of 250 feet shall be established around active pallid bat or western red bat roosts, and project activities shall not occur within this buffer until after the roosts are unoccupied.” The mitigation measure does not identify the buffer size for western mastiff bat roosts.

O7-32

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5. Please identify the buffer size for western mastiff bat roosts.

07-32
cont.

Mitigation Measure 3.4-2i states:

“If roosts of pallid bat, western mastiff bat, or western red bat are determined to be present and must be removed, the bats shall be excluded from the roosting site before the tree is removed. A program addressing compensation, exclusion methods, and roost removal procedures shall be developed in consultation with CDFW before implementation. Exclusion methods may include use of one-way doors at roost entrances (bats may leave but not reenter) or sealing roost entrances when the site can be confirmed to contain no bats. Exclusion efforts may be restricted during periods of sensitive activity (e.g., during hibernation or while females in maternity colonies are nursing young). The loss of each roost (if any) shall be replaced in consultation with CDFW and may require construction and installation of bat boxes suitable to the bat species and colony size excluded from the original roosting site. If determined necessary during consultation with CDFW, replacement roosts shall be implemented before bats are excluded from the original roost sites.”

07-33

This component of the mitigation measure is vague and does not reflect understanding of the special-status bat species that may occur at the Project site. For example, one-way doors and sealing roost entrances are not effective techniques for foliage-roosting bats. Similarly, installation of bat boxes does not mitigate impacts to the western mastiff bat or western red bat because neither species uses bat boxes.

6. Please revise Mitigation Measure 3.4-2i to reflect the roosting ecology of the species that may be impacted by the Project.
7. Please incorporate performance standards, and monitoring and reporting requirements, for Mitigation Measure 3.4-2i.
8. Please identify a mechanism for ensuring replacement roosts are protected and properly maintained.

Riparian Habitats

Mitigation Measure 3.4-3 states that setbacks around riparian woodland habitat will be a minimum of 50 feet. Based on the construction plans, this measure would not be feasible for the proposed livestock corral.

07-34

1. Please clarify the mitigation measure(s) that would be implemented to prevent significant impacts to the riparian habitat adjacent to the proposed livestock corral.

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Mitigation Measure 3.4-3 states:

“[t]he project applicant shall compensate for the loss of riparian habitat and habitat function and value of this habitat by:

- restoring riparian habitat function and value within the project site;
- restoring degraded riparian habitat outside of the project site;
- purchasing riparian habitat credits at a CDFW-approved mitigation bank; or
- preserving existing riparian habitat of equal or better value to the affected riparian habitat through a conservation easement at a sufficient ratio to offset the loss of riparian habitat function (at least 1:1).”

O7-35

Although the mitigation measure identifies the proposed mitigation ratio for habitat preservation, it does not identify the ratio(s) for habitat restoration or habitat credits.

2. Please identify the proposed mitigation ratio(s) for mitigation achieved through restoration or purchase of habitat credits.
3. Please provide the scientific basis for the determination that a 1:1 ratio would be sufficient for mitigation achieved through habitat preservation.

Mitigation Measure 3.4-3 subsequently states:

“For restoring or enhancing riparian habitat within the project site or outside of the project site, the Compensatory Mitigation Plan shall include a description of the proposed habitat improvements, success criteria that demonstrate the performance standard of maintained habitat function has been met, legal and funding mechanisms, and parties responsible for long-term management and monitoring of the restored or enhanced habitat.”

The proposed mitigation measure’s ability to reduce impacts to less-than-significant levels cannot be evaluated because the DEIR defers critical components of the Compensatory Mitigation Plan.

O7-36

4. Please identify:
 - a. success criteria for the compensatory mitigation;
 - b. the legal and funding mechanisms;
 - c. the parties responsible for long-term management and monitoring; and
 - d. the monitoring and reporting requirements.

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Wetlands

Mitigation Measure 3.4-4 states:

“[a]ny waters of the United States or waters of the state that are be affected by the project shall be replaced or restored on a no-net-loss basis in accordance with the applicable USACE and California Water Board mitigation standards in place at the time of construction.” The proposed mitigation measure’s ability to reduce impacts to less-than-significant levels cannot be evaluated because the DEIR defers critical details pertaining to the mitigation. Numerous studies have demonstrated that acquisition of regulatory permits for fill of jurisdictional waters does not ensure “no-net-loss,” or that environmental impacts under CEQA are reduced to less-than-significant levels.

1. Please identify the County’s proposed mitigation for impacts to wetlands, irrespective of permitting requirements imposed by the USACE, Water Board, or CDFW.
2. Please identify the variables that would be evaluated to ensure the compensatory mitigation achieves “no-net-loss.” In addition, please explain how the compensatory mitigation ratio would be calculated.

07-37

Corridors / Nursery Sites

The DEIR provides the following analysis of impacts to wildlife movement corridors and nursery sites:

“While the project site contains some riparian woodland habitat that may provide habitat for roosting bats and provide some habitat connectivity for wildlife, the project site is largely disturbed and located adjacent to significant barriers to wildlife movement (e.g., US 101). Further, there are no modeled ECAs or natural landscape blocks on the project site. As a result, the project site likely does not currently function as a significant wildlife nursery site or wildlife movement corridor. Therefore, the impact related [to] wildlife movement corridors or wildlife nurseries would be less than significant.”

The DEIR’s analysis suffers several flaws. First, the Project site lies within a critical linkage between the southern Santa Cruz Mountains and the Diablo Range. Second, although US 101 is a barrier, there is a large undercrossing at southern end of the Project site. Third, no surveys were conducted to assess wildlife movement through the site, nor to determine presence of wildlife nursery sites. Speculation that the Project site likely does not currently function as a significant wildlife nursery site or

07-38

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wildlife movement corridor is not evidence that the impact related to wildlife movement corridors or wildlife nurseries would be less than significant.

The DEIR subsequently concludes: “[w]ildlife moving through the vicinity of the project site would likely use the existing riparian corridors and undisturbed habitat in the undeveloped area (approximately 80 acres) on the project site that would not be developed.” This conclusion is unsubstantiated because there is no analysis of how the increase in noise, lighting, and human activity due to the Project would affect wildlife movement through the riparian corridor and undeveloped area.

O7-38
cont.

1. Please analyze how the increase in noise, lighting, and human activity due to the Project would affect wildlife movement through the riparian corridor and undeveloped area.

Invasive Plants

Ground disturbance associated with the Project has the potential to facilitate colonization of invasive plants. This issue is exacerbated by the Applicant’s proposed landscaping plan, which includes at least two invasive plant species (i.e., *Phoenix canariensis* and *Olea europaea*).

O7-39

1. Please incorporate mitigation for significant impacts associated with the introduction of invasive plants. At a minimum, the mitigation should include: (a) an invasive plant (weed) management plan with performance standards; and (b) a mechanism for ensuring the Applicant does not install invasive plants (e.g., as landscaping).

Lighting

The DEIR acknowledges that the Project would increase the amount of night lighting, but then concludes that the impact to aesthetics would be less than significant due to “compliance with County General Plan policies and regulations.” The DEIR provides no analysis of impacts to wildlife due to the increase in night lighting. Although compliance with County General Plan policies and regulations would reduce impacts from “astronomical light pollution” (whereby stars and other celestial bodies are washed out by light that is either directed or reflected upward), it would not reduce impacts from “ecological light pollution” (artificial light that alters the natural patterns of light and dark in ecosystems).

O7-40

1. Please provide analysis of impacts to wildlife due to night lighting generated by the Project.

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Cumulative Impacts

The DEIR lists the sensitive biological resources that could be subject to more severe cumulative impacts due to the Project. It then states: “[t]he mitigation measures for these resources...would offset the project’s contribution to cumulative biological resource impacts by avoiding impacts on these species and habitats or compensating for habitat and species impacts. Therefore, the project’s potential contribution to impacts on special-status species, riparian habitat, and state and federally protected wetlands would be less than cumulatively considerable.” The DEIR’s rationale is flawed because other than Mitigation Measure 3.4-2e (which requires compensation if burrowing owls are evicted and the burrows are destroyed), none of the mitigation measures require compensation for the Project’s impacts to terrestrial habitat. As a result, the Project would have an unmitigated contribution to significant cumulative impacts on habitat for terrestrial species.

O7-41

1. Please provide revised cumulative impacts analysis that reflects the Project’s impacts to terrestrial habitat.

II. Hydrology & Water Resources Impacts

Geology, Hydrology and Utilities

The DEIR indicates that the geology of the proposed project area is coarse grained stream deposited sediments, and that groundwater is shallow in the area, estimated at 17 to 20 feet below ground surface. The DEIR indicates the proximal presence of the confluence of the Pajaro and San Benito Rivers, with riparian habitat directly adjacent to the proposed project. The DEIR further indicates that a large capacity septic system will be installed to support the motel and other activities in addition to the existing small septic system to support the farm stand. The shallow groundwater and associated relatively limited unsaturated zone along with nearby rivers abutting the west side of the proposed project raise concern about potential water quality impacts to groundwater and the nearby surface water bodies.

O7-42

1. Please describe how the proposed project large capacity septic system will be designed to avoid any potential impacts to surface water and groundwater resources, considering the site setting, with the shallow unsaturated zone that likely fluctuates seasonally with the hydrology.
2. Please describe any potential cumulative impacts of the large capacity septic system, considering the proposed project geologic and hydrologic setting.

Cumulative Impacts to Hydrology and Water Quality

O7-43

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The DEIR describes how the proposed project plans to apply low impact development (LID) engineering to neutralize changes to the land surface hydraulics, minimize loss of groundwater recharge potential, and address increases in stormwater runoff while meeting RWQCB and NPDEs requirements. The hydrologic and geologic environment is sensitive and vulnerable with coarse stream deposits underlying the location and the confluence of two rivers bordering the proposed project.

O7-43
cont.

1. Please describe how water quality of the adjacent surface water and groundwater will not be degraded with the shallowness of the unsaturated zone for vadose zone treatment potential and proximity of the surface water bodies?
2. Please describe the proposed maintenance of the LID structures, which need to be maintained to avoid accumulation of debris and potential contamination to avoid adverse impacts to the environment.

Proposed Use of Existing Groundwater Supply Wells Onsite

The DEIR indicates that the proposed project will utilize existing groundwater supply wells on the property. With the assumption that these wells will require some limited alteration and/or maintenance to provide potable supply for the proposed project, the DEIR omits reference to Governor Newsome's Executive Order N-7-22 Item 9 pertaining to the permitting of new or alteration of existing wells in a SGMA high or medium priority ground water basin, which is as follows:

(9) To protect health, safety, and the environment during this drought emergency, a county, city, or other public agency shall not:

- a. Approve a permit for a new groundwater well or for alteration of an existing well in a basin subject to the Sustainable Groundwater Management Act and classified as medium-or high-priority without first obtaining written verification from a Groundwater Sustainability Agency managing the basin or area of the basin where the well is proposed to be located that groundwater extraction by the proposed well would not be inconsistent with any sustainable groundwater management program established in any applicable Groundwater Sustainability Plan adopted by that Groundwater Sustainability Agency and would not decrease the likelihood of achieving a sustainability goal for the basin covered by such a plan; or
- b. Issue a permit for a new groundwater well or for alteration of an existing well without first determining that extraction of groundwater from the proposed well is (1) not likely to interfere with the production and functioning of existing nearby wells, and (2) not likely to cause subsidence that would

O7-44

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adversely impact or damage nearby infrastructure. This paragraph shall not apply to permits for wells that will provide less than two acre-feet per year of groundwater for individual domestic users, or that will exclusively provide groundwater to public water supply systems as defined in section 116275 of the Health and Safety Code.

1. Please add the description of this requirement to the DEIR as part of the regulatory standards that are mandated.
2. Please provide additional detail on how the existing groundwater supply wells may need to be altered for the uses of the proposed project.
3. Please include a description of the permitting process that is required by the County of San Benito.

O7-44
cont.

III. Air Quality & Human Health Impacts

The DEIR states: “[o]peration of the project would result in new sources of TACs associated with commercial and fuel delivery truck, as well as trucks and vehicles refueling.”¹ The DEIR further discloses that: “[o]peration of the project would result in new commercial land uses that would result in diesel-fueled delivery trucks and refueling by both passenger vehicles and trucks.”² Furthermore, the DEIR’s appended traffic analysis reports that Project, during its operational phase, will generate 5,753 net new daily trips after pass-by trips are discounted.³ Some portion of these new trips will be by diesel trucks and other diesel-powered customer vehicles.

O7-45

According to the DEIR, sensitive receptors are located within the Betabel RV Park (north of the project site), residences along Chittenden Road and San Juan Highway (south of the project site), and Anzar High School along the Chittenden Road (south of the project site).⁴ The DEIR purports to assess impacts to nearby sensitive receptors from locating a new large gasoline dispensing facility, concluding that exposure to new emissions of toxic air contaminants (“TACs”) from fuel dispensing, truck deliveries, and construction materials would not result in an increased cancer risk exceeding applicable significance thresholds.⁵ However, the DEIR contains no assessment of the cumulative health risk impacts to nearby sensitive receptors from exposure to new TAC sources introduced by the Project.

¹ DEIR, p. 3.3-14

² DEIR, p. 3.3-15.

³ DEIR, Appx. E, p. 36.

⁴ DEIR, p. 3.3-10.

⁵ DEIR, p. 3.3-15.

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Cumulative impact analysis is a two-step process that requires an agency to make the following determinations: (1) whether the impacts of the project in combination with those from other projects are cumulatively significant, and (2) if so, whether the project's own effect is a considerable contribution. (Guidelines, § 15130(a).) Thus, in step one of the two-step analysis, the agency must determine whether the combined effect of the project and other past, present and/or future projects "when considered together" is significant, because those impacts may be "individually minor but collectively significant." *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 119-120. In step two, if there is a significant combined effect, the agency must then separately consider whether the project's contribution to that effect is itself considerable, i.e., "whether 'any additional amount' of effect should be considered significant in the context of the existing cumulative effect." (*Id.* at 119.) Thus, "the lead agency shall consider whether the cumulative impact is significant and whether the proposed project's incremental effects are cumulatively considerable." (*Id.* at 120, emphasis added.) Importantly, the analysis must consider all sources of "related impacts," including past, present, and potential future projects. (Guidelines, § 15130(a)(1), (b).)

Diesel particulate matter ("DPM") is recognized by the State of California as a carcinogenic TAC.⁶ In fact, DPM Diesel engine emissions are believed to be responsible for about 70% of California's estimated known cancer risk attributable to toxic air contaminants.⁷ Sensitive receptors near the Project site currently experience some degree of cancer risk from exposure to DPM emissions from trucks and diesel vehicles traveling on US 101. If that risk exceeds 10 excess cancers per one million exposed receptors (the applicable significance threshold), then there would be an existing significant health risk even without the Project. It is therefore critically important for the DEIR to quantify the existing cancer risk to offsite sensitive receptors, and then model the increased health risk that could result from exposure of additional DPM/TAC emissions from Project sources.

Therefore:

1. Please provide daily truck traffic counts for the segment of US 101 fronting the Project site.
2. Using appropriate emissions factors from an accepted model (e.g. EMFAC), please estimate DPM emission rates in grams per mile for existing truck traffic traveling on these roadway segment.

O7-45
cont.

⁶ See <https://ww2.arb.ca.gov/resources/summary-diesel-particulate-matter-health-impacts>

⁷ *Id.*

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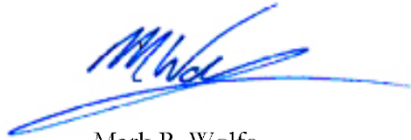
3. Using an appropriate dispersion model (e.g. AERMOD) with locally obtained meteorological data, please calculate the existing ambient cancer risk to receptors along the haul route.
4. Please calculate the cumulative health risk (number of excess cancers per million exposed individuals) resulting when the Project's new diesel truck trips are added to the haul route.

O7-45
cont.

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Most sincerely,

M. R. WOLFE & ASSOCIATES, P.C

A handwritten signature in blue ink, appearing to read 'MR Wolfe', with a long horizontal flourish extending to the right.

Mark R. Wolfe

MRW:

Letter O7 Protect San Benito County

Mark R. Wolfe

O7-1 This comment states that the letter was prepared on behalf of Protect San Benito and states that the Draft EIR does not meet the standards of CEQA. The comment is included in the record for consideration by the decision makers as part of the project approval process.

Specific concerns identified in this comment letter are responded to in responses to comments O7-2 through O7-45.

O7-2 This comment requests a copy of the Ascent Environmental 2022 source and states that this report was not included in the "References" chapter of the Draft EIR.

This reference was erroneously included in a source line under Table 3.4-1 on page 3.4-5, which has been revised to read "...compiled by Ascent Environmental in 2022" as follows:

Table 3.4-1 Habitat Types on the Project Site

Habitat Types	Project Site (acres)	Disturbance Area (acres)
Ruderal Grassland	79.3	22.4
Developed	11.6	9.4
Drainage Ditch	0.14	0.05
Riparian Woodland	24.9	0.2

Source: Denise Duffy & Associates 2020; compiled by Ascent Environmental in 2022.

O7-3 This comment requests identification of the vegetation alliances in the project area according to the Manual of California Vegetation (Sawyer et al. 2009), as well as the "Combined Vegetation Rapid Assessment and Releve Field Forms" used to classify vegetation communities on the project site. Vegetation on the project site was identified to the alliance level as described in Denise Duffy & Associates 2022 and results of this survey, which followed the protocol referred to by the commenter, were summarized in this report. The riparian habitat adjacent to the project site was identified as arroyo willow riparian habitat (Denise Duffy & Associates 2020), which is also called "arroyo willow thickets" in the Manual of California Vegetation, and the ruderal grassland habitat was defined as poison hemlock or fennel patches and upland mustard. The riparian woodland and ruderal grassland discussion in Section 3.4.2, "Environmental Setting," on pages 3.4-5 and 3.4-7 has been revised to more specifically reference these alliances, as shown below. The state rarity ranking associated with arroyo willow thickets is S4, meaning that the alliance is apparently secure, uncommon but not rare, and usually widespread. Alliances with S4 state rarity rankings are not considered sensitive natural communities.

Ruderal Grassland

Ruderal grassland areas are those areas which have been subject to historic and ongoing disturbance by human activities and are dominated by nonnative and/or invasive plant species or devoid of vegetation. Ruderal grassland areas on the project site include areas that have been farmed and disked regularly since at least 1993, margins of agricultural areas dominated by nonnative plants, and existing dirt roads (Figure 3.4-1; Table 3.4-1; Denise Duffy & Associates 2020). At the time of the May 16, 2022, reconnaissance-level survey for biological resources, the southern half of the project site had been recently disked and was mostly devoid of vegetation. The northern half of the project site had not been recently disked and contained dense nonnative grasses and forbs. Ruderal grassland on the project site is dominated by poison hemlock (*Conium maculatum*), black mustard (*Brassica nigra*), milk thistle (*Silybum marianum*), bull thistle (*Cirsium vulgare*), bristly ox-tongue

(*Helminthotheca echioides*), wild radish (*Raphanus* spp.), and slender wild oat (*Avena barbata*). The Manual of California Vegetation classifications for this habitat type are poison hemlock or fennel patches and upland mustards.

Riparian Woodland

The project site contains approximately 25 acres of riparian woodland, identified as arroyo willow riparian habitat (or arroyo willow thickets), approximately 0.2 acre of which is within the disturbance area (Table 3.4-1; Figure 3.4-1; Denise Duffy & Associates 2020). A larger area of riparian woodland is present adjacent to but outside of the project site associated with the Pajaro and San Benito Rivers. Dominant canopy species in this habitat are arroyo willow (*Salix lasiolepis*), box elder (*Acer negundo*), Fremont cottonwood (*Populus fremontii*), and blue elderberry (*Sambucus nigra caerulea*). Other tree species include northern California black walnut (*Juglans hindsii*) and buckeye (*Aesculus californica*). The edges of the riparian woodland habitat contain shrubby species including poison hemlock, coyote brush (*Baccharis pilularis*), and willow (*Salix* spp.). Native herbaceous understory species include mugwort (*Artemisia douglasiana*), California blackberry (*Rubus ursinus*), stinging nettle (*Hesperocnide tenella*), and California man-root (*Marah fabacea*). Nonnative species present in this habitat include giant reed (*Arundo donax*) and Himalayan blackberry (*Rubus armeniacus*). The riparian woodland habitat adjacent to the Pajaro and San Benito Rivers has a dense understory with copious downed woody debris. The riparian woodland corridor that bisects the project site and that is not adjacent to the Pajaro and San Benito Rivers is less dense than the woodland adjacent to the rivers but composed of the same species.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O7-4 This comment states that USFWS Birds of Conservation Concern should be included in the list of special-status wildlife species considered in the Draft EIR.

There are two birds designated as Birds of Conservation Concern within the nine U.S. Geological Survey 7.5-minute quadrangles including and surrounding the project area: burrowing owl and tricolored blackbird. These species are included in the Draft EIR analysis under Impact 3.4-2 (Draft EIR pages 3.4-29 through 3.4-31). Project contributions to cumulative biological resource impacts and mitigation measure offsets are addressed on Draft EIR page 4-8. Further response to this comment is not required.

O7-5 The comment also requests the addition of grasshopper sparrow to the list of special-status species in the Draft EIR.

Table 3.4-3 on page 3.4-15 of the Draft EIR has been revised to include grasshopper sparrow. The species was also added to Impact 3.4-2 on pages 3.4-30 and 3.4-31 of the Draft EIR (golden eagle has been added in response to comment O7-10), as follows:

<u>Grasshopper sparrow</u> <u><i>Ammodramus</i></u> <u><i>savannarum</i></u>	=	SCC	Dense grasslands on rolling hills, in lowland plains, in valleys, and on hillsides on lower mountain slopes. Favors native grasslands with a mix of grasses, forbs, and scattered shrubs. Loosely colonial when nesting.	May occur. There are several nearby observations of grasshopper sparrows west and north of the project site (eBird 2022). Although grassland habitat on the project site does not provide nesting habitat suitable for this species, grasshopper sparrows may forage on the project site periodically or may nest adjacent to the project site.
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Special-Status Birds and Other Native Nesting Birds

~~Six~~ Eight special-status bird species (other than burrowing owl) have potential to occur on the project site: golden eagle, grasshopper sparrow, loggerhead shrike, northern harrier, tricolored blackbird, white-tailed kite, yellow warbler, and yellow-breasted chat (Table 3.4-3). Most of these species may nest in vegetation associated with the drainage ditch and riparian woodland habitat on adjacent to the project site. Nesting habitat potentially suitable for golden eagles is present outside of the project site, especially undeveloped areas east and west of the project site. Additionally, other raptor species (e.g., Cooper's hawk [*Accipiter cooperi*], red-tailed hawk [*Buteo jamaicensis*], red-shouldered hawk [*Buteo lineatus*]) and other native nesting birds could nest on the project site, and these species and their nests are protected under California Fish and Game Code and MBTA. During the reconnaissance-level survey for biological resources on May 16, 2022, a large raptor nest was observed in a willow tree on the project site and a red-tailed hawk was observed exhibiting territorial behavior.

As described above, nesting habitat suitable for special-status bird species is largely limited to the riparian woodland habitat on and adjacent to the project site. Riparian woodland habitat adjacent to the project site would not be removed during project implementation, and tree removal on the project site would be limited (e.g., during well pipeline installation). Thus, project implementation would not result in significant loss of nesting habitat for special-status birds. Project activities (i.e., tree removal, vegetation clearing, ground disturbance, staging, heavy equipment use) may result in direct loss of special-status birds or active nests if present on the project site. Additionally, operation of heavy equipment and other construction activities could result in noise or visual stimuli that could result in disturbance to nearby nesting birds, which may result in nest abandonment and potential loss of eggs or chicks. This would be a **significant** impact.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact. Implementation of Mitigation measure 3.4-2f would still reduce potential impacts to a less-than-significant level.

O7-6

This comment requests inclusion of the site assessment information described in USFWS's *Guidance on Site Assessments and Field Surveys for the California Red-legged Frog*.

The surveys conducted in preparation of the Draft EIR were reconnaissance-level surveys to determine whether habitat suitable for special-status species was present on the project site. The Draft EIR analysis regarding California red-legged frog was intended to determine whether the species had potential to occur on the project site and to identify mitigation measures to reduce impacts on this species to less than significant. The site assessment referred to in this comment is required by USFWS during the Section 7 process under the Endangered Species Act, which has not yet occurred because this project is in the planning stages. Mitigation Measure 3.4-2a on pages 3.4-25 through 3.4-27 of the Draft EIR requires consultation with USFWS before project implementation, during which the Section 7 process would occur.

The comment also states that the Draft EIR does not provide enough information to substantiate that conversion of habitat in the project site would not result in significant loss of California red-legged frog habitat in the vicinity of the project site.

The project site has been routinely cultivated (i.e., disturbed, disked) since at least 1993, and most of the project site is still regularly disked. The project site has not been restored since agricultural activities ceased and does not provide upland habitat suitable for California red-legged frogs. Although California red-legged frogs could feasibly move through the site periodically, there are existing substantial barriers on the east side of the project site, including US 101.

- O7-7 This comment requests inclusion of the information discussed in USFWS's *Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander*.
- The surveys conducted during preparation of the Draft EIR were reconnaissance-level surveys to determine whether habitat suitable for special-status species was present on the project site. See response to comment O7-6. The Draft EIR analysis regarding California tiger salamander was intended to determine whether the species had potential to occur on the project site and to identify mitigation measures to reduce impacts on this species to less than significant. The site assessment referred to in this comment is required by USFWS during the Section 7 process under the Endangered Species Act, which has not yet occurred because this project is in the planning stages. Mitigation Measure 3.4-2a on pages 3.4-25 through 3.4-27 of the Draft EIR requires consultation with USFWS before project implementation, during which the Section 7 process would occur.
- O7-8 This comment requests inclusion of information from the Critical Linkages: Bay Area & Beyond project (Penrod et al. 2013).
- See response to comment O6-12.
- O7-9 This comment states that the analysis regarding conflict with adopted Habitat Conservation Plans, Natural Community Conservation Plans, or other approved local, regional, or state habitat conservation plans should include the California State Wildlife Action Plan.
- The California State Wildlife Action Plan is a framework to help guide conservation planning and funding for CDFW. Unlike a Habitat Conservation Plan or Natural Community Conservation Plan, it is not intended to influence land use decisions. As a result, the State Wildlife Action Plan would not apply to this impact.
- O7-10 This comment states that the Draft EIR did not consider potential impacts on golden eagle nests within 1 mile of the project site. The comment also requested additional substantiation that project implementation would not result in a significant loss of foraging habitat for golden eagles.
- Table 3.4-3 on page 3.4-14 of the Draft EIR has been revised to add the potential for nesting habitat within approximately 1 mile of the project site, and the species was also added to Impact 3.4-2 on pages 3.4-23, 3.4-30, and 3.4-31 of the Draft EIR, as shown in response to comment O7-5. The comment also requested analysis of the impacts of noise and human activity on golden eagles. See response to comment O6-5, regarding the impacts of human presence on wildlife species use of the site.

Golden eagle <i>Aquila chrysaetos</i>	–	FP	Rolling foothills, mountain areas, sage-juniper flats, and desert. Cliff-walled canyons provide nesting habitat in most parts of range; also, large trees in open areas.	May occur. While the project site does not contain nesting habitat suitable for golden eagles (i.e., large trees in open areas), the species may forage on the project site. One juvenile golden eagle was observed soaring over the project site during the reconnaissance-level survey for biological resources on May 16, 2022. <u>Additionally, nesting habitat potentially suitable for golden eagles may be present within approximately 1 mile of the project site.</u>
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This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O7-11

This comment states that mitigation measures for biological resources require submission of survey results to the project applicant and San Benito County if biological resources are not detected, and it requests that submission of survey reports be necessary if biological resources are detected.

Revisions have been made to Mitigation Measure 3.4-1 on pages 3.4-22 and 3.4-23, Mitigation Measure 3.4-2c on page 3.4-28, Mitigation Measure 3.4-2d on pages 3.4-28 and 3.4-29, Mitigation Measure 3.4-2e on pages 3.4-29 and 3.4-30, Mitigation Measure 3.4-2f on page 3.4-31, Mitigation Measure 3.4-2h on page 3.4-33, and Mitigation Measure 3.4-2i on pages 3.4-33 and 3.4-34 of the Draft EIR to clarify that reports to the project applicant and San Benito County would be required if biological resources are detected during preconstruction surveys, as shown below. Detailed surveys for the presence of sensitive biological resources at the Draft EIR stage may identify the lack of presence of a species that later occupies the site after completion of the Draft EIR and could be affected by project construction.

The comment also requests disclosure of preconstruction survey results to the public prior to implementation of the project. Upon completion of these surveys, survey reports will be publicly available and may be placed on the County website.

Mitigation Measure 3.4-1: Conduct Special-Status Plant Surveys and Implement Avoidance Measures and Mitigation

- ▶ Prior to commencement of project construction activities and during the blooming period for the special-status plant species with potential to occur in the development area, a qualified botanist shall conduct protocol-level surveys for special-status plants within the development area following survey methods from CDFW's *Protocols for Surveying and Evaluating Impacts on Special-Status Native Plant Populations and Natural Communities* (CDFW 2018a or most recent version). The qualified botanist shall: 1) be knowledgeable about plant taxonomy, 2) be familiar with plants of the ~~Sierra Nevada region in California~~ Sierra Nevada region in California, including special-status plants and sensitive natural communities, 3) have experience conducting floristic botanical field surveys as described in CDFW 2018a, 4) be familiar with the *California Manual of Vegetation* (Sawyer et al. 2009 or current version, including updated natural communities data at <http://vegetation.cnps.org/>), and 5) be familiar with federal and state statutes and regulations related to plants and plant collecting.
- ▶ If special-status plants are not found, the botanist shall document the findings in a report to the applicant and San Benito County, and no further mitigation shall be required.

Typical Blooming Period for Special-Status Plants That May Occur within the Project Site¹

Species	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Big-scale balsamroot												
Pinnacles buckwheat												
Hoover's button-celery												
Woodland woollythreads												

¹ This is the published blooming period for the species across their entire range and through history. The actual blooming period for any species at a given location in a given year is variable and should be based on observations of nearby reference populations, as required under CDFW's *Protocols for Surveying and Evaluating Impacts on Special-Status Native Plant Populations and Natural Communities* (CDFW 2018a).

Source: Data compiled by Ascent Environmental in 2022; CNPS 2022

- ▶ If special-status plants are found during special-status plant surveys, the botanist shall document the findings in a report to the applicant and San Benito County. If special-status plants are found during special-status plant surveys and cannot be avoided, the applicant shall, in consultation with CDFW, develop and implement a site-specific mitigation strategy to compensate for loss of occupied habitat or individuals. Mitigation measures shall include, at a minimum, preserving and enhancing existing populations (e.g., offsite), establishing populations through seed collection or transplantation from the site that is to be affected, and/or restoring or creating habitat in sufficient quantities to offset loss of occupied habitat or individuals. Potential mitigation sites could include suitable locations within or outside of the development area. Habitat and individual plants lost (e.g., direct removal, trampling, root damage) shall be mitigated at a minimum 1:1 ratio through implementation of the above measures, considering acreage as well as function and value. Success criteria for preserved and compensatory populations shall include:
 - The extent of occupied area and plant density (number of plants per unit area) in compensatory populations shall be equal to or greater than the affected occupied habitat.
 - Compensatory and preserved populations shall be self-producing. Populations would be considered self-producing when:
 - plants reestablish annually for a minimum of five years with no human intervention such as supplemental seeding; and
 - reestablished and preserved habitats contain an occupied area and flower density comparable to existing occupied habitat areas in similar habitat types in the project vicinity.
 - If off-site mitigation includes dedication of conservation easements or other off-site conservation measures, the details of these measures shall be included in the mitigation plan, including information on responsible parties for long-term management, conservation easement holders, long-term management requirements, success criteria such as those listed above and other details, as appropriate to target the preservation of long-term viable populations.

Significance after Mitigation

Implementation of Mitigation Measure 3.4-1 would reduce significant impacts on special-status plants to a **less-than-significant** level by requiring protocol-level surveys for special-status plants and implementation of avoidance measures and compensation for impacts on special-status plants if present on the project site to maintain viable plant populations consistent with General Plan Policy NCR-2.8.

Mitigation Measure 3.4-2c: Conduct Preconstruction Surveys for Coast Horned Lizard, Northern California Legless Lizard, and San Joaquin Coachwhip; Implement Avoidance Measures; and Relocate Individuals

- ▶ Within 48 hours of project construction activities (e.g., vegetation removal, ground disturbance), a qualified biologist would conduct a focused visual survey of habitat suitable for coast horned lizard, northern California legless lizard, and San Joaquin coachwhip within the development area, which would include walking linear transects of the development area and inspecting areas under logs or other materials.
- ▶ If coast horned lizard, northern California legless lizard, and San Joaquin coachwhip are not detected during the focused survey, the qualified biologist would submit a report

summarizing the results of the survey to the applicant and San Benito County, and further mitigation would not be required.

- ▶ If coast horned lizard, northern California legless lizard, or San Joaquin coachwhip is detected during the focused survey, the qualified biologist would submit a report summarizing the results of the survey to the applicant and San Benito County. If coast horned lizard, northern California legless lizard, and San Joaquin coachwhip are detected, a qualified biologist would be present during initial ground disturbance activities and would inspect the development area before initiation of project activities. If coast horned lizard, northern California legless lizard, and San Joaquin coachwhip are detected, the qualified biologist would move individuals into nearby habitat and out of harm's way (e.g., west of the development area within ruderal grassland habitat or shrub habitat adjacent to the San Benito River). Captured individuals would be held briefly in an appropriate receptacle such that they are protected from thermal stress and moved to the receptor location immediately.

Significance after Mitigation

Implementation of Mitigation Measure 3.4-2c would reduce potential impacts on coast horned lizard, northern California legless lizard, and San Joaquin coachwhip to a **less-than-significant** level by requiring focused surveys for the species, implementation of measures to avoid injury or mortality of western pond turtles if detected, and relocation of individual turtles by a qualified biologist. This mitigation measure would also be consistent with General Plan Policy NCR-2.8.

Mitigation Measure 3.4-2d: Conduct Preconstruction Surveys for Western Pond Turtle, Implement Avoidance Measures, and Relocate Individuals

- ▶ Within 24 hours of commencement of ground disturbing activities, a qualified biologist familiar with the life history of western pond turtle and experienced in performing surveys for western pond turtle shall conduct a focused survey of aquatic and upland habitat suitable for the species within the development area. The qualified biologist shall inspect the development area for western pond turtles as well as suitable burrow habitat.
- ▶ If western pond turtles are not detected during the focused survey, the qualified biologist shall submit a report summarizing the results of the survey to the applicant and San Benito County, and further mitigation shall not be required.
- ▶ If western pond turtles are detected during the focused survey, the qualified biologist shall submit a report summarizing the results of the survey to the applicant and San Benito County. If western pond turtles are detected, a no-disturbance buffer of at least 100 feet shall be established around any identified nest sites or overwintering sites including the nest or overwintering site and enough area to provide a clear path from the site to the nearest aquatic habitat (e.g., San Benito River, Pajaro River) until the nest is no longer active as determined by a qualified biologist, and no project activities shall occur within the no-disturbance buffer. A qualified biologist shall be present during initial ground disturbance activities and shall inspect the development area before initiation of project activities. If western pond turtles are detected, the qualified biologist shall move the turtles to the Pajaro or San Benito River or its tributaries that provide suitable aquatic habitat for western pond turtle.

Significance after Mitigation

Implementation of Mitigation Measures 3.4-2d would reduce potential impacts on western pond turtle to a **less-than-significant** level by requiring focused surveys for the species,

implementation of measures to avoid injury or mortality of western pond turtles if detected, and relocation of individual turtles by a qualified biologist. This mitigation measure would also be consistent with General Plan Policy NCR-2.8.

Mitigation Measure 3.4-2e: Conduct Take Avoidance Survey for Burrowing Owl, Implement Avoidance Measures, and Compensate for Loss of Occupied Burrows

- ▶ A qualified biologist shall conduct a focused survey for burrowing owls in areas of habitat suitable for the species on and within 1,640 feet (500 meters) of the development area no less than 14 days prior to initiating ground disturbance activities using survey methods described in Appendix D of the CDFW Staff Report on Burrowing Owl Mitigation (CDFW 2012).
- ▶ If no occupied burrows are found, the qualified biologist shall submit a report documenting the survey methods and results to the applicant and San Benito County, and no further mitigation shall be required.
- ▶ If active burrows are found, the qualified biologist shall submit a report documenting the survey methods and results to the applicant and San Benito County. If an active burrow is found within 1,500 feet of pending construction activities that would occur during the nonbreeding season (September 1 through January 31), the applicant shall establish and maintain a minimum protection buffer of 164 feet (50 meters) around the occupied burrow throughout construction. The actual buffer size shall be determined by the qualified biologist based on the time of year and level of disturbance in accordance with guidance provided in the CDFW Staff Report on Burrowing Owl Mitigation (CDFW 2012). The protection buffer may be adjusted if, in consultation with CDFW, a qualified biologist determines that an alternative buffer would not disturb burrowing owl use of the burrow because of particular site features or other buffering measures. If occupied burrows are present that cannot be avoided or adequately protected with a no-disturbance buffer, a burrowing owl exclusion plan shall be developed, as described in Appendix E of the CDFW Staff Report. Burrowing owls shall not be excluded from occupied burrows until the project burrowing owl exclusion plan is approved by CDFW. The exclusion plan shall include a compensatory habitat mitigation plan (see below).
- ▶ If an active burrow is found during the breeding season (February 1 through August 31), occupied burrows shall not be disturbed and shall be provided with a protective buffer at a minimum of ~~164~~ 656 feet (200 meters) unless a qualified biologist verifies through noninvasive means that ~~either: (1) the birds have not begun egg laying, or (2) juveniles~~ from the occupied burrows are foraging independently and are capable of independent survival. The size of the buffer may be adjusted depending on the time of year and level of disturbance as outlined in the CDFW Staff Report. The size of the buffer may be reduced if a broad-scale, long-term, monitoring program acceptable to CDFW is implemented so that burrowing owls are not adversely affected. Once the fledglings are capable of independent survival, the owls can be evicted, and the burrow can be destroyed per the terms of a CDFW-approved burrowing owl exclusion plan developed in accordance with Appendix E of CDFW Staff Report.
- ▶ If burrowing owls are evicted from burrows and the burrows are destroyed by implementation of project construction activities, the applicant shall mitigate the loss of occupied habitat in accordance with guidance provided in the CDFW Staff Report, which states that permanent impacts on nesting, occupied and satellite burrows, and burrowing owl habitat (i.e., grassland habitat with suitable burrows) shall be mitigated such that habitat acreage and number of burrows are replaced through permanent conservation of comparable or better habitat with similar vegetation communities and

burrowing mammals (e.g., ground squirrels) present to provide for nesting, foraging, wintering, and dispersal. The applicant shall retain a qualified biologist to develop a burrowing owl mitigation and management plan, which shall be approved by CDFW, that incorporates the following goals and standards:

- Mitigation lands shall be selected based on comparison of the habitat lost to the compensatory habitat, including type and structure of habitat, disturbance levels, potential for conflicts with humans, pets, and other wildlife, density of burrowing owls, and relative importance of the habitat to the species throughout its range.
- If feasible, mitigation lands shall be provided adjacent or proximate to the development area so that displaced owls can relocate with reduced risk of injury or mortality. Feasibility of providing mitigation adjacent or proximate to the development area depends on availability of sufficient habitat to support displaced owls that may be preserved in perpetuity.
- If habitat suitable for burrowing owl is not available for conservation adjacent or proximate to the development area, mitigation lands can be secured offsite and shall aim to consolidate and enlarge conservation areas outside of planned development areas and within foraging distance of other conservation lands. Mitigation may be also accomplished through purchase of mitigation credits at a CDFW-approved mitigation bank, if available. Alternative mitigation sites and acreages may also be determined in consultation with CDFW.
- If burrowing owl habitat mitigation is completed through permittee-responsible conservation lands, the mitigation plan shall include mitigation objectives, site selection factors, site management roles and responsibilities, vegetation management goals, financial assurances and funding mechanisms, performance standards and success criteria, monitoring and reporting protocols, and adaptive management measures. Success shall be based on the number of adult burrowing owls and pairs using the site and if the numbers are maintained over time. Measures of success, as suggested in the CDFW Staff Report, shall include site tenacity, number of adult owls present and reproducing colonization by burrowing owls from elsewhere, changes in distribution, and trends in stressors.

Significance after Mitigation

Implementation of Mitigation Measure 3.4-2e would reduce potential impacts on burrowing owl to a **less-than-significant** level by requiring protocol-level surveys for the species, implementation of measures to avoid injury or mortality of burrowing owls and destruction of active burrows if detected, and compensation for loss of burrows. This mitigation measure would also be consistent with General Plan Policy NCR-2.8.

Mitigation Measure 3.4-2f: Conduct Focused Surveys for Special-Status Birds, Nesting Raptors, and Other Native Nesting Birds and Implement Protective Buffers

- ▶ To minimize the potential for loss of special-status bird species, raptors, and other native birds, project activities (e.g., tree removal, vegetation clearing, ground disturbance, staging) shall be conducted during the nonbreeding season (approximately September 1-January 31, as determined by a qualified biologist), if feasible. If project construction activities are conducted during the nonbreeding season, no further mitigation shall be required.
- ▶ Within 14 days before the onset of project construction activities during the breeding season (approximately February 1 through August 31, as determined by a qualified biologist), a qualified biologist familiar with birds of California and with experience

conducting nesting bird surveys shall conduct focused surveys for special-status birds, other nesting raptors, and other native birds. Surveys shall be conducted in accessible areas within 1 mile of the development area for golden eagle, within 0.25 mile of the development area for white-tailed kite, within 500 feet of the development area for other raptor species and special-status birds, and within 50 feet of the development area for non-raptor common native bird nests.

- ▶ If no active nests are found, the qualified biologist shall submit a report documenting the survey methods and results to the applicant and San Benito County, and no further mitigation shall be required.
- ▶ If active nests are found, the qualified biologist shall submit a report documenting the survey methods and results to the applicant and San Benito County. If active nests are found, impacts on nesting birds shall be avoided by establishing appropriate buffers around active nest sites identified during focused surveys to prevent disturbance to the nest. Project construction activity shall not commence within the buffer areas until a qualified biologist has determined that the young have fledged, the nest is no longer active, or reducing the buffer would not likely result in nest abandonment. Buffers typically shall be at least 0.5 mile for golden eagle, 0.25 mile for white-tailed kite, and 500 feet for other raptors, and 100 feet for other special-status birds. Buffer size for non-raptor, non-special-status bird species shall be determined by a qualified biologist. Factors to be considered for determining buffer size shall include presence of natural buffers provided by vegetation or topography, nest height above ground, baseline levels of noise and human activity, species sensitivity, and proposed project construction activities. Generally, buffer size for these species shall be at least 20 feet. The size of the buffer may be adjusted if a qualified biologist, determines that such an adjustment shall not be likely to adversely affect the nest. Any buffer reduction for a special-status species shall require consultation with CDFW. Daily monitoring of the nest by a qualified biologist during project activities shall be required if the activity has potential to adversely affect the nest, the buffer has been reduced, or if birds within active nests are showing behavioral signs of agitation (e.g., standing up from a brooding position, flying off the nest) during project activities, as determined by the qualified biologist.

Significance after Mitigation

Implementation of Mitigation Measure 3.4-2f would reduce potential impacts on special-status birds, raptors, and other native nesting birds to a **less-than-significant** level by requiring focused surveys for the nesting birds and implementation of measures to avoid disturbance, injury, or mortality of the species if nests are detected. This mitigation measure would also be consistent with General Plan Policy NCR-2.8.

Mitigation Measure 3.4-2h: Conduct Focused American Badger Survey and Establish Protective Buffers

- ▶ Within ~~30~~ 14 days before commencement of project construction activities, a qualified wildlife biologist with familiarity with American badger and experience using survey methods for the species shall conduct focused surveys of habitat suitable for the species within the development area to identify any American badger dens.
- ▶ If occupied dens are not found, the qualified biologist shall submit a letter report summarizing the results of the survey to the project applicant and San Benito County, and further mitigation shall not be required.
- ▶ If occupied dens are found, the qualified biologist shall submit a letter report summarizing the results of the survey to the project applicant and San Benito County. If

occupied dens are found, impacts on active badger dens shall be avoided by establishing exclusion zones around all active badger dens, the size of which shall be determined by the qualified biologist. No project activities (e.g., vegetation removal, ground disturbance, staging) shall occur within the exclusion zone until the den is abandoned, as confirmed by a qualified biologist. The qualified biologist shall monitor each den once per week to track the status of the den and to determine when it is no longer occupied. Other methods, including but not limited to remote cameras, may be used to determine that the den is no longer occupied. When the den is no longer occupied, the den may be collapsed, and project activities within the exclusion zone may occur.

Significance after Mitigation

Implementation of Mitigation Measures 3.4-2h would reduce potential impacts on American badger to **less than significant** by requiring focused surveys for the species, and implementation of measures to avoid injury or mortality of American badger and destruction of active dens if detected. This mitigation measure would also be consistent with General Plan Policy NCR-2.8.

Mitigation Measure 3.4-2i: Conduct Focused Bat Surveys and Implement Avoidance Measures

- ▶ No more than 30 days pPrior to the start of project construction activities, a qualified biologist familiar with bats and bat ecology, and experienced in conducting bat surveys, shall conduct surveys for bat roosts in suitable habitat (e.g., large trees, crevices, cavities, exfoliating bark, foliage) within and adjacent to (i.e., within 250 feet) the development area. The qualified biologist shall inspect the aforementioned habitat areas for signs of bat use (e.g., whitewash, guano); shall inspect crevices, cavities, and exfoliating bark for bat presence (e.g., using a flashlight); and may use bat detection devices if needed.
- ▶ If no evidence of bat roosts is found, the qualified biologist shall submit a report summarizing the results of the survey to the applicant and San Benito County, and no further study shall be required.
- ▶ If evidence of bat roosts is found, the qualified biologist shall submit a report summarizing the results of the survey to the applicant and San Benito County. If evidence of bat roosts is observed, the species and number of bats using the roost shall be determined by a qualified biologist. Bat detectors shall be used if deemed necessary to supplement survey efforts by the qualified biologist.
- ▶ A no-disturbance buffer of 250 feet shall be established around active pallid bat, western mastiff bat, or western red bat roosts, and project activities shall not occur within this buffer until after the roosts are unoccupied.
- ▶ ~~If roosts of pallid bat, western mastiff bat, or western red bat are determined to be present and must be removed, the bats shall be excluded from the roosting site before the tree is removed. A program addressing compensation, exclusion methods, and roost removal procedures shall be developed in consultation with CDFW before implementation. Exclusion methods may include use of one-way doors at roost entrances (bats may leave but not reenter) or sealing roost entrances when the site can be confirmed to contain no bats. Exclusion efforts may be restricted during periods of sensitive activity (e.g., during hibernation or while females in maternity colonies are nursing young). The loss of each roost (if any) shall be replaced in consultation with CDFW and may require construction and installation of bat boxes suitable to the bat species and colony size excluded from the original roosting site. If determined necessary during~~

~~consultation with CDFW, replacement roosts shall be implemented before bats are excluded from the original roost sites. Once the replacement roosts are constructed and it is confirmed that bats are not present in the original roost site by a qualified biologist, the roost tree may be removed.~~

Significance after Mitigation

Implementation of Mitigation Measure 3.4-2i would reduce potential impacts on pallid bat, western mastiff bat, and western red bat to **less than significant** by requiring focused surveys for bat roosts and implementation of no-disturbance buffers around active special-status bat roosts. This mitigation measure would also be consistent with General Plan Policy NCR-2.8.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O7-12

This comment identified an error in Mitigation Measure 3.4-1 on pages 3.4-22 and 3.4-23 of the Draft EIR, and requested an edit to the measure to require a botanist with experience identifying plants that occur in the project region rather than the Sierra Nevada region.

Mitigation Measure 3.4-1 has been revised to require a botanist with experience identifying plants in California as shown in response to comment O7-11.

This comment also states that Mitigation Measure 3.4-1 does not demonstrate that impacts on special-status plants would be reduced to less than significant and requests several clarifying edits.

Development of the mitigation strategy would be required if special-status plants were detected on the project site and if these plants could not be avoided during project implementation. Surveys and consideration of avoidance measures have not been completed at this planning stage of the project; therefore, the details of a potential mitigation and monitoring program are not yet known. However, Mitigation Measure 3.4-1 describes the success criteria of the program (performance standards), and states that the program would be developed in consultation with CDFW. Because consultation with CDFW is required, all required elements of the mitigation and management program would be established before project implementation, or the program would not be approved. Use of performance standards when development of mitigation details in the EIR is impractical is provided for under State CEQA Guidelines Section 15126.4(a)(1)(B).

O7-13

This comment states that Mitigation Measure 3.4-1 on pages 3.4-22 and 3.4-23 of the Draft EIR does not provide a scientific basis for a 1:1 mitigation ratio.

Mitigation Measure 3.4-1 requires a mitigation ratio of a minimum of 1:1 (or no net loss) and provides performance measures that must be met through this mitigation, including a requirement that the occupied area and plant density in compensatory populations be equal to or greater than the affected occupied habitat, as well as a requirement for the compensatory population to be self-producing. These performance measures may require a mitigation ratio greater than 1:1. The mitigation measure does not limit the mitigation ratio to 1:1. The commenter did not provide any regulatory basis (e.g., CDFW requirements) that a 1:1 mitigation ratio would not be adequate, and the County is not aware of any official guidance regarding mitigation ratios for special-status plants other than reducing impacts to less than significant under CEQA. No revisions are required.

O7-14

This comment requests definition of the term "vicinity" in the California red-legged frog analysis on pages 3.4-23 and 3.4-24 of the Draft EIR.

Additional detail has been added to page 3.4-24 to define the term "vicinity," as shown below.

The comment also requests additional substantiation that project implementation would not result in significant loss of habitat for California red-legged frog.

See response to comment O7-6.

The project site does not contain breeding habitat suitable for California red-legged frogs and direct loss of breeding habitat would not occur as a result of project implementation. However, the drainage ditch on the project site may provide nonbreeding aquatic habitat (e.g., aestivation, refuge) when water is present in the ditch and the ruderal grassland habitat on the project site may provide upland migration or dispersal habitat during the wet season. Development of the project site would result in loss of this upland and nonbreeding aquatic habitat through conversion to impervious surfaces (e.g., parking areas) and buildings. However, the conversion of this upland and nonbreeding aquatic habitat would not result in substantial loss of aestivation or breeding habitat. As described above in Section 3.4.2, "*Environmental Setting*," the majority of the project site is disturbed or disked and has been farmed and disked regularly since at least 1993. While California red-legged frog individuals could enter the site, frogs are more likely to occur within the Pajaro and San Benito rivers and the associated riparian corridor. Conversion of disturbed habitat on the project site would not result in significant loss of habitat in the vicinity of the project site (i.e., within 2 miles or the typical dispersal distance of the species) or preclude California red-legged frogs from occurring in the vicinity of the project site.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O7-15

This comment requests clarification regarding preconstruction survey methods for California red-legged frog and California tiger salamander described in Mitigation Measure 3.4-2a on pages 3.4-25 through 3.4-27 of the Draft EIR, and clarification regarding the purpose for notifying CDFW and USFWS if an individual of these species is detected during the survey. Mitigation Measure 3.4-2a has been revised to provide additional details as follows:

Mitigation Measure 3.4-2a: Implement Conservation Measures for California Red-Legged Frog and California Tiger Salamander and Consult with CDFW and USFWS

Prior to and during project construction, the following measures shall be implemented to minimize the likelihood of take of California red-legged frogs and California tiger salamanders.

Conservation Measures

- ▶ Because the project site is within the range of California red-legged frog and California tiger salamanders and some marginally suitable habitat for these species is present on the project site (i.e., the drainage ditch), consultation with USFWS under Section 7 of the ESA would occur. USACE would be presumed to be the federal action agency because it has jurisdiction over the drainage ditch on the project site (see Impact 3.4-4). The project shall not proceed until a Biological Opinion is issued by USFWS.
- ▶ An Incidental Take Permit from CDFW shall be obtained for California tiger salamander. The project shall not proceed until the Incidental Take Permit is issued by CDFW.
- ▶ A biologist approved by CDFW and USFWS (approved biologist) shall supervise and implement all ~~conservation measures~~ terms and conditions of the permits. All construction contracts shall expressly include language requiring compliance with the ~~conservation measures~~ permits.
- ▶ At least 30 days prior to the start of project construction activities, the project applicant shall submit to CDFW and USFWS the names and credentials of all biologists proposed to work on the project for approval. No project work shall begin until the project

applicant has received approval from CDFW and USFWS that biologists are qualified to implement the proposed conservation measures terms and conditions of the permits.

- ▶ The approved biologist shall provide mandatory worker awareness training for all project construction personnel before work begins, that shall include, at a minimum, the biology, identification, and habitat needs of California red-legged frog and California tiger salamander and the conservation measures terms and conditions of the permits required to protect them.
- ▶ ~~Amphibian exclusion fencing shall be installed around the entire perimeter of the development area under the direction of the approved biologist. The exclusion fencing shall be maintained through the life of the project construction and shall be inspected by the biologist at least once per week.~~
- ▶ The approved biologist shall survey the development area for California red-legged frog and California tiger salamander no more than 48 hours before the start of project construction work (i.e., visual encounter surveys using walking transects of the entire development area). If California red-legged frogs or California tiger salamanders are detected during the survey, all project construction activities shall cease, and CDFW and USFWS shall be notified.
- ▶ ~~Each morning before work begins, the approved biologist shall inspect all vehicles, heavy equipment, and stored pipes for the presence of California red-legged frogs and California tiger salamanders.~~
- ▶ ~~The approved biologist shall be present at work areas during all ground disturbing activities and shall be available to visit work areas at all other times in the event a California red-legged frog or California tiger salamander is encountered.~~
- ▶ The approved biologist ~~may designate biological monitors to~~ shall oversee on-site compliance with all conservation measures terms and conditions of the permits. ~~The approved biologist shall ensure that monitors receive appropriate training, including identification of California red-legged frogs and California tiger salamanders. If these species are encountered in work areas, biological monitors~~ the approved biologist shall be authorized to stop any construction activities which may pose a threat to the animal, all equipment shall be turned off, and the approved biologist shall be notified immediately. Work shall not continue until the biologist has contacted CDFW and USFWS for guidance.
- ▶ Project construction activities shall not occur during the rainy season when California red-legged frogs and California tiger salamanders may be active (typically November through March), unless the entire development area has been graded and has been completely enclosed with amphibian exclusion fence prior to the onset of winter rains. For any work activities occurring after the onset of winter rains (i.e., usually mid-November, but variable from year to year), the approved biologist or biological monitor trained by the approved biologist shall be present at all times, even if ground disturbing activities have been completed.
- ▶ No construction work shall be performed during rain. If a rain event results in accumulation of less than 0.2 inch in a 24-hour period, work may resume after precipitation ceases. If a rain event results in accumulation of 0.2 inch or greater in a 24-hour period, work may resume after precipitation ceases, a drying-out period of 24 hours is observed, and the approved biologist inspects all work areas to verify the absence of California red-legged frogs and California tiger salamanders.

- ▶ If a work area is to be dewatered by pumping (e.g., the drainage ditch), intakes shall be completely screened with mesh not larger than 0.2 inch to prevent California red-legged frogs and California tiger salamanders from entering the pump system.
- ▶ Nighttime construction work shall not occur.
- ▶ All food-related trash items shall be disposed of in secure, closed containers and removed regularly to reduce the potential to attract predators. After construction, all trash and construction debris shall be removed from work areas for construction and operation of the project.
- ▶ All refueling, maintenance, and staging of equipment and vehicles shall occur at least 60 feet from habitat adjacent to the development area (i.e., Pajaro River, San Benito River, riparian woodland habitat adjacent to these rivers) that may be occupied by any life stage of the California red-legged frog or California tiger salamander.

Wildlife Agency Consultation

- ▶ ~~Prior to implementation of project construction activities, the project applicant shall initiate consultation with CDFW (for California tiger salamander) and USFWS (for California tiger salamander and California red-legged frog). If it is determined, in consultation with CDFW and USFWS, that take of these species could occur after implementation of the conservation measures described above, then the project applicant may be required to obtain incidental take authorization through the through Section 7 consultation or a Section 10 permit pursuant to ESA and through Section 2081 of California Fish and Game Code pursuant to CESA. Additional conservation measures may be recommended by CDFW or USFWS during the consultation process and these measures shall be implemented by the project applicant.~~

Significance after Mitigation

Implementation of Mitigation Measure 3.4-2a would reduce potential impacts on California red-legged frog and California tiger salamander to a **less-than-significant** level by requiring implementation of ~~conservation~~ measures to reduce the likelihood of take of these species, consultation with CDFW (for California tiger salamander) and USFWS (for California red-legged frog and California tiger salamander), and potential incidental take permitting from USFWS and CDFW. This mitigation measure would also be consistent with General Plan Policy NCR-2.8.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

07-16

This comment requests additional substantiation that impacts on habitat for coast horned lizard, northern California legless lizard, and San Joaquin coachwhip would be less than significant.

Additional detail has been added to the coast horned lizard, northern California legless lizard, and San Joaquin coachwhip impact discussion on pages 3.4-27 and 3.4-28 of the Draft EIR regarding habitat impacts for these species and additional rationale supporting the fact that habitat on the project site is marginal for these species, as follows:

Coast Horned Lizard, Northern California Legless Lizard, and San Joaquin Coachwhip

Documented occurrences of coast horned lizard, northern California legless lizard, and San Joaquin coachwhip range from 8 to 15 miles from the project site (CNDDDB 2022); however, the project site is located within the current range of all three species. The majority of the development area has been regularly disked or is otherwise disturbed (e.g., buildings,

roadways) and would not provide habitat suitable for these species. However, ~~H~~habitat potentially suitable for coast horned lizard, northern California legless lizard, and San Joaquin coachwhip is present within ruderal grassland habitat that has not been recently disked and shrub habitat adjacent to riparian woodlands on and adjacent to the project site. While this area has not been recently disked, it has been historically disked and subject to agricultural activities for the same duration as the rest of the development area. Additionally, most project activities would avoid the shrub habitat adjacent to riparian woodlands on and adjacent to the project site. As a result, habitat on the project site is considered to be marginal for coast horned lizard, northern California legless lizard, and San Joaquin coachwhip, and impacts on habitat for these species resulting from project implementation would not be substantial. Project activities (i.e., vegetation clearing, ground disturbance, staging, heavy equipment use) may result in direct loss of these species if present on the project site. This would be a **significant** impact.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O7-17 This comment states that linear transect surveys required under Mitigation Measure 3.4-2c on page 3.4-28 of the Draft EIR would not effectively detect coast horned lizards, northern California legless lizards, or San Joaquin coachwhips.

The reader is referred to response to comment O7-16. Habitat on the project site is marginal for these species, and the likelihood of occupancy is low. Regardless, Mitigation Measure 3.4-2c has been revised to add more specific survey requirements, as shown in response to comment O7-11.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O7-18 This comment states that the biological monitoring and relocation of coast horned lizard, northern California legless lizard, and San Joaquin coachwhip would not be effective.

The reader is referred to responses to comments O7-16 and O7-17. The comment also requests clarification of the translocation protocol and receptor site. Mitigation Measure 3.4-2c on page 3.4-28 of the Draft EIR has been revised to include these details, as shown in response to comment O7-17.

O7-19 This comment requests additional substantiation that impacts on habitat for western pond turtle would be less than significant.

Additional detail has been added to the western pond turtle impact discussion on pages 3.4-28 and 3.4-29 of the Draft EIR regarding impacts on habitat for this species and additional rationale supporting the fact that habitat on the project site is marginal for western pond turtle, as follows:

Western Pond Turtle

Western pond turtle can be found in many different aquatic habitats, including ponds (natural or human-made), marshes, rivers, and irrigation ditches. Western pond turtle uses upland habitat for basking and egg-laying. Upland habitat may include grasslands, scrub, or woodland habitats. Western pond turtles are known to travel into uplands up to 0.3 mile (approximately 1,600 feet) from aquatic habitat (Reese and Welsh 1997). Aquatic habitat suitable for western pond turtle is present within the San Benito River and Pajaro River adjacent to the project site. The majority of the development area has been regularly disked or is otherwise disturbed (e.g., buildings, roadways) and would not provide high-quality habitat for this species. As a result, habitat on the project site is considered to be marginal for western pond turtle, and impacts on habitat for this species resulting from project

implementation would not be substantial. However, Upland habitat potentially marginally suitable for this species is present within ruderal grassland areas up to approximately 0.3 mile away from these rivers, which includes most of the project site.

Project activities (i.e., vegetation clearing, ground disturbance, staging, heavy equipment use, fill of wetlands and other waters) may result in direct loss of western pond turtles and occupied burrows if present on the project site. This would be a **significant** impact.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O7-20 This comment states that the 100-foot no-disturbance buffer for active western pond turtle nest sites or overwintering sites required under Mitigation Measure 3.4-2d on pages 3.4-28 and 3.4-29 of the Draft EIR would not be sufficient to protect turtles if these sites were found in the interior of the project site.

Mitigation Measure 3.4-2d has been revised to address this potential case, as shown in response to comment O7-11.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O7-21 This comment requests removal of a detail under Mitigation Measure 3.4-2e on pages 3.4-29 through 3.4-30 of the Draft EIR that states that a burrowing owl burrow would be considered inactive if the birds have not begun egg-laying.

This detail has been removed.

The comment also requests clarification about breeding and nonbreeding season buffers for active burrowing owl burrows in Mitigation Measure 3.4-2e.

This detail has been clarified on page 3.4-30 of the Draft EIR, as follows:

- ▶ If an active burrow is found during the breeding season (February 1 through August 31), occupied burrows shall not be disturbed and shall be provided with a protective buffer at a minimum of ~~164~~ 656 feet (200 meters) unless a qualified biologist verifies through noninvasive means that either: (1) the birds have not begun egg-laying, or (2) juveniles from the occupied burrows are foraging independently and are capable of independent survival. The size of the buffer may be adjusted depending on the time of year and level of disturbance as outlined in the CDFW Staff Report. The size of the buffer may be reduced if a broad-scale, long-term, monitoring program acceptable to CDFW is implemented so that burrowing owls are not adversely affected. Once the fledglings are capable of independent survival, the owls can be evicted, and the burrow can be destroyed per the terms of a CDFW-approved burrowing owl exclusion plan developed in accordance with Appendix E of CDFW Staff Report.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O7-22 This comment asks why habitat mitigation would not be required if burrowing owls are evicted from burrows.

Mitigation Measure 3.4-2e on pages 3.4-29 through 3.4-30 of the Draft EIR states: "If burrowing owls are evicted from burrows and the burrows are destroyed by implementation of project construction activities, the applicant shall mitigate the loss of occupied habitat in accordance with guidance

provided in the CDFW Staff Report, which states that permanent impacts on nesting, occupied and satellite burrows, and burrowing owl habitat (i.e., grassland habitat with suitable burrows) shall be mitigated....” Further response to this comment is not required.

This comment also requests clarity on how the amount of occupied habitat requiring compensation would be determined.

Mitigation Measure 3.4-2e on pages 3.4-29 and 3.4-30 of the Draft EIR states that the loss of occupied habitat “shall be mitigated such that habitat acreage and number of burrows are replaced through permanent conservation of comparable or better habitat with similar vegetation communities and burrowing mammals (e.g., ground squirrels) present to provide for nesting, foraging, wintering, and dispersal.” The CDFW Staff Report states that “...minimum habitat replacement recommendation is not provided here as it has been shown to serve as a default, replacing any site-specific analysis and discounting the wide variation in natal area, home range, foraging area, and other factors influencing burrowing owls and burrowing owl population persistence in a particular area.” Following implementation of surveys required under Mitigation Measure 3.4-2e, these factors would be considered to determine the appropriate habitat acreage for mitigation. Further response to this comment is not required.

O7-23

This comment requests clarity regarding several details of the mitigation and management plan requirements under Mitigation Measure 3.4-2e on pages 3.4-29 and 3.4-30 of the Draft EIR. The comment asks whether there would be any prohibitions against pets on the project site, and why mitigation lands could be located adjacent to the development area given the potential for conflicts with humans, vehicles, and pets.

Mitigation Measure 3.4-2e presents the option of the mitigation lands being adjacent to “or proximate to” the development area. The rationale for this, as explained on page 3.4-30 of the Draft EIR, is to facilitate displaced owls relocating with reduced risk of injury or mortality. However, Mitigation Measure 3.4-2e specifies that this would be dependent on the availability of sufficient habitat and states that selection of this land would be based on many factors, including potential conflicts with humans and pets. This mitigation measure also does not limit the mitigation lands to areas adjacent to or proximate to the development area.

The comment also asks how it would be determined that sufficient habitat to support displaced owls would be present.

The reader is referred to response to comment 07-22.

The comment also asks for additional details regarding preservation and appropriate management of onsite mitigation land in perpetuity.

These details will be established if development of the burrowing owl mitigation and management plan is necessary after implementation of surveys and avoidance measures under Mitigation Measure 3.4-2e. However, Mitigation Measure 3.4-2e explicitly states that preservation in perpetuity is a requirement for the mitigation land and that if onsite lands could not be preserved in perpetuity, they would not qualify as mitigation lands. Further response to this comment is not required.

O7-24

This comment requests clarity on a mechanism (e.g., CDFW approval) for ensuring adequacy of the burrowing owl mitigation plan required under Mitigation Measure 3.4-2e on pages 3.4-29 and 3.4-30 of the Draft EIR.

As described in Mitigation Measure 3.4-2e, this plan shall be developed in accordance with guidance in the CDFW Staff Report, which requires CDFW approval of these plans. Use of performance standards is provided for under State CEQA Guidelines Section 15126.4(a)(1)(B). This detail has been added to Mitigation Measure 3.4-2e on page 3.4-30 of the Draft EIR, as follows:

- ▶ If burrowing owls are evicted from burrows and the burrows are destroyed by implementation of project construction activities, the applicant shall mitigate the loss of occupied habitat in accordance with guidance provided in the CDFW Staff Report, which states that permanent impacts on nesting, occupied and satellite burrows, and burrowing owl habitat (i.e., grassland habitat with suitable burrows) shall be mitigated such that habitat acreage and number of burrows are replaced through permanent conservation of comparable or better habitat with similar vegetation communities and burrowing mammals (e.g., ground squirrels) present to provide for nesting, foraging, wintering, and dispersal. The applicant shall retain a qualified biologist to develop a burrowing owl mitigation and management plan, which shall be approved by CDFW, that incorporates the following goals and standards:
 - Mitigation lands shall be selected based on comparison of the habitat lost to the compensatory habitat, including type and structure of habitat, disturbance levels, potential for conflicts with humans, pets, and other wildlife, density of burrowing owls, and relative importance of the habitat to the species throughout its range.
 - If feasible, mitigation lands shall be provided adjacent or proximate to the development area so that displaced owls can relocate with reduced risk of injury or mortality. Feasibility of providing mitigation adjacent or proximate to the development area depends on availability of sufficient habitat to support displaced owls that may be preserved in perpetuity.
 - If habitat suitable for burrowing owl is not available for conservation adjacent or proximate to the development area, mitigation lands can be secured offsite and shall aim to consolidate and enlarge conservation areas outside of planned development areas and within foraging distance of other conservation lands. Mitigation may be also accomplished through purchase of mitigation credits at a CDFW-approved mitigation bank, if available. Alternative mitigation sites and acreages may also be determined in consultation with CDFW.
 - If burrowing owl habitat mitigation is completed through permittee-responsible conservation lands, the mitigation plan shall include mitigation objectives, site selection factors, site management roles and responsibilities, vegetation management goals, financial assurances and funding mechanisms, performance standards and success criteria, monitoring and reporting protocols, and adaptive management measures. Success shall be based on the number of adult burrowing owls and pairs using the site and if the numbers are maintained over time. Measures of success, as suggested in the CDFW Staff Report, shall include site tenacity, number of adult owls present and reproducing colonization by burrowing owls from elsewhere, changes in distribution, and trends in stressors.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O7-25

This comment requests inclusion of the specific details of the burrowing owl mitigation and management plan required under Mitigation Measure 3.4-2e on pages 3.4-29 and 3.4-30 of the Draft EIR.

Development of the mitigation and management plan would be required if active burrowing owl burrows were detected on the project site and if these burrows could not be avoided during project implementation. Surveys and consideration of avoidance measures have not been completed at this planning stage of the project. The details of such measures cannot be known until and unless active burrowing owls are detected, as they would depend on the location and nature of the identified

burrows. Therefore, the details of a potential mitigation and monitoring program are not yet known, and further description would be speculative. However, Mitigation Measure 3.4-2e lists standards of the mitigation and monitoring program, describes the success criteria of the program, and states that the program will be developed in accordance with the CDFW Staff Report, which requires CDFW approval of the program. The reader is referred to response to comment O7-24. Because consistency with the CDFW Staff Report and approval by CDFW is required, all required elements of the mitigation and management program would be established before project implementation, or the program would not be approved. Use of performance standards when development of mitigation details in the EIR is impractical is provided for under State CEQA Guidelines Section 15126.4(a)(1)(B).

O7-26 This comment requests analysis of project impacts on special-status bird habitat.

Additional detail regarding potential impacts on special-status bird habitat has been added to the impact analysis of special-status birds and other native nesting birds on pages 3.4-30 and 3.4-31 of the Draft EIR. The reader is referred to response to comment O7-5.

O7-27 This comment states that a no-disturbance buffer for nesting birds of 20 feet would not be effective in preventing significant impact on nesting birds.

Mitigation Measure 3.4-2f on page 3.4-31 of the Draft EIR requires no-disturbance buffers of a minimum of 20 feet for non-special-status, non-raptor nesting birds. Some bird species are acclimated to human disturbance, and do not exhibit disturbance response due to nearby human activity, especially those species that often nest in urban or suburban settings. The actual size of the buffer, as described in the mitigation measure, would be determined by a qualified biologist who would consider multiple factors, including natural buffers provided by vegetation or topography, nest height above ground, baseline levels of noise and human activity, and species sensitivity (as described above). This measure would allow for a qualified biologist to tailor the buffer size based on current conditions, the location of the nest, and the bird species. The comment does not provide a more suitable minimum buffer size, so revisions to this mitigation measure are not required.

This comment also requests clarification regarding the term "periodic monitoring" in Mitigation Measure 3.4-2f.

Mitigation Measure 3.4-2f on page 3.4-31 has been revised to provide examples of the frequency of monitoring that may be required, as shown in response to comment O7-11.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O7-28 This comment requests analysis of project impacts on American badger habitat.

Additional detail regarding potential impacts on American badger habitat has been added to the American badger impact analysis on pages 3.4-32 and 3.4-33 of the Draft EIR, as follows:

American Badger

The majority of the development area has been regularly disked or is otherwise disturbed (e.g., buildings, roadways) and would not provide habitat suitable for American badger. Portions of the development area have not been recently disked; however, these areas have been historically disked and subject to agricultural activities for the same duration as the rest of the development area. Because this habitat has been regularly disturbed, it is considered to be marginal for American badger occupancy, and project implementation would not result in significant loss of habitat for this species. While this habitat would be only marginally suitable for American badgers, Un-disked grassland habitat on the project site may provide den habitat suitable for American badgers. While no sign of American badger use was observed

during the reconnaissance-level survey for biological resources on May 16, 2022 (e.g., large burrows), the project site is surrounded by annual grassland habitat optimal for American badgers, and it is possible that a badger could occupy the project site prior to project implementation. Project activities (i.e., vegetation clearing, ground disturbance, staging, heavy equipment use) may result in direct loss of American badgers or active dens if present on the project site. This would be a **significant** impact.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O7-29

This comment requests an edit to Mitigation Measure 3.4-2h on page 3.4-33 of the Draft EIR to reduce the timing between the preconstruction survey for American badger and project implementation from 30 days.

This mitigation measure has been revised to reflect a shorter survey window of 14 days before project implementation, as follows:

Mitigation Measure 3.4-2h: Conduct Focused American Badger Survey and Establish Protective Buffers

- ▶ Within ~~30~~ 14 days before commencement of project construction activities, a qualified wildlife biologist with familiarity with American badger and experience using survey methods for the species shall conduct focused surveys of habitat suitable for the species within the development area to identify any American badger dens.
- ▶ If occupied dens are not found, the qualified biologist shall submit a letter report summarizing the results of the survey to the project applicant and San Benito County, and further mitigation shall not be required.
- ▶ If occupied dens are found, the qualified biologist shall submit a letter report summarizing the results of the survey to the project applicant and San Benito County. If occupied dens are found, impacts on active badger dens shall be avoided by establishing exclusion zones around all active badger dens, the size of which shall be determined by the qualified biologist. No project activities (e.g., vegetation removal, ground disturbance, staging) shall occur within the exclusion zone until the den is abandoned, as confirmed by a qualified biologist. The qualified biologist shall monitor each den once per week to track the status of the den and to determine when it is no longer occupied. Other methods, including but not limited to remote cameras, may be used to determine that the den is no longer occupied. When the den is no longer occupied, the den may be collapsed, and project activities within the exclusion zone may occur.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O7-30

This comment requests clarification regarding potential impacts on special-status bats and whether the project could result in impacts on roosting bats or roosting habitat.

Additional detail regarding potential impacts on roosting bats and roosting habitat has been added to the special-status bats impact analysis on pages 3.4-33 and 3.4-34 of the Draft EIR, as follows:

Special-Status Bats

Three special-status bat species have potential to occur on the project site: pallid bat, western mastiff bat, and western red bat. Roosting habitat potentially suitable for these

species on the project site is present within large trees in riparian woodland habitat on and adjacent to the project site (i.e., crevices, cavities, exfoliating bark, foliage). Project activities (i.e., tree removal, either direct or indirect) may result in direct loss of roosting special-status bats and potential loss of roosting habitat if present on the project site. This would be a **significant** impact.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O7-31 This comment requests clarification regarding the timing of roosting bat surveys required under Mitigation Measure 3.4-2i on pages 3.4-33 and 3.4-34 of the Draft EIR, the bat survey area, and survey methods.

Mitigation Measure 3.4-2i has been revised to include these additional details, as follows:

Mitigation Measure 3.4-2i: Conduct Focused Bat Surveys and Implement Avoidance Measures

- ▶ No more than 30 days pPrior to the start of project construction activities, a qualified biologist familiar with bats and bat ecology, and experienced in conducting bat surveys, shall conduct surveys for bat roosts in suitable habitat (e.g., large trees, crevices, cavities, exfoliating bark, foliage) within and adjacent to (i.e., within 250 feet of) the development area. The qualified biologist shall inspect the aforementioned habitat areas for signs of bat use (e.g., whitewash, guano); shall inspect crevices, cavities, and exfoliating bark for bat presence (e.g., using a flashlight); and may use bat detection devices if needed.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O7-32 This comment identifies an error in Mitigation Measure 3.4-2i on pages 3.4-33 and 3.4-34 of the Draft EIR, wherein western mastiff bat was inadvertently omitted from the list of special-status bats.

Western mastiff bat has been added to the fourth bullet of Mitigation Measure 3.4-2i, as follows:

- ▶ A no-disturbance buffer of 250 feet shall be established around active pallid bat, western mastiff bat, or western red bat roosts, and project activities shall not occur within this buffer until after the roosts are unoccupied.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O7-33 This comment states that the final bullet in Mitigation Measure 3.4-2i on pages 3.4-33 and 3.4-34 of the Draft EIR does not apply to the particular special-status bat species that may occur on the project site. The comment also identifies several requested points of clarity.

This bullet, which requires the applicant to exclude bats from active roosts of special-status bats, has been removed from Mitigation Measure 3.4-2i, as follows. As revised, Mitigation Measure 3.4-2i shall require the applicant to avoid all special-status bat roosts completely, until they are unoccupied.

- ▶ A no-disturbance buffer of 250 feet shall be established around active pallid bat, western mastiff bat, or western red bat roosts, and project activities shall not occur within this buffer until after the roosts are unoccupied.
- ▶ ~~If roosts of pallid bat, western mastiff bat, or western red bat are determined to be present and must be removed, the bats shall be excluded from the roosting site before~~

~~the tree is removed. A program addressing compensation, exclusion methods, and roost removal procedures shall be developed in consultation with CDFW before implementation. Exclusion methods may include use of one-way doors at roost entrances (bats may leave but not reenter) or sealing roost entrances when the site can be confirmed to contain no bats. Exclusion efforts may be restricted during periods of sensitive activity (e.g., during hibernation or while females in maternity colonies are nursing young). The loss of each roost (if any) shall be replaced in consultation with CDFW and may require construction and installation of bat boxes suitable to the bat species and colony size excluded from the original roosting site. If determined necessary during consultation with CDFW, replacement roosts shall be implemented before bats are excluded from the original roost sites. Once the replacement roosts are constructed and it is confirmed that bats are not present in the original roost site by a qualified biologist, the roost tree may be removed.~~

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O7-34

This comment requests clarity regarding the location of the proposed livestock corral and whether this project feature could avoid the riparian woodland habitat to the west by at least 50 feet, as required under Mitigation Measure 3.4-3.

Mitigation Measure 3.4-3 on pages 3.4-34 and 3.4-35 of the Draft EIR has been revised to require that all project features, including the livestock corral, be sited at least 50 feet from the riparian woodland habitat, as follows:

- ▶ Setbacks shall be established around all riparian woodland habitat on the development area and shall be flagged or fenced with brightly visible construction flagging and/or fencing under the direction of the qualified biologist and no project activities (e.g., vegetation removal, ground disturbance, staging) shall occur within these areas. Setback distances shall be determined by a qualified biologist in consultation with the appropriate agency (e.g., CDFW), but will be a minimum of 50 feet. The final siting of all project features, including the livestock corral, will be at least 50 feet from riparian woodland habitat. Foot traffic by personnel shall also be limited in these areas to prevent the introduction of invasive or weedy species or inadvertent crushing of plants and soil compaction. Periodic inspections (e.g., once per week at a minimum) during construction shall be conducted by a qualified biologist to maintain the integrity of exclusion fencing/flagging throughout the period of construction involving ground disturbance.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O7-35

This comment states that Mitigation Measure 3.4-3 on pages 3.4-34 and 3.4-35 of the Draft EIR does not specify the required mitigation ratio for restoration or purchase of habitat credits for impacts on riparian habitat.

Mitigation Measure 3.4-3 has been revised for clarity to state that a mitigation ratio of at least 1:1 would be required for each of these mitigation options, as shown below. This comment also requests additional rationale that a 1:1 ratio would be sufficient for mitigation of riparian habitat impacts. The reader is referred to response to comment O6-15.

- ▶ If project implementation cannot avoid and thus may adversely affect riparian habitat subject to CDFW jurisdiction under California Fish and Game Code Section 1602, the following measures shall apply.
 - A Streambed Alteration Notification shall be submitted to CDFW, pursuant to Section 1602 of the California Fish and Game Code. If proposed project activities are determined to be subject to CDFW jurisdiction, the project applicant shall abide by the measures to protect fish and wildlife resources required by any executed agreement prior to any vegetation removal or activity that may affect the resource. Measures to protect fish and wildlife resources shall include a combination of the following mitigation.
 - The project applicant shall compensate for the loss of riparian habitat and habitat function and value of this habitat at a ratio sufficient to offset the loss of riparian habitat function (at least 1:1) by:
 - restoring riparian habitat function and value within the project site;
 - restoring degraded riparian habitat outside of the project site;
 - purchasing riparian habitat credits at a CDFW-approved mitigation bank; or
 - preserving existing riparian habitat of equal or better value to the affected riparian habitat through a conservation easement ~~at a sufficient ratio to offset the loss of riparian habitat function (at least 1:1).~~

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O7-36

This comment requests inclusion of the specific details of the Compensatory Mitigation Plan for riparian habitat required under Mitigation Measure 3.4-3 on pages 3.4-34 and 3.4-35 of the Draft EIR.

Development of the Compensatory Mitigation Plan would be required if adverse effects on riparian habitat could not be avoided during project implementation. Approximately 0.2 acre of riparian habitat is within the disturbance area; however, the exact magnitude (i.e., the exact acreage of impact) of impacts on riparian habitat has not yet been determined. However, Mitigation Measure 3.4-3 lists requirements of the Compensatory Mitigation Plan, describes the success criteria of the plan, and requires CDFW notification and potentially a Lake and Streambed Alteration Agreement from CDFW. Because the Compensatory Mitigation Plan would require consistency with any Lake and Streambed Alteration Agreement and approval by CDFW, all required elements of the plan would be established before project implementation, or the plan would not be approved.

Success criteria for compensatory mitigation are included in existing Mitigation Measure 3.4-3. The compensation lands must be defined, with adequate legal and funding mechanisms, and the Compensatory Mitigation Plan must contain evidence that the habitat will be preserved in perpetuity or that the necessary mitigation has already been implemented. The precise legal and funding mechanisms and parties responsible for management and monitoring of potential compensatory mitigation sites are not known at this time and will be determined once CDFW has determined whether a Lake and Streambed Alteration Agreement is required. Monitoring and reporting requirements also cannot be developed until additional facts are known. However, when these details can feasibly be defined, they must meet the performance standards established in Mitigation Measure 3.4-3.

O7-37

This comment requests additional detail regarding the compensatory mitigation ratio for potential impacts on wetlands and regarding the proposed mitigation for impacts on wetlands irrespective of permitting requirements.

Clarification has been added to Mitigation Measure 3.4-4 on pages 3.4-36 and 3.4-37 of the Draft EIR to emphasize that no net loss indicates a mitigation ratio of at least 1:1, as shown below:

- ▶ If it is determined that fill of waters of the United States would result from project implementation, authorization for such fill would be secured from USACE and the RWQCB through the Clean Water Act Sections 401 and 404 permitting processes. In association with the Section 404 permit (if applicable) and prior to the issuance of any grading permit, Section 401 Water Quality Certification from the Central Valley RWQCB would be obtained. For impacts on waters of the state that are not also waters of the United States and are therefore not covered by the 401 Water Quality Certification, the applicant would apply to the RWQCB for Waste Discharge Requirements following the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (State Water Resources Control Board 2021). Any waters of the United States or waters of the state that are affected by the project shall be replaced or restored on a no-net-loss basis (i.e., a mitigation ratio of at least 1:1) in accordance with the applicable USACE and California Water Board mitigation standards in place at the time of construction.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

Wetland delineations and consideration of avoidance measures have not been completed at this planning stage of the project; therefore, the details of potential compensatory mitigation, other than the mitigation ratio and performance measures included in Mitigation Measure 3.4-4, cannot yet feasibly be known or defined. However, Mitigation Measure 3.4-4 describes success criteria, and states that compensation will be developed in accordance with the applicable U.S. Army Corps of Engineers and California Water Board mitigation standards in place at the time of construction.

O7-38 This comment states that the wildlife movement analysis in the Draft EIR does not provide sufficient evidence demonstrating that impacts on wildlife movement would be less than significant and requests additional analysis of the impacts of increased noise, light, and human activity on wildlife movement corridors.

The reader is referred to responses to comments O6-11 and O6-12.

O7-39 This comment states that the project could result in spread of invasive plants, including two trees included in the proposed landscaping plan (i.e., *Phoenix canariensis*, *Olea europaea*). The comment requests inclusion of measures to prevent introduction of invasive plants and removal of invasive trees from the landscaping plan.

Two bullets have been added to Mitigation Measure 3.4-3 with BMPs that would be required to limit the introduction and spread of invasive plants, as shown below:

- ▶ Best management practices to limit the introduction and spread of invasive plants to adjacent natural habitat shall be implemented, including but not limited to cleaning clothing, footwear, and equipment; inspecting heavy equipment, vehicles, and tools; and staging equipment in areas free of invasive plant infestations.
- ▶ Before the building permit is issued, the project applicant shall update its landscaping plan to remove species considered invasive by the California Invasive Plant Council. This shall include removing the Canary Island date palm and common olive tree from the currently proposed landscaping plan.

- This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.
- O7-40 This comment requests additional analysis regarding impacts on wildlife related to nighttime lighting.
- As described on Draft EIR page 3.1-15, the project would be required to comply with the Zone II lighting standards and requirements from the County's Dark Sky Ordinance (San Benito County Code Chapter 19.31) and would be subject to design review, per General Plan Policy LU-5.3. Lighting sources would be designed to project light downward and away from the project boundary in order to avoid light spillage and glare on adjacent properties and in private spaces. Cut-off lenses potentially would be used. All lighting would be consistent with International Dark Sky Standards, which recommend that lighting should be on only when needed, that it light only the area that needs it, that it be no brighter than necessary, that blue light emissions be minimized, and that it be fully shielded (pointing downward). Lighting also would be consistent with the Illuminating Engineering Society of North America criteria for luminaries. As shown in Draft EIR Appendix B (sheets E2.2P, E2.3P, and E2.4P), project illumination would be largely contained to the development site and would not create significant illumination into the undeveloped area.
- O7-41 This comment states that the cumulative impact analysis for biological resources is flawed because it refers to compensation for habitat and species impacts without providing compensation for all impacts on habitats or species.
- Draft EIR page 4-8 and Section 3.4, "Biological Resources," state that Mitigation Measures 3.4-1, 3.4-2a, 3.4-2b, 3.4-2c, 3.4-2d, 3.4-2e, 3.4-2f, 3.4-2g, 3.4-2h, 3.4-2i, 3.4-3, and 3.4-5 would offset the project's contribution to cumulative biological resource impacts by avoiding impacts on these species and habitats or compensating for habitat and species impacts.
- O7-42 This comment states that the project site is located close to the Pajaro and San Benito Rivers and the associated riparian areas. It expresses concerns about groundwater and surface water quality impacts related to operation of the septic system given the site's proximity to the rivers.
- The commenter mischaracterizes the proximity of the development area to the rivers and riparian area. The reader is referred to Draft EIR Figure 2-2. The proposed septic leach field would be set back approximately 850 feet from the river corridors. As stated on Draft EIR page 3.7-12, septic systems within the County require a permit from the County Environmental Health Division (consistent with County General Plan policy requirements). It must be demonstrated that the onsite system would meet the operational demand with minimal maintenance. Additionally, as part of compliance with California Water Code Section 13290 and SWRCB Water Quality Control Policy for Siting, Design, Operation and Maintenance of Onsite Wastewater Systems, the septic system would be required to demonstrate that onsite wastewater disposal is addressed efficiently and would not result in offsite pollution or nuisance. Percolation tests and analysis of the tests would also be conducted as part of the in-depth geotechnical review of the project site to be conducted for California Building Code-compliance purposes. In March 2022, the applicant submitted septic system percolation calculations based on the results of the geotechnical analysis (2019 Earth Systems Geotechnical Engineering Report) for the project that addresses the adequacy of the site soils to accommodate generated wastewater (C3 Engineering 2022). Soil borings conducted for the proposed septic leach field did not encounter groundwater (Earth Systems 2019: Boring No. P-1 Sheet). Thus, no significant project impacts on water quality are expected. The proposed septic system would be a site-specific issue that would not contribute to cumulative water quality impacts on the Pajaro and San Benito Rivers.
- O7-43 This comment states that the project site borders the two rivers and requests that the EIR describe how water quality would be protected from project operation with LID measures. The comment also asks how drainage and water quality features would be maintained.

As described in response to comment O7-42 the commenter mischaracterizes the proximity of the development area to the rivers and riparian area. The reader is referred to response to comment O4-40, regarding the effectiveness of proposed operational water quality control measures (e.g., infiltration). Typical maintenance of drainage and water quality control features identified for the project would consist of routine removal of accumulated sediment and debris.

O7-44

This comment mentions Executive Order N-7-22, which pertains to new well permitting, and requests that the Draft EIR be updated to address this requirement and any modifications to the project's water system needed to comply with it.

The draft North San Benito Subbasin Groundwater Sustainability Plan indicates that the San Juan Management Area, which underlies the project site, has a sustainable yield of 19,017 acre-feet per year (AFY). The sustainable yield is based on the future baseline (2050) simulated conditions, which reflect current land use, Central Valley Project operating rules, and other management activities for the North San Benito Subbasin. Because the project is consistent with current land use designations and the zoning district, it has been factored into the sustainable yield. Under existing conditions, 7,454 AFY of groundwater is produced in the San Juan Management Area. The difference between the current groundwater production level and the sustainable yield is 11,563 AFY. The project's demand of 32 AFY would be less than the available groundwater supply under sustainable conditions (11,563 AFY) (Draft EIR page 3.10-10). Thus, no changes to the proposed design of project groundwater facilities would be required.

Upon acceptance of the North San Benito Subbasin Groundwater Sustainability Plan by the California Department of Water Resources, the permitting of project wells by the County would require written verification from the San Benito County Water District that the project's wells would not be inconsistent with the sustainable groundwater management program in the North San Benito Subbasin Groundwater Sustainability Plan. County regulations related to well permitting are presented on Draft EIR page 3.17-4. The following text is added to Draft EIR page 3.17-2 to reference Executive Order N-7-22.

Executive Order N-7-22

On March 28, 2022, Governor Newsom issued Executive Order N-7-22 to provide further water resource protections during drought conditions. Item 9 in the executive order requires written verification from groundwater sustainability agencies that proposed groundwater wells or modifications to existing wells would not be inconsistent with the sustainable groundwater management program in an applicable groundwater sustainability plan or result in interference with nearby wells and adversely affect or damage nearby infrastructure.

This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

O7-45

This comment states that further analysis of potential health impacts from toxic air contaminants is needed in the EIR. The comment requests existing diesel truck traffic counts along US 101 and associated toxic air contaminant emissions, as well as an analysis of project and cumulative emissions and health impacts from projected diesel truck traffic using the haul route.

This project does not propose the daily use of diesel trucks and is not proposing any hauling as part of project operations. Since release of the Draft EIR, a health risk assessment (HRA) has been prepared for the project that is consistent with the conclusions of Draft EIR Impact 3.3-3. The HRA is provided in Appendix B.

Pursuant to State CEQA Guidelines Sections 15126.2(a) and 15126.4(a)(4), EIR impacts and mitigation measures are focused on impacts of the project and not impacts of the environment, such as existing diesel truck emissions on US 101. Environmental impact analyses under CEQA generally are not required to analyze the impact of existing environmental conditions on a project's future users or residents unless the proposed project might create environmental hazards or conditions or risk exacerbating existing environmental hazards or conditions (State CEQA Guidelines Section 15126.2[a]). In those specific instances, it is the project's impact on the environment and not the environment's impact on the project that compels an evaluation of how future residents or users may be affected by exacerbated conditions (*California Building Industry Association v. Bay Area Air Quality Management District* [2015] 62 Cal. 4th 369).

2.5 INDIVIDUALS

Sheila K. Singh, MD, PhD, FRCSC, Professor and Division Head, Neurosurgery, Department of Surgery,
Director, Centre for Discovery in Cancer Research, McMaster University,
Hamilton, ON, Canada. T: 905 521 2100 x75237 F: 905 521 9992 Email: ssingh@mcmaster.ca



**Letter
I1**

To: San Benito County Resource Management Agency Attn: Abraham Prado
2301 Technology Parkway Hollister, California 95023 aprado@cosb.us

July 30, 2022

RE: The Betabel Project

Dear Mr. Prado:

Monday June 13th was the 4th anniversary of the death of Errol McDowell, 18, whose long battle with brain cancer precipitated the planning of the Betabel Project.

Now that Errol's goal has come closer to fruition, I wanted to reach out as a pediatric cancer researcher who endeavored to help Errol, and ask for your support of this wonderful project. The sad sad truth is that pediatric cancer research is obscenely underfunded and in America receives only 4 cents of every funding dollar from the National Institute of Health. The reason: children are not political and young families typically have little political clout, so no one listens to them. To lose a child to early death is the hardest and most tragic thing a family can experience. As a consequence many families want to forget the horror of their loss and move on with life, and can be too depressed to lobby on behalf of cancer funding, etc. They've paid their dues, as it were.

The McDowells are different. Like Errol they are fighters, trying to bring some meaning to their loss. They know that it is up to families like theirs to draw attention to a cause that gets too little attention. The Betabel Project conceived of and inspired by Errol McDowell, has the potential to be one of the largest single funding sources for pediatric cancer research in America. All profits from the venture go to support the doctors and researchers whose work can make the difference.

And we are very close. In my own lab we have identified several potential game changing cancer therapies. But like most pediatric cancer researchers, I spend too much of my time writing grants for desperately needed funding. The competition for this limited funding is fierce. The Betabel Project to someone like me, and to some unsuspecting family whose innocent child is about to be diagnosed with cancer, is a godsend.

Thank you for your support of Betabel, and for considering the importance of this beautiful idea come to life.

Sheila K. Singh, MD PhD FRCS(C),
Pediatric Neurosurgeon, McMaster Children's Hospital,
Professor of Surgery, Professor of Biochemistry and Biomedical Sciences,

I1-1

Sheila K. Singh, MD, PhD, FRCSC, Professor and Division Head, Neurosurgery, Department of Surgery,
Director, Centre for Discovery in Cancer Research, McMaster University,
Hamilton, ON, Canada. T: 905 521 2100 x75237 F: 905 521 9992 Email: ssingh@mcmaster.ca



Division Head, Neurosurgery, Hamilton Health Sciences,
Director, Centre for Discovery in Cancer Research, McMaster University,
Senior Canada Research Chair in Human Cancer Stem Cell Biology,
University Scholar, and Chair, McMaster College of Health Inventors
MDCL 5027, Michael DeGroote Centre for Learning and Discovery,
1280 Main Street West, Hamilton, ON, L8S 4K1, Canada
P: 905 521 2100 x75237 F: 905 521 9992 Email: ssingh@mcmaster.ca
<http://sheilasinghlab.ca/>

Letter I1 **Sheila K. Singh, MD, PhD, FRCS(C)**
July 30, 2022

I1-1 The comment expresses support for the project because it would provide funding for pediatric cancer research. The comment does not raise any environmental issues related to the adequacy of the EIR analysis; therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.

Letter
I2

From: June MD, Carl H <cjune@upenn.edu>
Sent: Tuesday, August 2, 2022 5:20 AM
To: Abraham Prado
Subject: letter supporting

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

San Benito County Resource Management Agency
 Attn: Abraham Prado
2301 Technology Parkway Hollister, California 95023

Dear Mr. Prado:

I am supportive of the initiative by Mr McDowell on Highway 101.

I I2-1

Carl H. June, M.D.
 Richard W. Vague Professor in Immunotherapy
 Department of Pathology and Laboratory Medicine
 Director Center for Cellular Immunotherapies
 Director, Parker Institute for Cancer Immunotherapy
 Perelman School of Medicine
 University of Pennsylvania
 Smilow Center for Translational Research
 3400 Civic Center Boulevard, Building 421
 8th Floor, Room 123
 Philadelphia, PA. 19104-5156
 (215)-746-4044 phone
 (610)-646-8455 fax
 Assistant: Chelsey Molineaux / mchelsey@upenn.edu | 215-573-3269
<https://www.med.upenn.edu/cci/>
www.med.upenn.edu/junelab/

From: TJR McDowell <cutstinger@gmail.com>
Sent: Monday, August 1, 2022 2:56 PM
To: June MD, Carl H <cjune@upenn.edu>
Subject: From Rider McDowell

Dear Carl:

Some years ago, in 2017 I believe, we communicated about a dinner we were hosting in San Francisco of cancer researchers to try to foster a dialogue re: medulloblastoma and whether a sharing of information could precipitate a cure. And whether Car-T offered any pathway to a treatment. Our beautiful boy, Errol McDowell, died of MB in 2018 after a fierce 6 year struggle during which we utilized every conceivable cutting edge therapy.

I'm writing to ask a favor, namely whether you would write a letter of support for our 'Betabel Project' (Betabelproject.com). My wife and I are building a vintage roadside 'village,' all profit from which will go to pediatric brain cancer research. We purchased the land through our charity trust and plan to build a 1940's era small hotel, a big mercantile store with exhibits and local produce n crafts, a restaurant, and a convenience store and gas/electric station. All on a former highway 101 junkyard in California. 675,00+ cars pass by us each week and there's nothing else around, and we anticipate being able to generate millions each year towards pediatric brain cancer research. You can view the project at Betabelproject.com. This is in honor of Errol.

The San Benito County Supervisors are poised to vote on the project in the next few months and we are rallying support, emphasizing to the county the value of this project. Thank you for considering this. Curing MB has become our top life's goal, and we will not stop until we've done everything possible. The project is being funded by the McDowell Charitable Remainder Trust and we have a 501c3 (Canceragogo.com) as well. Thank you very much.

Sincerely, Rider McDowell
831-915-9888

Comments/letters should be directed to:

San Benito County Resource Management Agency Attn: Abraham Prado
2301 Technology Parkway Hollister, California 95023 aprado@cosb.us

Letter I2 **Carl H. June, MD**
August 2, 2022

- I2-1 The comment expresses support for the project. It does not raise any environmental issues related to the adequacy of the EIR analysis; therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.



Roger J. Packer, MD
 Senior Vice President
 Center for Neuroscience and
 Behavioral Medicine
 Endowed Distinguished Professor & Director
 Gilbert Family Neurofibromatosis Institute
 Director, Brain Tumor Institute
 Children's National Hospital

111 Michigan Ave, NW
 Washington, DC 20010
 202-476-5973 | fax 202-476-2864
rpacker@childrensnational.org

Letter
I3

August 2, 2022

Mr. Abraham Prado
 San Benito County Research Management Agency
 2301 Technology Parkway
 Hollister, CA 95023

Dear Mr. Prado,

It has come to my attention that the parents of Errol McDowell are attempting to build a vintage roadside village to memorialize the death of their child from medulloblastoma. Errol died in 2018 after a valiant 6-year struggle with medulloblastoma. The project the family is creating the "Betabel Project" and it is my understanding that all profits from the village created by the "Betabel Project" will go to medulloblastoma research in honor of Errol.

I have been involved for the past 30 years in the care of hundreds of children with medulloblastoma, including developing multiple research projects focusing on improving survival and quality of survival of those stricken with this disease. Childhood brain tumors are the leading cause of death and residual morbidity in survivors of all childhood cancer. Medulloblastoma is the most common form of malignant childhood brain tumor. I was fortunate to develop and lead the study approximately 20 years ago which improved survival from 50% to 85% for the major subset of children with medulloblastoma, but there are still forms of medulloblastoma highly resistant to therapy. Even for those forms of childhood medulloblastoma we can cure, the price paid by survivors is extremely high with significant intellectual damage and other hormonal and endocrinologic sequelae due to the therapy required.

There is great hope that we will be able to better treat this disease in the near future. There have been remarkable advances over the past decade in our understanding of the biology and genetics of medulloblastoma, but they have yet to be translated into better treatments. The possibility of improving survival for children with medulloblastoma and for that matter other forms of malignant childhood cancer is tangible but requires significant investments in research. There are few things that are more urgent for children with cancer and their families.

I3-1

**Children's National**

I know little about the zoning issues involved in developing the "Betabel Project", but obviously I am extremely supportive of that project or any that can raise the funds we need to cure medulloblastoma and increase the number of survivors with acceptable qualities of life. Please let me know if any other information would be of use to your zoning board.

Sincerely,

Roger J. Packer, MD
Senior Vice President
Center for Neuroscience and
Behavioral Medicine
Endowed Distinguished Professor & Director
Gilbert Family Neurofibromatosis Institute
Director, Brain Tumor Institute
Children's National Hospital
Professor of Neurology and Pediatrics
The George Washington University
Medical Center

13-1
cont.

Letter I3**Roger J. Packer, MD**

August 2, 2022

I3-1

The comment expresses support for the project because it would raise funds to cure medulloblastoma. The comment describes the commenter's experience working with children with medulloblastoma and states why more funding is needed. The comment does not raise any environmental issues related to the adequacy of the EIR analysis; therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.



Letter
14

McGovern
Medical School

**Department of Pediatric Surgery
Division of Pediatric Neurosurgery**

David Sandberg, MD, FAANS, FACS, FAAP
Professor and Director of Pediatric Neurosurgery

August 2, 2022

Dear San Benito County:

I am Dr. David Sandberg, Director of Pediatric Neurosurgery at McGovern Medical School/ UT Health and the University of Texas, MD Anderson Cancer Center. I'm writing to express my support of the Betabel charity project which the McDowell family is ardently proposing.

I met the McDowells several years ago when they were fighting valiantly for the life of their son Errol. Although they lost Errol, which was devastating to them, they haven't given up the fight, which illustrates their extreme dedication to this cause. I can't express how important this project will be to pediatric cancer research. I support this family and their noble efforts to cure the scourge of childhood cancer, specifically the medulloblastoma which took Errol. I ask that you please appreciate the value of the Betabel Project when it comes up for approval. Not only will it be a boon for the San Benito County community (Rider is an accomplished businessman - AIRBORNE, BAI, PINE BROS) it will help accelerate a cure for childhood cancer.

14-1

Please contact me directly with any questions.

Sincerely yours,

David Sandberg, MD, FAANS, FACS, FAAP

Professor & Director of Pediatric Neurosurgery
Department of Pediatric Surgery
Division of Pediatric Neurosurgery
University of Texas Health Science Center at Houston/ McGovern Medical School
University of Texas, MD Anderson Cancer Center

713.500.7370 phone | 713.500.7296 fax
6431 Fannin Street, MSB 5.140, Houston, TX 77030

Letter I4**David Sandberg, MD**

August 2, 2022

I4-1

The comment expresses support for the project, stating the commenter's belief that it would be beneficial for the San Benito economy and would help accelerate a cure for childhood cancer. It does not raise any environmental issues related to the adequacy of the EIR analysis; therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.



Ben Towne Center for Childhood Cancer Research

Letter
15

James M. Olson, MD, PhD
Principal Investigator
Ben Towne Center for Childhood Cancer Research
E-mail: Jim.Olson@seattlechildrens.org

August 3, 2022

Dear San Benito County Supervisors:

I am writing in strong support for the approvals needed for the McDowell Charitable Remainder Trust to build and operate the Betabel Road Project. I see this as a direct and therapeutic response to the homogenization of America by chain stores and franchises. I grew up in the Upper Peninsula of Michigan, where roadside attractions not only drove the economy of the region but also created the fondest of childhood memories. For example, carless Mackinac Island between the upper and lower peninsulas of Michigan has fudge shops, mercantile shops, bicycle rentals, and other features analogous to the Betabel Road Project. Not only do Mackinac Island visitors drive the economy of nearby towns and the hospitality industry, but multiple generations of families all point to their visits as the best moments of life in Michigan or in their travel to Michigan. Furthermore, even though we live in Seattle, we've made a point of taking our kids to the island while they were growing up. Each time, we spent money on the island and in the surrounding counties.

My personal motivation for writing this letter comes from caring for children with brain tumors for over 30 years. The profits from the Betabel Road Project will fuel pediatric brain tumor research. Pediatric cancer research currently receives only 4% of the National Cancer Institute budget, and only a fraction of this goes to pediatric brain tumor research because there are so many types of pediatric cancer that require research to improve survival and quality of life. So, our research community needs private philanthropy to advance lifesaving cures.

My lab invented "Tumor Paint" (aka, Tozuleristide), a molecule that is injected prior to brain tumor surgery to make the cancer "light up" with bright green fluorescence, so that surgeons can safely remove as much brain tumor as possible while minimizing damage to adjacent normal brain. The drug candidate has been studied in 5 human clinical trials and is expected to advance to the Food and Drug Administration for an approval decision next year. I bring this up because it was philanthropy that supported all the critical early work on Tumor Paint. It was not until we showed that it worked that peer scientists reduced their skepticism and began approving National Cancer Institute grants that I wrote.

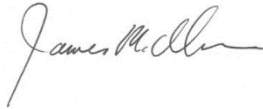
This is a win-win-win situation. The Betabel Road Project will bring joy to families and individuals who are drawn to this unique roadside attraction, the project is good for the local economy, and the cure for pediatric brain tumors may literally depend on this source of funding.

Sincerely,

Hope. Care. Cure™

STREET ADDRESS MAILING ADDRESS
1100 Olive Way, Suite 100 MS OL-1, PO Box 5371
Seattle, WA 98101 Seattle, WA 98145-5005

www.seattlechildrens.org/research

A handwritten signature in black ink, appearing to read "James M. Olson". The signature is fluid and cursive, with a long horizontal stroke at the end.

James M. Olson, MD, PhD

Endowed Chair | Jennifer Lynn Kranz, Unravel Pediatric Cancer
Principal Investigator | Ben Towne Center for Childhood Cancer Research
Professor | Fred Hutchinson Cancer Center, University of Washington

Letter I5**James M. Olson, MD**

August 3, 2022

I5-1

The comment expresses support for the project, stating that it would be a roadside attraction, would be good for the economy, and would support finding a cure for pediatric brain tumors. The comment details the personal experiences and motivation that led the commenter to write the letter in support of the project. The comment does not raise any environmental issues related to the adequacy of the EIR analysis; therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.

Letter 16

August 3, 2022

San Benito County Resource Management Agency
Attn: Abraham Prado
2301 Technology Parkway
Hollister, CA 95023

Re: The Betabel Project

I am writing this letter in support of the Betabel Project, which I understand is going through their EIR process. I believe this project will be very beneficial for the county, in fact, it already has.

The owners have shown very strong environmental stewardship of that land. They invested a great deal of funds to remove over 8 tons of trash from the property and around the river. They brought in an environmental group to restore the Pajaro River and the result has been that steelhead trout were spotted for the first time in 75 years!

Not only have they improved an unsightly dumping ground, this project will be very beneficial to the county economically in multiple ways. It will provide sales, TOT and gas tax revenues, and provide jobs. They also plan to include a visitor's center to promote tourism for the county. And their local farmstand/market will not only have their own produce, but will feature other local grown produce and products much like Casa de Fruita does. This is a win-win-win for the county.

I urge the Resource Management Agency and the Board of Supervisors to move this project forward.

Thank you,

Mia Casey

Mia Casey

16-1

Letter I6**Mia Casey**

August 3, 2022

I6-1

The comment expresses support for the project, stating the commenter's belief that it would be beneficial to the County by providing sales tax and gas tax revenue and employment opportunities and that the owners would manage the project site while considering the environment. The comment does not raise any environmental issues related to the adequacy of the EIR analysis; therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.



August 4, 2022

San Benito County Resource Management Agency
ATTN: Abraham Prado
2031 Technology Parkway
Hollister, CA 95023

Dear San Benito County Board of Supervisors,

My family shares something in common with the McDowell family, which is we both have a child who died of cancer. We have lived every parent's worst nightmare – being unable to prevent the death of a child from a horrific disease.

Cancer remains the leading cause of death by disease among children in our country. Despite that fact, only four percent of the budget of the National Cancer Institute is allocated for pediatric cancer research. Even for those that survive a childhood cancer diagnosis, most go on to face life-long debilitating side effects from treatment. We can and must do better. Which is why private philanthropy is critical to accelerate the pace of childhood cancer research to save lives and help kids not only survive but thrive into adulthood.

The McDowell family's Betabel Road Project will help do just that – provide critical funding to advance research towards cures. Not only that, the Betabel Road Project will establish a classic roadside attraction, create jobs and highlight local produce, beverages and gift items.

I implore you to consider granting swift approval for the Betabel Road Project to proceed. In Errol McDowell's memory, and by extension the memory of my son Ben and children like them. Generations of children who benefit will someday plan a trip down 101 to visit the unique roadside attraction that funded research that saved their lives.

Sincerely,

Jeff Towne
Director, Philanthropic Gifts

17-1

Letter I7**Jeff Towne**

August 4, 2022

I7-1

The comment expresses support for the project, stating that the commenter has experience with cancer in children and that the project would provide funding for research toward finding a cure. The comment does not raise any environmental issues related to the adequacy of the EIR analysis; therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.

**Letter
18**

From: Al Musella, DPM <musella@virtualtrials.com>
Sent: Monday, August 8, 2022 9:39 AM
To: Abraham Prado
Subject: Betabel charity project

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear San Benito County:

My name is Dr Al Musella and I'm a national cancer researcher and fundraiser with the Musella Foundation For Brain Tumor Research & Information, Inc.

I'm writing to voice my passionate support of the Betabel charity project which the McDowell family is proposing. I can't emphasize how important this project will be to pediatric cancer research which is desperately in need of funding. I have known the McDowells for six years and was closely involved in the odyssey of their wonderful son Errol McDowell. I support this fine family and their heartfelt effort to make a difference in the world, specifically in their relentless quest to cure the terrible disease which took their son. Please consider the value of the Betabel Project when it is being considered for approval. Please contact me directly with any questions. My cell is 516-270-5182.

18-1

Most Sincerely,

Al Musella, DPM

Letter I8**Al Musella, DPM**

August 8, 2022

I8-1

The comment expresses support for the project because it would fund pediatric cancer research. The comment does not raise any environmental issues related to the adequacy of the EIR analysis; therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.

**Letter
19**

SWEDISH NEUROSCIENCE INSTITUTE

Charles S. Cobbs, M.D.
Director, The Ben and Catherine Ivy Center for Advanced Brain Tumor Treatment
Swedish Neuroscience Institute
550 17th Avenue, Suite 540
Seattle, Washington 98122
T 206.320.2300 F 206.320.8149

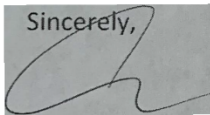


August 8, 2022

Dear Rider,

I enthusiastically support your efforts for the Betabel Project. I know you have been in strong advocate for many years for pediatric brain cancer research and it sounds like this project could generate income that could be divided among multiple beneficiaries -most of which being pediatric brain cancer research. I strongly support all of your efforts along this valuable path and I know that Errol would be so proud of you. Let me know if I can help out in any other way.

19-1

Sincerely,


Charles S. Cobbs, MD

Director, Ivy Center for Advanced Brain Tumor Treatment

Swedish Neuroscience Institute

Seattle Washington

Letter I9**Charles S. Cobbs, MD**

August 8, 2022

I9-1

The comment expresses support for the project because it would provide funding for pediatric brain cancer research. The comment does not raise any environmental issues related to the adequacy of the EIR analysis; therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.



Betabel (Sugar Beet)

BETABEL RV RESORT

9664 Betabel Road
San Juan Bautista, CA 95045
(831) 623-2202 Fax (831) 623-2028

info@betabel.com

www.betabel.com

Letter
I10

August 10, 2022

Abraham Prado
San Benito County Resource Management Agency
2301 Technology Parkway
Hollister, CA 95023



Mr. Prado,

It is my pleasure to write this letter of support for the Betabel project currently in progress located next to Betabel RV Park. I believe that this project will bring much needed attention to what San Benito County has to offer with its local produce and wineries. Based on current plans, the project next door will help showcase the rich history of our county in a well-planned and constructed facility for travelers to enjoy.

Betabel RV Park looks forward to the enrichment the Betabel project will add to our small corner of this great county.

I fully support the Betabel project and its future development and view this as a great addition to Highway 101 for all travelers who might otherwise just travel through our county.

I10-1

Sincerely,

Frank Paura
General Manager
Betabel RV Park, LLC

Letter I10**Frank Paura**

August 10, 2022

I10-1

The comment expresses support for the project, stating that because the project site is located adjacent to the Betabel RV Park, it would increase tourism in the County for local wineries while providing a stopping point for tourists. The comment does not raise any environmental issues related to the adequacy of the EIR analysis; therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.



Robert J. Wechsler-Reya
 Professor and Director,
 Tumor Initiation and Maintenance Program
 T 858.795.5115
 E rwreya@SBPdiscovery.org

August 14, 2022

San Benito County Resource Management
 Agency Attn: Abraham Prado
 2301 Technology Parkway
 Hollister, CA 95023

Dear Mr. Prado,

I am writing this letter in strong support of Rider McDowell and the Betabel Road Project, whose proceeds will go to support childhood brain tumor research. I am a cancer biologist who has devoted his entire career to studying childhood brain tumors, in hopes of finding new therapies for these diseases. During my training at Stanford, and in my own laboratories at Duke University and at the Sanford Burnham Prebys Medical Discovery Institute in La Jolla, I have learned how horrific these diseases can be for children and their families. I have met many children with brain tumors, and have watched helplessly as they have died from their diseases. Even those who do survive suffer severe long term side effects from the aggressive therapies we use to treat them. We desperately need safer and more effective treatments for pediatric brain tumors, and these can only come from research into the causes and vulnerabilities of these diseases.

Having lost his son Errol to a brain tumor, Rider understands this all too well. He knows that the only way we can make progress is by supporting laboratories committed to finding cures for pediatric brain tumors. He also knows that these laboratories are underfunded by the federal government: only about 4% of all federal funding for cancer research is spent on childhood cancer. As a result, investigators working in this area depend heavily on support from foundations and donors. The idea of creating an old-time roadside rest stop to raise funds for pediatric brain cancer research – originally suggested by Errol – is truly innovative and inspiring. If it is successful, it will dramatically advance research into childhood brain tumors, and bring us closer to a cure for these devastating diseases.

I strongly urge you to support the Betabel Road Project and help bring an end to suffering from childhood brain tumors.

Sincerely,

Robert Wechsler-Reya, Ph.D.

I11-1

Better Scientists > Better Research > Better Life™

Sanford Burnham Prebys | 10901 North Torrey Pines Road | La Jolla, CA 92037 | (858) 646-3100

Letter I11 **Robert Wechsler-Reya, PhD**
August 14, 2022

- I11-1 The comment expresses support for the project because project proceeds would be used to fund research toward finding a cure for pediatric brain tumors. The comment also provides background on the commenter's cancer research and information regarding cancer funding. The comment does not raise any environmental issues related to the adequacy of the EIR analysis; therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.

**Letter
I12**

August 30, 2022

To: San Benito County Resource Management Agency
 Attn: Abraham Prado
 2301 Technology Park
 Hollister, California 95023
 Email: aprado@cosb.us

Re: BETABEL COMMERCIAL DEVELOPMENT USE PERMIT DRAFT ENVIRONMENTAL IMPACT REPORT STATE
 CLEARINGHOUSE NO. 2022040455

Dear Mr. Prado and Staff,

Thank you for the opportunity to make public comments on the dEIR for Betabel Commercial Development Use Permit dEIR, State Clearinghouse No. 2022040455.

Sincerely,

Dorah L. Rosen
 122 Kirby St.
 Santa Cruz, CA 95060
finndorah@gmail.com

Comments:

Biological Resources Section 3.4

Comments: As the climate is becoming less predictable and more extreme, there will be greater impacts on all wildlife species, causing increased concern for their health and viability, especially for listed species and species of special concern. The Final EIR needs to address these concerns and discuss specifics on how risks to already threatened and endangered species will be mitigated, and species of special concern must be considered according to CEQA. There needs to be more discussion on how these species will be affected by the proposed build outs of this commercial enterprise, with the projected climate instabilities taken into account.

I12-1

There are some problems with the descriptions of (at least) two species in the Table 3.4.3, which lists species of special concern:

Steelhead Trout: The table on pg. 3.4-16 says that steelhead trout “[m]ay occur.” The sentence needs to be changed to say that steelhead trout are definitely there. According to a piece on the McDowell family website, Betabel Project (betabelproject.com), <https://betabelproject.com/news/threatened-trout-return-to-san-benito-river/> dated July 6, 2020, steelhead trout are in a creek “on the Betabel property” that drains into the Pajaro River, and their presence has been confirmed by NOAA. The steelhead are legally protected by ESA-the Endangered Species Act because they are federally listed as threatened.

I12-2

Mountain Lion on pg. 3.4-18, the species is described as “not expected to occur” because “the project site is disturbed and adjacent to significant sources of human disturbance (e.g., US 101) which would likely prevent

I12-3

mountain lions from using the site more than very rarely.” It is well known that mountain lions come into neighborhoods and onto people’s porches. In fact, on August 27, 2022, a mountain lion was on the front porch of a home on Diablo Drive in Hollister (see <https://www.kron4.com/news/bay-area/mountain-lion-shot-by-police-later-dies-at-oakland-zoo-during-surgery/>). There are also many instances of mountain lions being sighted on highways and in areas with “human disturbance”, see [Watch: Mountain lions run alongside motorist on highway \(usatoday.com\)](#), [Mountain lion P-22 spotted roaming Hollywood Hills streets - Los Angeles Times \(latimes.com\)](#), <https://www.chron.com/news/article/Mountain-lion-killed-by-vehicle-in-Southern-17401449.php>, (see the full text of these articles in the Appendix)

I12-3
cont.

The details of this table must be double checked for accuracy. It is extremely well known that mountain lions come into neighborhoods and the claim that these animals avoid places with “human disturbance” flies in the face of reality. That makes me concerned about other claims in this table and other parts of the report.

I12-4

Water and Hydrology Section 3.10

Comments:

As with section 3.4, this section does not discuss or plan for changing weather patterns and extreme weather due to the climate shifts that we have seen recently in California and around the world. The hundred-year flood standard which seemed so reasonable even a few years ago probably needs to be changed as floods once considered once-in-a-century occurrences are happening more frequently. The construction, the buildings, parking lots, roads and changes in topography, changes in ground permeability and so on need to be planned accordingly. Some of the buildings are sited in the flood plain.

I12-5

The final EIR must include plans for preventing problems with water quality, erosion, sediment dumping etc. under the likely scenario of more frequent “hundred year” floods. Besides causing other problems, sediment dumping in the waterways and increased contaminants in the river caused by flood debris will affect animals such as steelhead trout and the California Red Legged Frog, both federally listed as threatened and both legally protected by the ESA.

I12-6

Sediments and contaminants within the sediments will debase the river, which is already at high risk of pollution from other industries and agriculture.

Agricultural Resources Section Section 3.2

Quotes from the dEIR

Pg. 3.2-7: The 2035 General Plan includes several policies (LU-3.2, LU-3.10, LU-3.14, LU-4.9) related to the need to preserve and enhance the presence of agriculture within the County, as well as the need to be protecting these areas and resources from incompatible urban uses and other development. Nonetheless, development of the proposed project could result in the conversion of agricultural land within the County. The conversion of approximately 27 acres would result in a **significant** impact.

I12-7

Pg. 3.2-7, 8: Significance after Mitigation Implementation of Mitigation Measure 3.2-1 is consistent with General Plan Policy LU-3.10, but would only prevent future loss of Important Farmland and would not replace lands converted to development or other nonagricultural activities. It is infeasible to replace lost Important Farmland as it would require removal of existing development from Important Farmland or the improvement of soil and/or water conditions on open land areas to create Important Farmland, which are not considered feasible

options because of the expense involved and unknown willingness of Agricultural Resources Ascent Environmental San Benito County 3.2-8 Betabel Commercial Development Conditional Use Permit Draft EIR other property owners to participate in mitigation. Another option would be conversion of natural lands to Important Farmland, but this would require mitigation of lost habitat. Therefore, this impact is considered to be **significant and unavoidable**.

I12-7
cont.

Comments:

No one would argue that San Benito County does not deserve to have economic opportunities, however there is a need to balance land use with economic factors. Besides the loss of Important Farmland, erosion or displacement of topsoil that would be caused by the proposed Betabel project is a significant problem.

No one is making more land and making topsoil is a slow process. Loss of topsoil is a huge concern especially when it can travel into the waterways and harm aquatic life. Topsoil is a major resource obviously needed for agriculture and one which is being eroded globally. San Benito County needs to protect soil resources. The final EIR needs to have discussion of this issue as well as plans in place to protect the topsoil.

I12-8

Tribal Cultural Resources Section 3.16

Quotes from the dEIR

Pp. 3.16-2,3: San Benito County General Plan: The San Benito County General Plan contains the following policies that are relevant to tribal cultural resources:

AD-2.6: Native American Tribe Consultation/Coordination. The County shall ensure effective intergovernmental review procedures with the Ohlone Indians and other legally-recognized Native American tribes regarding their landholdings and interests in San Benito County in order to achieve the best possible outcomes consistent with the General Plan.

NCR-1.1: Maintenance of Open Space. The County shall support and encourage maintenance of open space lands that support natural resources, agricultural resources, recreation, tribal resources, wildlife habitat, water management, scenic quality, and other beneficial uses.

NCR-7.9: Tribal Consultation. The County shall consult with Native American tribes regarding proposed development projects and land use policy changes consistent with the State's Local and Tribal Intergovernmental Consultation requirements.

Pg. 3.16-3: San Benito County Code of Ordinances County Code Chapter 19.05, Archaeological Site Review The purpose of this ordinance is to protect, preserve, and show respect for Native American, Spanish, Mexican, Euroamerican, and other archaeological sites and resources within the County. There are areas in the County that are known to contain significant cultural and archaeological sites which contain unique, irreplaceable, or religious resources significant to the history of the County. These archaeological resources are quickly disappearing as a result of public and private land development. It is the policy of the County to preserve the County's historic identity and integrity, and this ordinance establishes regulations for the protection, enhancement, and perpetuation of archeological sites in order to promote the public welfare, and to implement General Plan policy and state law.

Pg. 3.16-8: The JTCL spans 21,122.92 acres in the rugged hills overlooking Gilroy to the north and Watsonville to the south (see Figure 3.16-1). It has been evaluated against CRHR significance and recommended eligible under criteria 1, 2, 3, and 4. JTCL is recommended eligible for the CRHR under Criterion 1 for its association with several important events in the AMTB Tribal history. It is recommended eligible for the CRHR under Criterion 2

I12-9

for its association with several important historic-era Mutsun and pre-contact Ohlone people, ancestral figures, and spirits. Under Criterion 3, JTCL is recommended eligible for its association with the prominent shamanic and doctoring traditions of the Mutsun and the AMTB. Finally, under Criterion 4, it is recommended eligible for its potential to be used to teach Tribal history, culture, and ecology to AMTB members. JTCL retains the integrity of location, setting, association, and feeling; the integrity of design, materials, and workmanship is not a contributing aspect (Albion and Environmental Science Associates 2021:112-122). For these reasons, JTCL meets the definition of a tribal cultural resource for the purposes of CEQA under PRC Section 21074.

Quotes describing impacts as significant:

Pg. 3.16-11: **Thresholds of Significance** Based on Appendix G of the State CEQA Guidelines, the project would result in a potentially significant impact on tribal cultural resources if it would: cause a substantial adverse change in the significance of a Tribal cultural resource, defined in PRC Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American Tribe.

Pg. 3.16-11 ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES Impact 3.16-1: Cause a Substantial Adverse Change in the Significance of a Tribal Cultural Resource: Consultation with AMTB identified JTCL as a tribal cultural resources that has been recommended eligible under CRHR criteria 1, 2, 3, and 4. JTCL therefore meets the definition of a tribal cultural resource for the purposes of CEQA under PRC Section 21074. Because development of the project (including project-related ground-disturbing activities) would result in damage to this tribal cultural resource, the project could cause a significant impact.

Pg. 3.16-12 Because development of the project would result in damage to tribal cultural resources, the potential impact would be significant.

Pg. 3.16-13: Significance after Mitigation: AMTB has communicated to the County that any development on the project site will cause a significant impact, and that only full avoidance will reduce the impacts to a less-than-significant level. Implementation of Mitigation Measures 3.16-1a through 3.16-1d would reduce potential tribal cultural resource impacts associated with the project, but not to a less-than-significant level because development of the project, including its associated traffic, noise, visual obstruction of natural viewsheds, and amusement-oriented atmosphere would substantially and inappropriately alter the feeling and setting of the project site, a cornerstone feature of the JTCL. Additionally, the possibility remains that excavation activities might not be able to avoid impacting buried tribal cultural resources. The potential impact would be **significant and unavoidable**. [Bolding in original dEIR]

I12-9
cont.

Comments:

The dEIR clearly states that Juristac is, in and of itself, a tribal cultural resource and cites San Benito County code and the County General Plan. All these legal documents call for protection of Juristac as a valuable resource. County code 19.05 also states that “public and private land development” is causing resources to “disappear” and that protection from the County is needed for “unique, irreplaceable, or religious resources significant to the history of the County.”

CEQA mentions specific forms of protection, for instance in Section 15126.4 CONSIDERATION AND DISCUSSION OF MITIGATION MEASURES PROPOSED TO MINIMIZE SIGNIFICANT EFFECTS, which states, “Preservation may also avoid conflict with religious or cultural values of groups associated with the site.” [Section 15126.4 (b)(3)(A)] and adds that “Preservation in place may be accomplished by, but is not limited to, the following: Planning construction to avoid archaeological sites; Incorporation of sites within parks, greenspace, or other open space;

... Deeding the site into a permanent conservation easement.” [Section 15126.4 5(b)(3)(B)]. The dEIR says that the impacts on Juristac as a tribal cultural resource would be “significant and unavoidable”, making this section relevant without question.

I12-9
cont.

A decision to go ahead with the proposed project in any of its forms goes against the spirit and intention of the relevant regulations, statutes and the General Plan. The permit seekers admit that the proposed impacts are significant and unavoidable. The concessions that are offered miss the mark and are insensitive to the human rights of the Amah Mutsun and other Native Americans who consider Juristac a sacred ceremonial place of power and a home to many of the plants and animals that are part of their tribal cultural heritages. To quote from the dEIR, page 3.6-13, “AMTB has communicated to the County that any development on the project site will cause a significant impact, and that only full avoidance will reduce the impacts to a less-than-significant level.”

I12-10

If the Betabel Commercial project were proposed at San Juan Bautista Mission, in the open green space between the Mission and the historic buildings, it would easily be understood how building in that space would cause irreparable damage to the nature of the Mission State Historical Park, damage that cannot be mitigated. I imagine that many people would be completely outraged and horrified at the thought of building something completely unrelated to the Mission in the Mission State Park. Those feelings, and the feelings of once again being ignored, are felt by the Amah Mutsun when they are confronted with plans to build atop Juristac, their most revered place and home to their ancestors for many generations.

6.4 ALTERNATIVES SELECTED FOR DETAILED ANALYSIS

6.4.1 Alternative 1: No Project–No Development Alternative (Pg. 6.6)

Comments:

Notwithstanding the owners statement that an orchard and flea market will be placed on Juristac if the Betabel Commercial Project is denied, the No Project-No Development alternative is the one most in line with the rights of the Amah Mutsun; the protection of the environment, including the plant and animal species of concern and species listed by the US and California governments; and the intent of local and state governments, as seen in the San Benito General Plan, AB 52, CEQA etc.

I12-11

6.4.2 Alternative 2: No Project – Orchard and Flea Market Alternative (Pp. 6.6-6.9)

Comments:

San Benito County Code § 25.07.004 PERMITTED USES. for the Agricultural Rangeland doesn’t appear to include flea markets.

I12-12

6.4.3 – 6.4.5 Alternatives 3-5 (Pp. 6.9-6.25)

Comments:

These modifications of the vast commercial development proposed for this section of Juristac are all unacceptable because of the significant and unavoidable impacts on tribal cultural resources, biological resources, aesthetics, farmland, water and hydrology, and because they are in conflict with the San Benito General Plan and San Benito County Code Chapter 19.05 as well as with the sections of CEQA added by AB 52. (see the section on Tribal Cultural Resources for texts of these pertinent government requirements)

I12-13

Ms. Clark is an attorney for the Amah Mutsun Tribal Band and a partner with Shute, Mihaly & Weinberger. Regarding the “approved farm stand” mentioned in all three alternatives, she wrote to Abraham Prado, Assistant Director of Planning and Building in San Benito County, “As you know, the County ministerially permitted a massive ‘seasonal farm stand’ to be built on the site, despite the fact that no grown-on-site agricultural products are available. **This approval was contrary to County Code, which requires that such stands be both seasonal, and limited to “sale of agricultural produce grown on the premises where the stand is located.” San Benito County Code § 25.07.004** As a result of the inappropriate ministerial approval, grading, trenching, and excavation occurred without environmental review, archaeological or cultural monitoring, or tribal consultation, despite Amah Mutsun’s objections about the sites culturally sensitive nature.” (Letter dated May 22, 2022 in response to the NOP, from dEIR Appendix A NOP and Comments. Bolding not in original.)

I12-14

APPENDIX with text from cited websites:

From the section on Biological Resources:

<https://betabelproject.com/news/threatened-trout-return-to-san-benito-river/>

Threatened trout return to San Benito River

FIRST SIGHTING IN 75 YEARS ATTRIBUTED TO RECLAMATION WORK

After 75 years of abuse and countless tons of garbage dumped into it, all it took was 18 months of work from dedicated volunteers to get the San Benito River on the road to recovery.

Just a few weeks ago, a discovery was made in the river in what environmentalists are calling an historic milestone for the Pajaro River Watershed: The threatened steelhead trout are back in the river in the first confirmed sighting in three-quarters of a century.

Herman Garcia, founder of Gilroy-based Coastal Habitat Education and Environmental Restoration (CHEER), made the discovery by happenstance on a recent tour of the river, where it meets up with the

I12-15

Pajaro River adjacent to the Betabel property along Highway 101 at the northern end of San Benito County.

"This is huge, historic news," Garcia said.

Landfill along the river

About 18 months ago, Graniterock enlisted CHEER and its team of volunteers to clean up the San Benito River on property it owns south of Buena Vista Road in Hollister.

The volunteers were kept busy. Garcia said they were removing "thousands of pounds" of trash every day, which by the end of the work included 14 cars and trucks, one RV and two ski boats, along with 420 tires and plenty of other junk.

At the same time, CHEER gained access to the confluence of the San Benito and Pajaro rivers on the Betabel property, which is owned by the McDowell Charity Trust. That property includes a half-mile of both rivers.

Rider McDowell of the trust said when they purchased the 112-acre property adjacent to the Betabel RV Park a number of years ago, they knew it would need some major reclamation work before they could begin with plans to build a vintage-themed roadside stop.

"It was so polluted in so many ways," he said.

On one side were 170 junked vehicles, where an illegal chop shop was operating, McDowell said. About 10 people were living in mobile homes on the property, while a doublewide trailer served as a meth lab.

Things were even worse deeper into the property toward the San Benito River.

"We didn't even extrapolate how bad it would be further back in the watershed," McDowell said. "It was a landfill down there. There was so much junk. People had been using it as a dumping ground."

It was around this time McDowell met Garcia, who gave him access to the property to begin the arduous task of restoring the polluted river.

"I started deep diving into the brush," Garcia recalled. "I'm discovering all this garbage. I mean, tonnage of garbage. Down the river banks, in the river channels, in the floodplain. It was a mess. I said, 'Rider, you bought a landfill, man.'"

Garcia, who called the confluence "just about the heart of the watershed," said when it rains, much of the waste from as far north as Cochrane Road in Morgan Hill finds its way downstream to Watsonville and the Monterey Bay.

I12-15
cont.

The volunteers went to work, pulling out roughly 3,000 to 5,000 pounds of trash every day, according to Garcia.

Their efforts from both the Betabel and Graniterock properties were rewarded.

Clean water attracts steelhead

Steelhead trout require “good to very good” water quality for their habitat, Garcia said.

As such, the fish avoided the San Benito River for roughly 75 years.

“It was all polluted and nasty,” Garcia said. “They didn’t even think about going in there.”

A 2010 report by the California Department of Fish and Game cited studies from 1913 and 1934, where juvenile steelhead were collected at the Pajaro River near the San Benito River confluence. A 1959 study by the department reported an absence of juvenile steelhead in the area.

The National Oceanic and Atmospheric Administration reported in 2013 that the dry conditions of the San Benito River has “limited potential” to provide a habitat for juvenile steelhead.

A few weeks ago, Garcia was giving a tour of the river on the Betabel property when at one point he had to jump over the creek. As he did so, he noticed what looked to be a startled juvenile steelhead darting out of the way underwater.

He enlisted the help of a photographer, who captured video of the fish both underwater and jumping out of it to catch bugs floating along the river. The video was sent to the National Oceanic and Atmospheric Administration, where they confirmed that the juvenile fish were indeed steelhead trout. The fish are now migrating into the Pajaro River and eventually the Monterey Bay.

“The reclamation work that we did had a significant impact on the water quality and the health of the ecosystem,” Garcia said.

A healthy watershed also has economic benefits, he noted, such as boosted property values.

Restoration work continues

Garcia said CHEER’s work is far from finished.

“We are going to continue our maintenance work,” he said. “To be sustainable, we can’t stop.”

The organization plans to jump in and put its “fine touch” on Llagas Creek in San Martin—a few miles north in Santa Clara County—as that creek flows into the Pajaro River, following Graniterock’s work to expand the capacity of the creek as part of a flood control project.

I12-15
cont.

Garcia is thankful for the support CHEER has received throughout its efforts. Graniterock and the McDowell Charity Trust provided financial support for the nonprofit to purchase a trailer, while Recology South Valley waived all fees for CHEER to transfer the debris to the San Martin Transfer Station.

McDowell called the return of steelhead trout a “major development,” and gave all credit to Garcia and CHEER.

“We were the passive party here,” he said. “The one that did all the work was Herman. He is a powerhouse.”

Garcia called CHEER the “first line of defense in the Monterey Bay, and the last line of defense in the lower watershed.”

“If it wasn’t for all the work that CHEER has done, Monterey Bay would be a mess,” he said. “Our group of volunteers is doing a tremendous job protecting the marine sanctuary.”

July 6th, 2020 | [Betabel Project](#)

USA Today: Watch Mountain Lions Run Alongside Motorist on Highway Feb. 25, 2021

[Watch: Mountain lions run alongside motorist on highway \(usatoday.com\)](#)

Jay Kinsey was driving in central Montana last week when he caught up to three mountain lions running on a highway.

The accompanying footage shows the mountain lions, or cougars, pacing in a line before hopping over a guard rail into the snow and disappearing from view.

Kinsey then exits his car and focuses on the cats as they emerge from the base of a bush and walk farther from the road.

“It was definitely not something a guy comes across every day,” Kinsey, who lives in Lewistown, told [MTN News](#). He explained that he had previously seen crows and eagles feasting on a road-kill deer carcass and thought the distant objects might be more crows. “Then I noticed they were cats so I picked up my phone to [document the encounter] and show my wife and daughter when I got service.”

[ALSO ON FTW OUTDOORS: Anglers land enormous Warsaw grouper after three-year quest](#)

Kinsey told For The Win Outdoors that hunting friends told him he was watching a female mountain lion and two sub-adult kittens.

“I’d say they were right because she was always in the lead,” Kinsey said. “It was pretty neat to see. I’ve seen a few when out hunting deer and elk but never that close to them.”

The unusual encounter occurred last Thursday just west of Lake Sutherlin.

KRON 4: Mountain Lion Shot By Police, Later Dies at Oakland Zoo During Surgery August 26, 2022

[Mountain lion dies at Oakland Zoo after being shot in Hollister \(kron4.com\)](#)

OAKLAND, Calif. ([KRON](#)) — A mountain lion died during emergency surgery on Friday around 5 p.m. after suffering from a gunshot wound, the Oakland Zoo announced on [Twitter](#). A young male mountain lion suffered at least one gunshot to the abdomen after being shot by Hollister Police Department officers, according to the department’s [Facebook page](#).

I12-15
cont.

The situation began when Hollister police received a report around 4:42 a.m. of a mountain lion on the front porch of a residence on the 1400 block of Diablo Drive. California Department of Fish and Wildlife officers were dispatched to the scene to assist.

Authorities issued a shelter-in-place order and evacuated the residence, the post said. Wildlife officers tried to fire two tranquilizer darts into the lion but were unsuccessful.

The lion then charged toward a police officer. Two other officers fired their rifles at the mountain lion in fear of that officer's life.

The lion jumped into a fence of a neighboring yard and retreated into a bush. CDFW personnel then treated the animal with tranquilizer medication. Police said the lion was sedated and safely removed from the area. CDFW personnel then took the lion from Hollister to Oakland, which is roughly 100 miles away. Officials say this is the 20th mountain lion to come to Oakland Zoo in need of help relating to a human-wildlife incident.

Chron.com: Mountain Lion Killed by Vehicle in Southern California August 26, 2022

<https://www.chron.com/news/article/Mountain-lion-killed-by-vehicle-in-Southern-17401449.php>

OJAI, Calif. (AP) — A young mountain lion was struck and killed by a vehicle in Southern California early Friday, just weeks after his brother was fatally hit on another freeway, according to the National Park Service.

The 2-year-old male cougar, named P-90, was killed on a highway in Ventura County, more than 75 miles (120 kilometers) northwest of downtown Los Angeles. Authorities will conduct a necropsy, the Santa Monica Mountains National Recreation Area said in a statement.

P-90 and his brother, P-89, were outfitted with radio tracking collars by biologists who are studying how the big cats live in habitat fragmented by urban sprawl, barriers that limit genetic diversity and with hazards ranging from poisons to roads and freeways.

P-90 was the seventh mountain lion in the study killed by vehicles this year within the research area, which includes the Santa Monica range, Simi Hills, Santa Susana Mountains, Verdugo Mountains and Griffith Park in Los Angeles.

Los Angeles Times Mountain Lion P-22 Spotted Roaming Hollywood Hills August 26, 2022

<https://www.msn.com/en-us/news/us/mountain-lion-p-22-spotted-roaming-hollywood-hills-streets/ar-AA118SfH>

The mountain lion famously known as P-22 was spotted roaming through the Hollywood Hills, climbing and jumping off fences Wednesday night and early Thursday, according to officials and video footage captured by residents.

The big cat ambled across the street in front of a doorbell camera in Beachwood Canyon around 4:40 a.m.

Thursday, resident Arielle Lafuente said. The mountain lion then passed by her house again after the sun came up, around 6:30.

The mountain lion famously known as P-22 was spotted roaming through the Hollywood Hills, climbing and jumping off fences Wednesday night and early Thursday, according to officials and video footage captured by residents.

I12-15
cont.

The big cat ambled across the street in front of a doorbell camera in Beachwood Canyon around 4:40 a.m. Thursday, resident Arielle Lafuente said. The mountain lion then passed by her house again after the sun came up, around 6:30.

"He was prowling for hours over here," she said. "It's definitely exciting. We do have a dog who did not want to go out the door around 6:30 at his usual walk time and then was very interested in the scents outside." Another neighbor who requested anonymity caught the cat jumping off the fence by his residence, footage shows.

While Lafuente is used to catching packs of coyotes on her camera, this was the first time she saw a mountain lion.

Officials confirmed the identity of the golden feline, saying it was bachelor cat P-22, whose home territory is Griffith Park.

"P-22 is a celebrity cat and any sighting of him at least for a lot of people is news, but it's not unusual," said Ana Beatriz Cholo, a spokeswoman for the National Parks Service. "He lives in Griffith Park and the hills are right there, so he occasionally does venture out into other neighborhoods. It's all part of his hood."

P-22 is sporting his signature GPS collar in the videos.

P-22 ended up in Griffith Park about 10 years ago after leaving his original home in the Santa Monica Mountains and [crossing the 101 and 405 freeways](#).

This story originally appeared in [Los Angeles Times](#).

I12-15
cont.

Letter I12**Dorah Rosen**

August 30, 2022

I12-1

The comment states that the Final EIR needs to address the impact of climate change in addition to project impacts on all wildlife species (especially for listed species and species of concern). The comment refers to two species of concern that are identified in Table 3.4-3 of Section 3.4, "Biological Resources," in the Draft EIR.

Pursuant to State CEQA Guidelines Sections 15126.2(a) and 15126.4(a)(4), EIR impact and mitigation measures are focused on impacts of the project on the environment and not impacts of the environment, such as climate change. Environmental impact analyses under CEQA generally are not required to analyze the impact of existing environmental conditions on a project's future users (including associated wildlife) or residents unless the proposed project might exacerbate or risk exacerbating already existing environmental hazards or conditions (State CEQA Guidelines Section 15126.2[a]). In those specific instances, it is the project's impact on the environment and not the environment's impact on the project that compels an evaluation of how future residents or users (including wildlife) may be affected by exacerbated conditions (*California Building Industry Association v. Bay Area Air Quality Management District* [2015] 62 Cal. 4th 369).

Draft EIR pages 3.8-4 through 3.8-6 of Section 3.8, "Greenhouse Gas Emissions," provide a summary of the environmental impacts of climate change globally, as well as in California. Project impacts involving increases in greenhouse gas (GHG) emissions associated with global warming are addressed in Impact 3.8-1 (see Draft EIR pages 3.8-8 through 3.8-10). The project's potential to contribute to climate change through increases in GHG emissions would be mitigated by implementing Mitigation Measures 3.8-1a through 3.8-1f. Project impacts on biological resources associated with site development would be addressed by implementing Mitigation Measures 3.4-1, 3.4-2a through 3.4-2i, 3.4-3, and 3.4-4.

Concerns regarding the Draft EIR discussion of steelhead trout and mountain lion are addressed in responses to comments I12-2, I12-3, and I12-4.

I12-2

The comment questions the determination presented in Table 3.4-3 in the Draft EIR regarding the presence of steelhead trout in the project area.

The project is located in the designated recovery domain ranges (South-Central/Southern California Coast) for steelhead trout identified by the National Oceanic and Atmospheric Administration. Draft EIR pages 3.4-31 and 3.4-32 address potential impacts on this species and state that habitat suitable for special-status fish is not present in the development area. In addition, the project feature closest to the San Benito River or Pajaro River that would require grading or ground disturbance would be greater than 300 feet east of these features.

Although most project activities would avoid impacts on the San Benito River and Pajaro River, ground disturbance associated with construction activities could result in discharge of silt into the rivers, which could result in temporary reduction in instream water quality and potential adverse effects on survival of special-status fish, if present. The river and its water quality could be indirectly affected by grading, trenching, and creation of impervious surfaces proposed for adjacent uplands and encroachment of developed land uses. Implementation of Mitigation Measure 3.4-2g would reduce potential indirect impacts on special-status fish to a less-than-significant level by requiring implementation of protection measures to prevent discharge of silt into the Pajaro River and San Benito River during construction. The following text change is made to the Draft EIR to clarify the potential presence of this species. This modification clarifies the text but would not result in further changes to the document with respect to the severity of an environmental effect disclosed in the Draft EIR, or the need to discuss a new significant environmental impact.

Draft EIR Table 3.4-3 (page 3.4-16), the following edit is made:

Steelhead - south-central California coast DPS <i>Oncorhynchus mykiss irideus</i> pop. 9	FT	–	Coastal basins from the Pajaro River south to, but not including the Santa Maria River.	May occur. Project is located within the South-Central/Southern California Coast recovery domain for this species. The segment of the Pajaro and San Benito Rivers, which runs adjacent to the project site, is within the current range of riffle sculpin.
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112-3 The comment questions the determination in Table 3.4-3 in the Draft EIR regarding the presence of mountain lion based on observations reported in the city of Hollister and other urban areas.

As described on Draft EIR page 3.4-18, the analysis acknowledges that the region surrounding the project site contains relatively undeveloped open space and riparian corridors that are likely used by mountain lions. However, the project site is disturbed and adjacent to significant sources of human disturbance, which would likely lead mountain lions to use the site rarely. This includes the development area's frontage along US 101 and fencing along the US 101 right-of-way, as well as on the property east of US 101, which would act as a barrier, limiting mountain lion movement through the site. The reader is referred to response to comment O6-3, regarding further analysis of mountain lions.

112-4 The comment further questions the conclusion regarding mountain lion presence, as well as the analysis of other wildlife species.

The reader is referred to response to comment O6-3, regarding mountain lions. The conclusions presented in Table 3.4-3 are based on the data sources identified below, which describe documented occurrences of species. The comment provides no technical data to counter the analysis provided in Table 3.4-3.

California Natural Diversity Database. 2022. Results of electronic records search. California Department of Fish and Wildlife, Biogeographic Data Branch. Retrieved April 26, 2022.

Matocq, M. D. 2002. Morphological and Molecular Analysis of a Contact Zone in the *Neotoma fuscipes* Species Complex. *Journal of Mammalogy* 83: 866–883.

US Fish and Wildlife Services. 2022. Information for Planning and Consultation electronic records search. Available: <https://ecos.fws.gov/ipac/>. Retrieved April 27, 2022.

Xerces Society. 2018. *A Petition to the State of California Fish and Game Commission to List the Crotch Bumble Bee (Bombus crotchii), Franklin's Bumble Bee (Bombus franklini), Suckley Cuckoo Bumble Bee (Bombus suckleyi), and Western Bumble Bee (Bombus occidentalis occidentalis) as Endangered under the California Endangered Species Act.* Available: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=161902&inline>. Accessed April 14, 2022.

112-5 The comment states that the Final EIR needs to address the impact of climate change in addition to project impacts on flooding.

The reader is referred to response to comment O4-41.

112-6 The comment states that the Final EIR needs to address problems with water quality, erosion, and sedimentation under increased flood conditions. The comment identifies concerns regarding water quality impacts on wildlife species.

The reader is referred to response to comment O4-41, regarding flooding and project mitigation to address changes in flooding conditions. Implementation of Mitigation Measure 3.4-2g would reduce potential indirect impacts on special-status fish to a less-than-significant level by requiring implementation of protection measures to prevent discharge of silt into the Pajaro River and San Benito River during construction. As identified in Impact 3.10-2 in Section 3.10, "Hydrology and Water Quality," of the Draft EIR, the project would be required to comply with federal and state

- stormwater management regulations (i.e., Central Coast Regional Water Quality Control Board [RWQCB] and National Pollutant Discharge Elimination System [NPDES] requirements) to maintain preproject hydrology and incorporate proper pollutant source controls, minimize pollutant exposure outdoors, and treat stormwater runoff through proper best management practices (BMPs), when source control or exposure protection are insufficient for reducing runoff pollutant loads. In accordance with Central Coast RWQCB compliance guidelines, development at the project site would be required to incorporate BMPs and low-impact development (LID) stormwater management principles. These would include on-site detention systems and other suitable stormwater pollutant control BMPs, such as conservation of natural areas and construction/maintenance of swales and infiltration basins, to reduce the discharge of pollutants into stormwater (see Draft EIR page 3.10-12).
- 112-7 The comment provides a summary of the analysis of Impact 3.2-1 provided in the Draft EIR.
- The summary of the impact analysis is noted. It does not require a response pursuant to CEQA Guidelines Section 15088(a).
- 112-8 The comment states that the loss of Important Farmland and associated topsoil is a concern that should be addressed by the County. The comment requests that the Final EIR address this issue and provide plans to protect topsoil.
- As identified on pages 3.2-7 and 3.2-8 of Section 3.2, "Agricultural Resources," of the Draft EIR, there are no feasible means to mitigate the loss of Important Farmland and associated topsoil if the project is approved and constructed. It is infeasible to replace lost Important Farmland, because it would require removal of existing development from Important Farmland or the improvement of soil and/or water conditions on open land areas to create Important Farmland. Neither option is considered feasible because of the expense involved and the unknown willingness of other property owners to participate in implementing the mitigation. Another option would be conversion of natural lands to Important Farmland, but this approach would require mitigation of lost habitat. Mitigation Measure 3.2-1 would partially address this impact through the preservation of existing Important Farmland at a minimum ratio of 1:1 for each acre of Important Farmland converted to nonagricultural use by the project. The EIR concludes that the impact is significant and unavoidable. The County decision makers will weigh the project impacts identified in the EIR against its benefits in their overall consideration of the proposed project, as required by CEQA Guidelines section 15093.
- 112-9 The comment provides a summary of the tribal cultural resource setting and impact analysis provided in Draft EIR Section 3.16, "Tribal Cultural Resources."
- The summary is noted. It does not require a response pursuant to CEQA Guidelines Section 15088(a).
- 112-10 The comment expresses opposition to the project based on its impact on tribal cultural resources and states that the concessions identified in the Draft EIR "miss the mark."
- The comment's opposition to the project because of impacts on tribal cultural resource is noted. It is unclear what "concessions" are being referred to in the comment. The Draft EIR does acknowledge that implementation of Mitigation Measures 3.16-1a through 3.16-1d would reduce potential impacts on tribal cultural resource but not to a less-than-significant level because development of the project, including its associated traffic, noise, visual obstruction of natural viewsheds, and amusement-oriented atmosphere would substantially alter the feeling and setting of the project site, a cornerstone feature of the *Juristac* Tribal Cultural Landscape (JTCL). Additionally, the possibility remains that excavation activities might not be able to avoid disturbing buried tribal cultural resources. Thus, the Draft EIR concludes that this impact would be significant and unavoidable. The County decision makers will weigh the project impacts identified in the EIR against its benefits in their overall consideration of the proposed project, as required by CEQA Guidelines section 15093.
- 112-11 The comment states that Draft EIR Alternative 1: No Project – No Development Alternative is the alternative most in line with the rights of the Amah Mutsun Tribal Band (AMTB); protection of the environment; and the intent of the General Plan, CEQA, and other provisions.

- Draft EIR page 6-24 states that Alternative 1 would avoid all adverse impacts resulting from construction and operation of the project and is the environmentally superior alternative. However, Alternative 1 would not meet any of the project objectives.
- 112-12 Regarding Alternative 2: No Project - Orchard and Flea Market Alternative, the comment states that County Code Section 25.07.004 does not appear to allow flea markets.
- As discussed on Draft EIR page 6-6, County Use Permit No. 1006-08 was approved by the County in 2009 for the operation of a flea market along the site's frontage. Although County Code Section 25.07.004 does not identify flea markets as an allowed use, County Code Section 25.29.106 (Additional Uses Permitted) allows the Planning Commission to permit uses that are deemed essential or desirable to the public convenience or welfare and that are in harmony with the various elements or objectives of the General Plan. Flea markets are identified in this section of the County Code.
- 112-13 The comment states that Draft EIR Alternatives 3-5 are all unacceptable because of their significant and unavoidable impacts on tribal cultural resources, biological resources, aesthetics, farmland, and water/hydrology and because they are in conflict with the San Benito County General Plan, County Code Chapter 19.05, and the Assembly Bill (AB) 52 requirements of CEQA.
- The expressions of concern regarding Alternatives 3-5 are noted. The comment is incorrect regarding Draft EIR impact conclusions for biological resources and water/hydrology. As identified in Section 3.4, "Biological Resources," Section 3.10, "Hydrology and Water Quality," and Chapter 4, "Cumulative Impacts," these impacts would be less than significant with the implementation of mitigation measures. The comment provides no technical analysis to counter these conclusions. Draft EIR Impact 3.11-1 states that the project would not conflict with the General Plan, and the Draft EIR impact analysis identifies where proposed mitigation measures would assist in implementing General Plan policies intended to address environmental issues (see mitigation measures in Section 3.2, "Agricultural Resources"; Section 3.4, "Biological Resources"; and Section 3.10, "Hydrology and Water Quality"). The project would be required to comply with County Code Chapter 19.05, regarding archaeological resources and tribal cultural resources. Draft EIR page 3.16-7 identifies the process to date of County compliance with the consultation requirements under AB 52.
- 112-14 The comment expresses concerns regarding the County approval of the farm stand that currently exists on the site.
- The Draft EIR uses April 20, 2022, as the date to determine the baseline for existing environmental conditions. This approach is consistent with the State CEQA Guidelines recommendation that environmental conditions present on the date the notice of preparation (NOP) is issued (in this case, April 20, 2022) should normally constitute the baseline conditions upon which comparison with the project should be based (Section 15125[a]). The Draft EIR baseline discloses the current construction activities for the farm stand, restroom building, septic tank, and stormwater retention pond, consistent with State CEQA Guidelines Section 15125(a). These uses were approved by the County as a separate project under an administrative permit and are not part of the proposed conditional use permit. The farm stand has independent utility and would operate whether or not the proposed project is approved. The Draft EIR impact analysis generally identifies the existence of the farm stand because it would be incorporated into the site design.
- 112-15 The comment provides general reference information that was used in preparation of this comment letter.
- The existence of these materials is noted. None of the cited materials include comments or input on the Draft EIR impact analysis. Thus, no further response is provided. The comment is included in the record for consideration by the decision makers as part of the project approval process.

<p>Letter I13</p>

From: Mike Monroe <mike.valleyofheartdelight@gmail.com>
Sent: Friday, September 2, 2022 4:02 PM
To: Abraham Prado
Subject: Betabel Road Commercial Project

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

To: Mr. Abraham Prado
 County of San Benito Planning Office

Thank you for the opportunity to comment on the proposed Betabel Road Project and its Draft EIR.

My comments are more of a general nature, but focus on the issues of water availability and quality, and specifically flood risk.

My residence is in Santa Clara County, yet I have an overarching concern with the Betabel Road Project in association with the development proposals for Strada Verde and the Sargent Ranch Quarry, of the cumulative impacts upon the Soap Lake floodplain, the drawdown of groundwater supplies, and the very real possibility of extreme precipitation events that might inundate the low lying areas at the confluence of the Pajaro and San Benito Rivers.

In my opinion, the infrastructure buildout for the Betabel Road Project, including underground gasoline tanks, water lines, septic systems etc, is problematic. The potential for flood risks should require significant hydrology engineering efforts to protect the development. Of course, such adaptation measures will necessitate an evaluation by the Army Corps of Engineers in terms of floodplain and river channel modifications. The gas station element of the Betabel Road Project should definitely be re-examined in light of the rapid transition to electric vehicles.

For years, the Soap Lake floodplain has been the focus of a regional effort to protect its attenuation benefits for the downstream communities of Monterey and Santa Cruz Counties. It seems that the original shared vision of the nearly 30 agencies will go by the wayside if the Betabel, Strada Verde and the Sargent Ranch Quarry are allowed to proceed.

Within the past week, reports of sea level rise should give us pause in terms of increasing groundwater usage in the context of saltwater intrusion. Hardscape surfaces will most likely add to runoff and sedimentation issues in the Pajaro River. And the fact that our atmosphere now retains more moisture due to increasing temperatures, leading to deluges that may overwhelm the 100 year flooding models currently cited in project planning.

I13-1

I13-2

I13-3

I13-4

I13-5

Not being an engineer does not preclude me from remembering flood events in the not too distant past. In 2017, the City of San Jose and Valley Water were not prepared when an atmospheric river brought heavy downpours, causing water to spill from Anderson Dam in Morgan Hill and flooding neighborhoods along Coyote Creek in San Jose.

I13-6

The placement of the Betabel Road Project and the new commercial zoning designation are troubling to me. I liken the development to building in a fire prone area where the risks are underestimated until a calamity is upon us.

I13-7

Thank you for your consideration.

--

Mike

Mike Monroe
8752 Lions Creek Drive
Gilroy, CA 95020

The Valley of Heart's Delight
(408)234-6377

Letter I13**Mike Monroe**

September 2, 2022

- I13-1 The comment introduces remarks on water availability, water quality, and flooding. These comments are responded to below.
- I13-2 The comment identifies concerns about cumulative impacts on flooding on the Soap Lake Floodplain and groundwater supplies associated with the proposed Strada Verde Innovation Park and proposed Sargent Quarry project in combination with the Betabel Commercial Development Conditional Use Permit Project.
- The project site is not located within the Soap Lake Floodplain or the Soap Lake Floodplain Preservation Project area. The cumulative impact analysis considers the proposed Strada Verde Innovation Park and proposed Sargent Quarry project (Draft EIR pages 4-3 and 4-4). The cumulative flooding impact analysis concludes that implementing Mitigation Measure 3.10-4 would offset the project's contribution to cumulative flooding impacts by ensuring that the final design of the project would not alter the floodplain conditions in such a way that would result in off-site floodplain impacts. The retention, grading, and other measures associated with Mitigation Measure 3.10-4 are consistent with the requirements of General Plan Policies LU-1.8, LU-1.10, and HS-2.1 and County Code of Ordinances Chapter 23.31 (Draft EIR page 4-11).
- The draft North San Benito Subbasin Groundwater Sustainability Plan indicates that the San Juan Management Area, which underlies the project site, has a sustainable yield of 19,017 AFY. The sustainable yield is based on the future baseline (2050) simulated conditions, which reflect current land use, Central Valley Project operating rules, and other management activities for the North San Benito Subbasin. Because the project is consistent with current land use designations and the zoning district, it has been factored into the sustainable yield. Under the existing conditions, 7,454 AFY of groundwater is produced in the San Juan Management Area. The difference between the current groundwater production level and the sustainable yield is 11,563 AFY. The project's demand of 32 AFY would be less than available groundwater under sustainable conditions (11,563 AFY) (Draft EIR page 3.10-10).
- I13-3 The comment expresses concerns about water resources related to installation of underground fuel storage tanks and septic systems. The comment also expresses concerns regarding flooding impacts on the project site and suggests that the proposed gas station component should be reconsidered given the transition to electric vehicles.
- As shown in the Draft EIR Appendix B (Sheet A100), the proposed septic leach field and gas station would be located outside of the floodplain. In addition, gasoline tanks would be double-walled. In accordance with Title 23, Section 2635(b) of the CCR, tanks would be required to have spill containment and overfill prevention systems. Fuel tank storage areas would have appropriate safety design, equipment, and signage to protect public health and safety from leaks, fires, and spills involving vehicle fuel if any were to occur on the project site. As identified in Draft EIR Impact 3.10-4, Mitigation Measure 3.10-4 would be implemented to ensure that the final design of the project would not alter the floodplain conditions in such a way that would result in off-site floodplain impacts. The building design (elevation of living, manufacturing, or storage areas above the 100-year flood elevation), retention, grading, and other appropriate measures associated with Mitigation Measure 3.10-4 are consistent with the requirements of General Plan Policies LU-1.8, LU-1.10, and HS-2.1 and County Code of Ordinances Chapter 23.31. The comment's recommendation that the gas station be reconsidered is noted.
- I13-4 The comment expresses concerns that the project, proposed Strada Verde Innovation Park, and proposed Sargent Quarry project would affect Soap Lake Floodplain Preservation Project.
- The reader is referred to response to comment I13-2.

- I13-5 The comment expresses concern regarding climate change impacts associated with sea level rise and groundwater quality impacts from saltwater intrusion. The comment also identifies concerns related to flooding and water quality impacts from climate change.
- The reader is referred to response to comment O4-41, regarding climate change-related flooding impacts. Climate change impacts on groundwater resources were evaluated in the 2021 North San Benito Groundwater Sustainability Plan (San Benito County Water District 2021: 8-1 through 8-7). Water quality impacts of the project are addressed in Draft EIR impacts 3.10-1, 3.10-2, and 3.10-5.
- I13-6 The comment identifies additional concerns regarding flooding and references previous flooding events. The reader is referred to responses to comments I13-2 and I13-3.
- I13-7 The comment states that the placement of the project site and the new commercial zoning designation are troubling. The concern expressed in the comment is noted. The comment does not raise any environmental issues related to the adequacy of the EIR analysis; therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.

<p>Letter I14</p>

From: Greg SeaLion Cotten <openshoreline@gmail.com>
Sent: Monday, September 5, 2022 3:01 PM
To: Abraham Prado
Subject: dEIR comment regarding Betabel development Proposal

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Abraham Prado,

I request the Betabel development proposal be denied for the following significant reasons.

- This would desecrate a sacred landscape to the Indigenous community. A violation of human rights, a common practice for our government, that must end. I14-1
- There is no mitigating the destruction of a sacred landscape.
- The Santa Clara General Plan calls for the protection of Scenic Highways,
- Aesthetics, and scenic highway (resource)- this area is unique, a sacred sentinel area and is the scenic entrance to the County. Do we want a natural entrance to the County, or develop it, to look like another strip mall like facility for all time. I14-2
- The General Plan states protecting areas that provide- a "sense of place" value, the potential to give to our surroundings a unique identity which contributes to our sense of well-being and distinguishes Santa Clara County from other areas." This area defines the Valley, next to a rare water source (Pajaro River) and next to two other county entrances.
- This is an ecologically sensitive area, let's not put this development at its doorstep. Let's protect it and set a peaceful and beautiful tone for those who are entering the County. I14-3
- The General plan states "The future of our resources depend on our current actions". This area is now well known for its cultural, scientific, and historic resources. Allowing for this development will be in violation of this knowledge and will greatly limit what's possible for our collective future. I14-4
- General Plan states: "Minimize or Compensate for Human Impacts". This would significantly impact the Indigenous communities' religious rights and places. There is no compensation for such crimes against humanity, and therefore this permit must not be approved.
- The Santa Clara Human Rights initiative: "eliminate prejudice and discrimination, and build positive intergroup relations" This development would be another offense against the Native Americans, a further injury to a devastating and catastrophic relationship that is in dire need of 'positive intergroup relations" I14-5

I hope this helps to shed more light on the significant and unmitigatable impacts of this projects which dictate, this proposal isn't consistent with the General Plan or the Human Rights Commissions mission and must be denied. I14-6

Respectfully,

Greg Cotten

Letter I14**Greg Cotten**

September 5, 2022

- I14-1 The comment states that the project would affect a landscape sacred to the indigenous community and that no mitigation is provided to address this impact.
- Draft EIR Section 3.16, "Tribal Cultural Resources," addresses project impacts on the JTCL, associated with the AMTB, under Impact 3.16-1. Mitigation Measures 3.16-1a through 3.16-1d are identified to partially address but not fully mitigate impacts on the JTCL (Draft EIR pages 3.16-11 through 3.16-13).
- I14-2 The comment references the San Benito County General Plan and states concerns regarding the scenic impacts of the project. The Draft EIR addresses visual character and scenic resource impacts under Impacts 3.1-1 and 3.1-2. As identified on Draft EIR pages 3.1-14 and 3.1-15, implementing the project would result in damage to scenic resources and would affect the JTCL.
- I14-3 The comment states that the project site is located in an ecologically sensitive area. Biological resource setting conditions are described and project impacts are addressed in Draft EIR Section 3.4, "Biological Resources."
- I14-4 The comment references the San Benito County General Plan and the importance of the project site for cultural, scientific, and historic resources. Draft EIR Section 3.5, "Cultural Resources," addresses impacts to historic resources on the project site, and Section 3.16, "Tribal Cultural Resources," addresses impacts to tribal cultural resources. Biological resource impacts are addressed in Section 3.4, "Biological Resources," and water resource impacts are addressed in Section 3.10, "Hydrology and Water Quality."
- I14-5 The comment references the San Benito County General Plan and Santa Clara Human Rights initiative and states that implementing the project would result in significant impacts on Native Americans. The reader is referred to response to comment I14-1, regarding impacts on tribal cultural resources as analyzed in the Draft EIR.
- I14-6 The comment states that the project's impacts are significant and unavoidable and that the project is inconsistent with the General Plan and the Human Rights Commission's mission and should be denied. The comment appears to be referring to the Human Rights Commission of Santa Clara County, which does not have jurisdiction in San Benito County. The reader is referred to response to comment I14-1, regarding impacts on tribal cultural resources. The EIR discloses the project's significant and unavoidable impacts. The County decision makers will weigh the project impacts identified in the EIR against its benefits in their overall consideration of the proposed project, as required by CEQA Guidelines section 15093. The comment is included in the record for consideration by the decision makers as part of the project approval process.

**Letter
I15**

September 5, 2022

From: Dr. Rachel E. O'Malley

Professor of Environmental Studies
San Jose State University
One Washington Square
San Jose, CA 95192-0115

To: Abraham Pardo

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

**Re: Betabel Commercial Development Conditional Use Permit Draft
Environmental Impact Report**

Dear Mr. Pardo:

I am a biologist with 36+ years of experience as a field researcher; I earned my BA in Biology in 1986, and my PhD in Biology from UC Santa Cruz in 1997. As an Assistant, Associate and Full Professor of Environmental Studies at San Jose State University for 25 years, as well as Graduate Coordinator for the Master of Science Program, I have conducted research, published and taught courses on Environmental Research Methodology, Environmental Impact Assessment, and Environmental Restoration among other relevant subjects. During this time, I have chaired over 40 Master of Science thesis committees, and I have conducted research and published academic journal papers on endemic and rare animal and plant species on the Central Coast of California. My Ph.D. training included substantial work in animal population and ecosystem modelling for ecological conservation (please see Appendix A: Curriculum Vitae).

I have reviewed the Draft Environmental Impact Report for a Conditional Use Permit for the Betabel Commercial Development (Betabel dEIR) at 9644 Betabel Road, at the interchange of U.S. Highway 101 and Betabel Road in unincorporated San Benito County, as well as supporting documents, public records and scholarly literature regarding this site, and I have visited the site. Based on this evidence and nearly 4 decades of field experience, my professional opinion is that the proposed Project, as described in the Betabel dEIR, will cause significant impacts to biological resources that are not reduced to less than significant by the proposed mitigations.

The Betabel dEIR fails to address several key areas, including wildlife connectivity and impacts on mountain lions and the adjacent riparian corridor species; indirect impacts on

I15-1

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adjacent agricultural lands; impacts of light, noise, air quality and hazards on wildlife during project operation; as well as cumulative impacts of several other proposed local projects on wildlife connectivity. Given its location in a long-recognized important wildlife corridor, the proposed project will likely have significant adverse impacts on several wildlife species, most notably mountain lions, but including the many other special-status and native species that occur in and around this highly sensitive site.

I15-1
cont.

Wildlife Movement Corridors

The wildlife movement corridor analysis presented in the Betabel dEIR is inadequate and flawed for the following reasons:

The Highway 101 corridor in San Benito and southern Santa Clara County is widely recognized as a critical wildlife linkage, identified in numerous wildlife connectivity studies done in California (Critical Linkages: Bay Area and Beyond, Bay Area Conservation Lands Network 1.0 and 2.0, California Essential Habitat Connectivity Project). Wildlife connectivity between the Santa Cruz Mountains, Gabilan Range, and Diablo Ranges is currently tenuous at best. Animals that navigate across Highway 101 are at great risk of becoming roadkill which is commonly observed on this stretch (California Roadkill Observation System, CROS), or they must use a limited number of undercrossings and culverts (Diamond et al. forthcoming).

Of particular concern is the mountain lion in Santa Cruz Mountains, which is at risk of local extinction because of inbreeding (Gustafson et al. 2018). The North Central Coast (NCC) mountain lion population has been proposed for Threatened status under the California Endangered Species Act (Yap et al. 2019); the petition is now under review by the California Fish and Game Commission. As a candidate species, the mountain lion is treated as if it is already listed until the decision on listing is made. The mountain lions in the Santa Cruz Mountains are further at risk if this already tenuous linkage is further degraded.

I15-2

Badger, a state species of Special Concern (SSC), is in a similar situation as mountain lion – there needs to be connectivity of populations if the species is to persist in the Santa Cruz Mountains (MROSD report forthcoming). Badger roadkill have been observed along Highway 101 north of the project site, indicating that they seek to cross despite the hazards.

Diamond et al (2022) provide a comprehensive study of wildlife passage along Highway 101 south of Gilroy. To quote:

“US 101 Site 5 Pajaro River Bridge facilitated the highest number of native species passages in this section, with a total of 502 passages across all trap nights (226 passages in the 100 trap nights analysis) (Figure 2.29). Bobcat, deer, skunk, and raccoon were routinely recorded traveling under the bridge. This site had five native species recorded (Figure 2.29) and was also only one of two in the entire study area where wild pig passages were recorded (six total passages) (Figure 2.30). US 101 Site 6 San Benito River Bridge had the second-highest

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number of documented passages by native wildlife in this section, with a total of 421 passages across all trap nights (118 passages in the 100 trap nights analysis) (Figure 2.29). Both of these bridges feature a wide riparian corridor with high-quality habitat, which likely contributed to high passages by native wildlife and high species richness.”

I15-2
cont.

The Betabel project lies between these two undercrossings, ~ 1.5 miles south of the Pajaro River Bridge, and only ~½ mile north of the San Benito River Bridge. While neither of the two special status mammals were observed at these sites in the Diamond et al (2022) study, passages of these species are rare, intermittent events. For mountain lion the presence of key prey species (deer and wild pigs) increases the likelihood of use.

Concerns about wildlife connectivity are inappropriately dismissed in the DEIR, and no mention of the bridges, especially the San Benito River Bridge, can be found in Chapter 3.4 Biological Resources. The DEIR states (under Wildlife Movement Corridors) that:

“The project site contains some natural habitat (e.g., riparian woodland) and is adjacent to natural habitat to the west (i.e., San Benito River, Pajaro River), which likely function as wildlife movement corridors. However, the project site is also adjacent to development to the north and US 101 to the east; a significant barrier to wildlife movement. Wildlife moving through the vicinity of the project site would likely use the existing riparian corridors west of the project site rather than the disturbed habitat on the project site. Therefore, it is unlikely that the project site currently functions as a critical habitat linkage; however, it likely functions as a movement corridor for some wildlife species.

There will be a massive increase in human activity in the project area. The project site itself includes...[a] gas station with convenience store, a restaurant, [five] amusement buildings with exhibits, a motel and banquet hall with outdoor pool and outdoor movie screen, and an outdoor event center, along with parking lots and access roads...

I15-3

Long term changes to the noise environment, including human voices (screams, shouts, laughter and loud talking) in the outdoor pool, in the amusement buildings, and in the outdoor movie theater are very disruptive to wild animals and are not analyzed in this document, instead only vehicle noise is considered. Impacts on wildlife of the operational vehicle noise is also not addressed, although this kind of noise and vibration can change the behavior of frogs and insects, as well as bats and other wildlife that communicates through sound. These impacts will be significant. An increase in lighting from the buildings will also cause significant effects on sensitive wildlife onsite and offsite. Twenty-four hour per day lighting, seven days per week will change the behavior of sensitive nocturnal mammals and insects, even if the lighting conforms to dark-sky provisions.

While the project development footprint does not lie directly across the approaches to the bridges, these noise impacts, light impacts, air quality impacts, and other hazards of the project for wildlife must be addressed. Noise and light impacts extend far beyond the development footprint, including into the riparian zone of the Pajaro River that is the likely

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path for animals (as admitted in the dEIR above), and will degrade the quality of the area for wildlife movement.

Additionally, increased traffic and trucks and vehicles entering and exiting will increase hazards to wildlife using the area, especially mountain lions and other sensitive mammals that rely on this corridor for breeding and dispersal. Mountain lions and badgers are well-documented to actively avoid altered landscapes (Wilmers et al. 2013). Their ability to navigate the wildlife linkage could be greatly diminished by this project.

I15-3
cont.

These impacts are inadequately described in the DEIR, and the omissions are a major flaw in the DEIR and need to be more completely addressed.

Cumulative Impacts

The Cumulative Impacts (Section 4.3.4) also dismisses the impacts on wildlife movement. Between Sargent Quarry, Strada Verde, Traveler's Station, San Benito Ag Center, and other projected developments along the 101 corridor the already tenuous wildlife linkage is at great risk of further degradation.

Simply put, there is no consideration of cumulative impacts of these projects on wildlife movements and connectivity. Given the statewide importance of this wildlife linkage, and the placement of the Betabel Road project between two of the most important undercrossings, this omission is a major flaw in the DEIR and needs to be explicitly addressed.

I15-4

Listed mitigations do not adequately protect sensitive wildlife from significant impacts due to noise, light, air quality and hazards, and these impacts are not acknowledged in the dEIR. These issues must be identified, not dismissed nor deferred for future analysis.

Potentially significant impacts on agriculture

Potentially significant indirect effects of the project on agriculture are also understated. The project site currently supports prime agricultural land (as acknowledged by the dEIR) and it is located less than 2000 feet from the nation's largest grower of organic produce in the country, Earthbound Farms (See Figure 1). Developing this site for high-intensity urban use will increase pressure on and conflicts with adjacent agricultural uses to the west and southeast of the project and will indeed result in indirect conversion of Farmland to non-agricultural use. The argument for a less-than-significant effect is not convincing, as microtopography is only one element of pressure on agricultural land. The daily activities of large commercial operations rely on protection of intact agricultural communities. Urban development of this scale, especially in the context of the many projects simultaneously proposed along this corridor (described further above) will certainly cause a significant impact on all the adjacent agricultural uses.

I15-5

O'Malley 2022

115-5
cont.

Figure 1. Wetland and agricultural sites surround project site. Earthbound Farm is the largest Organic produce grower in the US. Offsite impacts on agriculture are understated in the dEIR

Conclusion

In sum, it is my opinion that the Betabel Project will cause significant impacts on wildlife and agriculture, and that the dEIR has failed to address these concerns adequately. For additional information, please see References on the following page.

115-6

Sincerely,

Dr. Rachel O'Malley
Professor of Environmental Studies
San Jose State University
Washington Square Hall
118 One Washington Square
San Jose, CA 95192-0115

O'Malley 2022

References

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Letter I15**Dr. Rachel E. O'Malley**

September 5, 2022

- I15-1 This comment provides background information about the commenter. This comment is noted. The comment also states that the Draft EIR does not address wildlife connectivity, impacts on mountain lions, adjacent riparian corridor species, and hazards to wildlife during project operation. Specific concerns identified in this comment letter are responded to in comments I15-2 through I15-4.
- I15-2 This comment provides background information and references related to wildlife movement and mountain lions, as well as a summary of the Diamond et al. 2022 study. The reader is referred to responses to comments O6-3, O6-5, and O6-12.
- I15-3 This comment states that impacts on wildlife connectivity were not sufficiently addressed in the Draft EIR and expresses concerns regarding the potential increase in human activity (and the associated increases in noise, lighting, and traffic) that may result from project implementation. The reader is referred to responses to comments O6-5 and O6-12.
- I15-4 This comment states that the cumulative impact analysis for biological resources on page 4-8 of the Draft EIR does not include an analysis of wildlife movement and that mitigation measures would not address potential impacts resulting from increased noise and light. The reader is referred to responses to comments O6-5 and O6-12.
- I15-5 The comment states that implementing the project would result in significant indirect impacts on agriculture given the project site's proximity to Earthbound Farms. The comment disagrees with the Draft EIR's impact conclusion regarding indirect effects on agricultural lands, stating that the project would increase pressure on adjacent farmland and result in conversion of agricultural uses to nonagricultural uses.
- As described on Draft EIR page 3.2-8, the project involves constructing a compact and clustered new development on land designated for commercial development, and much of the development would take place on lands that would be buffered from adjacent agricultural lands through the retention of approximately 80 acres of undeveloped land zoned for agricultural uses. Through the provision of a conservation easement (Mitigation Measure 3.16-1d) on the west side of the project site, operation of the more urban uses would not encroach on the adjacent agricultural lands to the west. Topography (i.e., rolling hills) acts as a buffer north and south of the project site; the Betabel RV Resort provides an additional buffer to the north. As a result, the conversion of active agricultural uses on the project site is not expected to apply pressure that would result in the loss or conversion of adjacent agricultural uses. The project does not involve an amendment to the General Plan land use designations that would set a precedent for further conversion of agricultural lands. Thus, no significant impacts from the indirect conversion of agricultural lands would occur.
- I15-6 The comment provides concluding statements that summarize concerns regarding the Draft EIR. The reader is referred to responses to comments I15-1 through I15-5. The comment is included in the record for consideration by the decision makers as part of the project approval process.

**Letter
I16**

From: Stacie Wolny <stacie.wolny@gmail.com>
Sent: Monday, September 5, 2022 8:17 AM
To: Abraham Prado
Subject: Betabel dEIR comments

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

To: San Benito County Resource Management Agency
 Attn: Abraham Prado
 2301 Technology Park
 Hollister, California 95023
 Email: aprado@cosb.us

Thank you for the opportunity to make public comments on the dEIR for Betabel Commercial Development Use Permit dEIR, State Clearinghouse No. 2022040455.

I16-1

In summary, I am opposed to this development because it further desecrates the sacred landscape of Juristac, further fragments habitat and endangers wildlife, adds more stress to the hydrology of the area, and creates yet more development sprawl that we do not need and should cease permitting.

I16-2

I have great sympathy for the McDowell family, and understand their desire to honor their son. But there are so many other ways that this could be done that do no harm to the land, water and ecosystems that are our collective life support system, and do no harm to the First People of this land.

More detailed comments follow.

Sincerely,
 Stacie Wolny
 1776 Regina Way
 Campbell CA 95008
stacie.wolny@gmail.com

Comments

Page 3.1-1:

County Policy LU-1.5: Infill Development. The County shall encourage infill development on vacant and underutilized parcels to maximize the use of land within existing urban areas, minimize the conversion of productive agricultural land and open spaces, and minimize environmental impacts associated with new development as one way to accommodate growth.

I16-3

Comment: This project obviously conflicts with this very important policy. Especially at this point, where we have collectively paved far too much of the land, and taken it for human uses, little by little with projects like this. Meanwhile, we are finally aware of how much that hurts the ability of the land to support us with water, clean air, carbon storage, biodiversity and so much more.

Page 3.1-1:

County Policy NCR-1.1: Integrated Network of Open Space. The County shall maintain an integrated network of open space lands that support natural resources, recreation, tribal resources, wildlife habitat, water management, scenic quality, and other beneficial uses.

Comment: This project lies just one mile south of an area considered an "essential connectivity area" by the California Essential Habitat Connectivity (CEHC) report and map (<https://wildlife.ca.gov/Conservation/Planning/Connectivity/CEHC>) because it is one of the few remaining corridors where wildlife can move between the Santa Cruz and Diablo/Gabilan ranges. No additional habitat fragmentation should be allowed to occur in or near this corridor. (Really, this area should be protected, enhanced and strengthened as a critical wildlife corridor.)

Related, on **page 3.4-18**, Mountain lion is considered as "Not expected to occur. The region surrounding the project site contains relatively undeveloped open space and riparian corridors that are likely used by mountain lions. However, the project site is disturbed and adjacent to significant sources of human disturbance (e.g., US 101) which would likely prevent mountain lions from using the site more than very rarely." Adding a new source of noise pollution, light pollution and traffic only makes this worse, and leads to an even larger buffer area of wildlife avoidance. With increasing human-caused fragmentation and habitat destruction, animals like Mountain Lion have no choice but to use our degraded landscapes. Meanwhile, just one mile to the north lies that CEHC "essential connectivity area", which is also highlighted in the Santa Clara Valley Greenprint 2014 (<https://www.openspaceauthority.org/our-work-old/conservation-priorities/santa-clara-valley-greenprint.html>) as being of highest conservation value, partly for this very reason.

I16-4

Impact 3.1-2: Damage to Scenic Resources (considered significant and unavoidable) relates to county Policy NCR-8.1: Protect Scenic Corridors.

Comment: This project would indeed add another scar of ugly development to the relatively rural viewshed, which potentially impacts every person who drives down highway 101 and surrounding roads, especially local residents, who also bear the brunt of light and noise pollution and increased traffic.

I16-5

Impact 3.2-1: Convert Lands Designated as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland) to Non-Agricultural Use (significant and unavoidable)

Impact 3.4-1: Result in Disturbance or Loss of Special-Status Plant Species

Impact 3.4-2: Result in Disturbance to or Loss of Special-Status Wildlife Species and Habitat

Comment: Mitigation measures are listed for all three of these impacts. But we cannot, and should not, keep trying to "mitigate" our way out of rampant, unnecessary development. Just do the non-impactful thing in the first place.

I16-6

Section 3.10 Hydrology and Water Quality generally and specifically **Impact 3.10-4: Increase Localized Flooding Risk Because of Changes in Site Drainage** and **Impact 3.17-2: Provision of Sufficient Water Supplies**

Comment: I don't see mention of climate change in the Hydrology and Water Quality section of this EIR at all - that is a very important omission. As we've seen elsewhere, what used to be 100-year floodplains are routinely flooding much more frequently. How will this project impact water quality and resources if there's increased flooding or decreased groundwater supply in the future?

I16-7

Impact 3.16-1: Cause a Substantial Adverse Change in the Significance of a Tribal Cultural Resource (significant and unavoidable)

Comment: Finally, and most importantly, this project should not be permitted because it would further desecrate the Juristac cultural landscape, which has been a most sacred place of the Amah Mutsun Tribal band for thousands of years. The "mitigation" options that are provided miss the point that the landscape, in its integrated, natural entirety, is what's sacred. Thus the dEIR quotes (page 3.6-13) "AMTB has communicated to the County that any development on the project site will cause a significant impact, and that only full avoidance will reduce the impacts to a less-than-significant level."

I16-8

I ask San Benito County to honor the religion, culture, and deep history of the AMTB on the land of Juristac, by refusing this permit, and instead work to protect and return this stolen, sacred land to the Amah Mutsun Tribal Band.

Thank you.

Letter I16**Stacie Wolny**

September 5, 2022

- I16-1 The comment expresses thanks to the County for providing an opportunity to comment on the Draft EIR. This comment does not require a response pursuant to CEQA Guidelines Section 15088(a).
- I16-2 The comment expresses opposition to the project because of its impacts on the sacred landscape of *Juristac*, habitat and wildlife impacts, stress to the hydrology of the area, and the creation of sprawl. The comment also expresses sympathy for the McDowell family.
- The opposition to the project expressed in the comment is noted. The project's proposed land uses are consistent with the site's General Plan land use designation of Commercial Regional and its zoning (C-1 [Commercial Thoroughfare]). Tribal cultural resource impacts of the project are addressed in Section 3.16, "Tribal Cultural Resources," impacts to biological resources are addressed in Section 3.4, "Biological Resources," and hydrologic impacts of the project are addressed in Section 3.10, "Hydrology and Water Quality."
- I16-3 The comment states that the project conflicts with San Benito County General Plan Policy LU-1.5 and creates environmental impacts.
- As identified on Draft EIR page 3.11-5, the project's commercial uses are consistent with General Plan Policies LU-5.2, LU-5.5, LU-5.6, ED-5.3, and ED-5.4, associated with its Commercial Regional designation. Project application materials and the Draft EIR address environmental conditions for development suitability, consistent with General Plan Policies LU-1.8 and LU-1.10. As part of the project, a conditional use permit would be required for the local and regional commercial uses, including the outdoor event area, consistent with County Code Chapter 25.16, Section 25.16.023, applicable to the C-1 District. General Plan Policy LU-1.5 encourages infill development but does not require that all development in the County occur at infill sites.
- I16-4 The comment states that the project conflicts with San Benito County General Plan Policy NCR-1.1 given the project site's location near an identified essential connectivity area and impacts on mountain lions.
- The reader is referred to response to comment O6-3, regarding impacts on mountain lions and responses to comment O6-5 and O6-12, regarding wildlife movement corridors. As identified on Draft EIR page 3.4-37, the retention of the 80 acres of undeveloped area would be consistent with General Plan Policies NCR-2.1, NCR-2.4, and NCR-4.4.
- I16-5 The comment identifies Draft EIR Impact 3.1-2 as a significant and unavoidable impact and states that the project would have an impact on the rural viewshed along US 101. The comment also identifies impacts associated with lighting, noise pollution, and increased traffic.
- The comment is correct that the Draft EIR identifies significant and unavoidable scenic impacts along the US 101 corridor and the JTCL. However, no significant lighting impacts were identified (see Draft EIR pages 3.1-15 and 3.1-16). Traffic noise impacts are addressed in Draft EIR Impact 3.12-3 (see Draft EIR pages 3.12-20 through 3.12-24), whereas increases in traffic (vehicle miles traveled) are addressed in Draft EIR Impact 3.15-2 (see Draft EIR pages 3.15-8 through 3.15-11).
- I16-6 The comment references Draft EIR impacts 3.2-1, 3.4-1, and 3.4-2 and states that the County should stop trying to mitigate its way out of rampant and unnecessary development.
- This comment is noted. Identification of mitigation measures for significant impacts is required for EIRs under CEQA. State CEQA Guidelines Section 15121(a) states:
- An EIR is an informational document which will inform public agency decision makers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project.

The public agency shall consider the information in the EIR along with other information which may be presented to the agency.

I16-7 The comment references Draft EIR Section 3.10, "Hydrology and Water Quality," and Impacts 3.10-4 and 3.17-2. The comment states that the effects of climate change are not addressed in this analysis.

The reader is referred to responses to comments O4-41 and I13-5.

Draft EIR pages 3.8-4 through 3.8-6 provide a summary of the environmental impacts of climate change globally, as well as in California. Project impacts involving increases in GHG emissions associated with global warming are addressed in Impact 3.8-1 (see Draft EIR pages 3.8-8 through 3.8-10). The project's potential to contribute to climate change through increases in GHG emissions would be mitigated by implementing Mitigation Measures 3.8-1a through 3.8-1f.

I16-8 The comment references Draft EIR Impact 3.16-1 and states that the project should not be permitted given the impact on the JTCL and the AMTB. The comment also states that the mitigation provided misses the point that the landscape is what is sacred and that the project permitting should be refused.

The opinion expressed in the comment that the project should not be approved is noted. The comment is correct that Draft EIR Section 3.16, "Tribal Cultural Resources," addresses project impacts on the JTCL associated with the AMTB under Impact 3.16-1. Impact 3.16-1 identifies Mitigation Measures 3.16-1a through 3.16-1d to partially address but not fully mitigate impacts on the JTCL (see Draft EIR pages 3.16-11 through 3.16-13). Draft EIR page 3.16-13 specifically states the impact on the JTCL after mitigation will be significant and unavoidable because development of the project, including its associated traffic, noise, visual obstruction of natural viewshed, and amusement-oriented atmosphere would substantially alter the feeling and setting of the project site, a cornerstone feature of the JTCL.

The comment identifies no additional mitigation to address this impact. The County decision makers will weigh the project's significant and unavoidable impacts identified in the EIR against its benefits in their overall consideration of the proposed project, as required by CEQA Guidelines section 15093. The comment is included in the record for consideration by the decision makers as part of the project approval process.

<p>Letter I17</p>

From: [Lizabeth Morell](#)
Cc: [Abraham Prado](#)
Subject: Re: Comment on draft EIR for Betabel Commercial Development Conditional Use Permit
Date: Tuesday, September 6, 2022 5:03:51 PM
Attachments: [sigima2](#)

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Abraham Prado,

I request the Betabel development proposal be denied for the following significant reasons. and most of all because development should go to local businesses not to a large venture like this.. It will prevent people from coming to San Juan Bautista and other local areas which should be encouraged for local towns and businesses to flourish not freeway stops. I17-1

In Chapter 8, it is made very clear that any form of this project (Mitigations 1,2,3 & 4) would go against the wishes and consultations of the Amah Mutsun tribe, and would be a direct act of violence towards Amah Mutsun culture and history. I17-2

From records of tribal consultation, and from the description in Chapter 8, it appears this land has provided immense value to Amah Mutsun people and their culture for 10,000s of years, and given that the Amah Mutsun Tribal Band has communicated how the conservation of this cultural resource is vitally important to their present efforts towards cultural renewal, it seems appropriate that the Juristac Tribal Cultural Landscape be considered for the Registry of Historical Places, either in local registry or CRHR. Eligibility would be derived from Criterion 4: "Has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California or the nation." I17-3

I strongly urge the Planning Commission to halt all development and planning procedures on this site until the San Benito County Historical Commission *in collaboration and consultation with the Amah Mutsun Tribal Band* asks for CRHR designation of this land, and hears back with a confirmation or denial of this request. I17-4

Regardless of CRHR designation, the consultation and advice of the Amah Mutsun Tribal Band must be taken as a directive. The AMTB has clearly voiced opposition to any development on this land whatsoever, as all mitigation measures and alternatives would produce significant and unavoidable/irreversible impacts on the cultural resources. I17-5

Therefore, the "No Project" Alternative should be selected. Deny the proposal for development on this land. I17-6

Secondly, the Pajaro River has been identified in previous years as one of the most polluted rivers in America, and was identified as the #1 Most Endangered River in the USA by American Rivers (See attached images of their 2006 report documenting this.). For such a sensitive watershed, *any* additional stormwater could tip the river into dangerous levels of contamination once again. Would San Benito County be proud of the Pajaro River being re-classified in the top 10 Most Endangered Rivers in the US by American Rivers? I think this

is a reason to consider the runoff and soil disturbance impacts listed in Chapter 3 to be at least significantly impactful, and unavoidable. This is another reason to choose the "No Project" alternative - deny this proposal.

I17-6
cont.

To reiterate reasons not to allow this development to occur:

- This would desecrate a sacred landscape to the Indignous community. A violation of human rights, a common practice for our government, that must end.
- There is no mitigating the destruction of a sacred landscape.
- Aesthetics, and scenic highway (resource)- this area is unique, a sacred sentinel area and is the scenic entrance to the County. Do we want a natural entrance to the County, or develop it, to look like another strip mall?
- This is an ecologically sensitive area to an extreme degree, (see attached documents), let's not risk tipping the scale towards the side of extreme contamination and ecological dysfunction. Let's protect it and improve it instead.
- Instead of aesthetically jarring tourist trap and gas station, let's maintain a peaceful and beautiful tone for those who are entering the County.

I17-7

Thank you for receiving and reading public comments on this project proposal. And thank you for your hard work in service to the communities of San Benito.

Respectfully,
Elizabeth Morell

--

..May we find the silver lining of this time

Lizabeth K. Morell, REALTOR

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Letter I17**Lizabeth Morell**

September 6, 2022

- I17-1 The comment recommends that the project should be denied because of potential impacts on local businesses in the County, such as those in San Juan Bautista.
- The opinion expressed in the comment is noted. This comment addresses economic issues. As identified in State CEQA Guidelines Section 15131(a), economic effects of a project shall not be treated as significant effects on the environment. Therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.
- I17-2 The comment refers to Chapter 8 and mitigations 1, 2, 3, and 4 and states that this project would go against the wishes and consultations of the AMTB. The comment further states that the project would be a direct act of violence toward the AMTB culture and history.
- It is unclear what information and mitigation the comment is referring to in the Draft EIR. Chapter 8 of the Draft EIR is the "References" chapter and identifies no mitigation measures. It appears that the comment is referring to Draft EIR Section 3.16, "Tribal Cultural Resources," and Mitigation Measures 3.16-1a through 3.16-1d. The Draft EIR does conclude that this impact would be significant and unavoidable because development of the project, including its associated traffic, noise, visual obstruction of natural viewsheds, and amusement-oriented atmosphere, would substantially alter the feeling and setting of the project site, a cornerstone feature of the JTCL (see Draft EIR page 3.16-13). As documented on Draft EIR page 3.16-7, the County and the AMTB have been in consultation regarding the parameters of potential additional measures to avoid or mitigate significant effects of the project with regard to tribal cultural resources.
- I17-3 The comment states that based on records of tribal consultation and information in Chapter 8, the JTCL should be considered eligible for the "Registry of Historical Places," either in the local registry or in the California Register of Historical Resources (CRHR).
- As described on Draft EIR page 3.16-8, the JTCL has been evaluated against CRHR significance criteria and recommended eligible under Criteria 1, 2, 3, and 4. The JTCL is recommended eligible for the CRHR under Criterion 1 for its association with several important events in the AMTB tribal history. It is recommended eligible for the CRHR under Criterion 2 for its association with several important historic-era Mutsun and precontact Ohlone people, ancestral figures, and spirits. Under Criterion 3, the JTCL is recommended eligible for its association with the prominent shamanic and doctoring traditions of the Mutsun and the AMTB. Finally, under Criterion 4, it is recommended eligible for its potential to be used to teach tribal history, culture, and ecology to the AMTB members. The JTCL retains the integrity of location, setting, association, and feeling; the integrity of design, materials, and workmanship is not a contributing aspect.
- I17-4 The comment requests that all development and planning procedures for the project be halted until the San Benito County Historical Commission, in collaboration and consultation with the AMTB, asks for CRHR designation of this land.
- The recommendation expressed in the comment is noted. As identified in response to comment I17-3, the JTCL (which includes the project site) has been recommended eligible for CRHR designation and thus is considered a tribal cultural resource of significance for the purposes of CEQA.
- I17-5 The comment expresses support for the No Project Alternative. It is unclear which no project alternative the comment is referencing. Two no project alternatives are evaluated in Draft EIR Chapter 6, "Alternatives":
- ▶ Alternative 1: No Project–No Development Alternative assumes no development of the project site. The project site would remain in its current condition.

- ▶ Alternative 2: No Project – Orchard and Flea Market Alternative would involve not moving forward with the proposed project and the reestablishment of orchard agricultural uses on the site with a flea market operation along the site's frontage with US 101 as allowed under County Use Permit No. 1006-08.

I17-6

The comment states that the Pajaro River was identified in previous years as one of the most polluted rivers in America and was identified as the #1 Most Endangered River in the United States by American Rivers. A report documenting this circumstance (see Appendix A – America's Most Endangered Rivers of 2006 [American Rivers 2006]) was submitted with the comment letter. The comment states that the stormwater impacts of the project would further contaminate the river, resulting in an unavoidable impact.

Although the Pajaro River is designated as an impaired water for sediment, metals, pathogens, pesticides, turbidity, and salinity (see Draft EIR page 3.10-1), the America's Most Endangered Rivers of 2006 report does not identify the Pajaro River as the most polluted river. The report states that the primary issue with the Pajaro River is related to flood control (American Rivers 2006: 11 and 12). The disturbance associated with development of the project site would be required to comply with the statewide NPDES Construction Stormwater General Permit (Order No. 2010-0014 DWQ). This permit requires the development of a site-specific stormwater pollution prevention plan (SWPPP) that would have to comply with established regulatory standards and would include site-specific best management practices (BMPs) that reduce the potential for impacts on water quality resulting from stormwater runoff. Additionally, a hazardous materials spill response plan is a required component of the SWPPP and would reduce the potential that construction-related hazardous material spills would directly or indirectly affect water quality. The SWPPP would be prepared by a Qualified SWPPP Practitioner and would be designed to meet the stormwater control needs of the project. The project operation must also maintain preproject hydrology and incorporate proper pollutant source controls, minimize pollutant exposure outdoors, and treat stormwater runoff through proper BMPs when source control or exposure protection are insufficient for reducing runoff pollutant loads. In accordance with Central Coast RWQCB compliance guidelines, development at the project site would be required to incorporate BMPs and LID stormwater management principles. These would include on-site detention systems and other suitable stormwater pollutant control BMPs, such as conservation of natural areas and construction/maintenance of swales and infiltration basins, to reduce the discharge of pollutants into stormwater (Draft EIR pages 3.10-10 through 3.10-12).

Lastly, implementation of Draft EIR Mitigation Measure 3.10-4 would ensure that the final design of the project would not alter the floodplain conditions in such a way that would result in off-site floodplain impacts. The retention, grading, and other measures associated with Mitigation Measure 3.10-4 are consistent with the requirements of General Plan Policies LU-1.8, LU-1.10, and HS-2.1 and County Code of Ordinances Chapter 23.31 (see Draft EIR pages 3.10-13 and 3.10-14).

I17-7

The comment summarizes concerns related to tribal cultural resource impacts, scenic corridor impacts, and impacts on the Pajaro River.

The reader is referred to responses to comments I17-1 through I17-6. The County decision makers will consider these comments in their overall consideration of the proposed project.

**Letter
I18**

September 6, 2022

San Benito County Resource Management Agency
Attn: Abraham Prado
2301 Technology Parkway
Hollister, California 95023

Re: Betabel Commercial Development Use Permit EIR,
San Benito County

Dear San Benito County Resource Management Agency,

I am writing to you regarding the proposed Betabel Commercial Development along highway 101 in San Benito County, and its potential impact on the mountain lion population in the Santa Cruz Mountains. I am a professor of wildlife ecology at the University of California, Santa Cruz and have been studying mountain lions in this area for 15 years. I have reviewed the draft EIR, as well as all 25+ peer reviewed publication on mountain lions in the area (available at wildlife.ucsc.edu/publications), and conducted a site visit.

I18-1

The proposed Project is sited in a corridor connecting the Santa Cruz Mountains to the Gabilan mountains (Penrod et al. 2013). Populations of mountain lions in both ranges are now provisionally listed as a state threatened species in California. Gustafson et al (2018) conducted a statewide genetics analysis of mountain lions and found them to be dangerously low in genetic diversity. The study found that mountain lions in the Santa Cruz Mountains have an effective population size of only 16 individuals whereas 50-500 individuals are required to avoid extinction (Soule et al 1986).

The draft EIR does not adequately address potential impacts to mountain lions. This is a serious omission. Protecting and restoring the corridor between the Santa Cruz Mountains and the Gabilan range represents the best and possibly only opportunity to restore genetic connectivity and save mountain lions from eventual extinction in the Santa Cruz Mountains. To this end, Caltrans is in the early stages of scoping out possible construction of a wildlife bridge or tunnel to allow for safe movement of animals across the freeway in this region. Importantly, suitable habitat on both sides of the freeway will be necessary for the corridor to function appropriately.

I18-2

Given the Project's location in an important mountain lion corridor, the presence of increased vehicle traffic, people, lights and noise at this location, combined with proposed developments elsewhere in the corridor are likely to impede the ability of mountain lions to safely move across the freeway between the Gabilan and Santa Cruz Mountain ranges.

San Benito County, where this project is based, is in the midst of proposing numerous developments (including this one) along the stretch of Highway 101 that intersects this important wildlife corridor, including the Searl road and Strada Verde developments, as well as

I18-3

a mine on the Sargent ranch property. Without considering the impact of this Project in concert with other proposed (or soon to be proposed) developments on this important wildlife corridor, there is a substantial risk that the ability of animals to traverse this area will be interrupted for a long time, causing or contributing to the extinction of mountain lions in the Santa Cruz Mountains and possibly other species as well over the long term.

I18-3
cont.

In sum, development of the Betabel site at this location, without considering it together with other proposed developments, is likely to have significant adverse impacts on mountain lion populations in this area of San Benito County.

I18-4

Sincerely,



Chris Wilmers

Attachments

Letter I18 Chris Wilmers (Comment Letter Attachments Provided in Appendix A)

September 6, 2022

- I18-1 This comment provides background information about the commenter. The comment does not raise any environmental issues related to the adequacy of the EIR analysis; therefore, no further response is required. The comment is included in the record for consideration by the decision makers as part of the project approval process.
- I18-2 This comment provides background about wildlife corridors that overlap with the project site and about mountain lion populations in California and in the Santa Cruz Mountains. It also states that the Draft EIR did not adequately address potential impacts on mountain lions, increased vehicle traffic, human activity, light, and noise, which may impede mountain lion movement. The reader is referred to responses to comments O6-3, O6-5, and O6-12.
- I18-3 This comment describes other development projects in the vicinity of the project site and states that project implementation in combination with these other projects could result in adverse effects on wildlife corridors and mountain lions. The reader is referred to responses to comments O6-3, O6-5, and O6-12.
- I18-4 This comment states that project implementation is likely to have a significant adverse effect on mountain lion populations. The reader is referred to response to comment O6-3.

<p>Letter 119</p>

From: [Benny Drescher](#)
To: [Abraham Prado](#)
Subject: Comment on draft EIR for Betabel Commercial Development Conditional Use Permit
Date: Tuesday, September 6, 2022 3:59:01 PM
Attachments: [pajaro river 2006 american rivers 3.png](#)
[pajaro river 2006 american rivers.png](#)
[pajaro river 2006 american rivers 2.png](#)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Abraham Prado,

I request the Betabel development proposal be denied for the following significant reasons. I 119-1

In Chapter 8, it is made very clear that any form of this project (Mitigations 1,2,3 & 4) would go against the wishes and consultations of the Amah Mutsun tribe, and would be a direct act of violence towards Amah Mutsun culture and history. I 119-2

From records of tribal consultation, and from the description in Chapter 8, it appears this land has provided immense value to Amah Mutsun people and their culture for 10,000s of years, and given that the Amah Mutsun Tribal Band has communicated how the conservation of this cultural resource is vitally important to their present efforts towards cultural renewal, it seems appropriate that the Juristac Tribal Cultural Landscape be considered for the Registry of Historical Places, either in local registry or CRHR. Eligibility would be derived from Criterion 4: "Has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California or the nation." I 119-3

I strongly urge the Planning Commission to halt all development and planning procedures on this site until the San Benito County Historical Commission *in collaboration and consultation with the Amah Mutsun Tribal Band* asks for CRHR designation of this land, and hears back with a confirmation or denial of this request. I 119-4

Regardless of CRHR designation, the consultation and advice of the Amah Mutsun Tribal Band must be taken as a directive. The AMTB has clearly voiced opposition to any development on this land whatsoever, as all mitigation measures and alternatives would produce significant and unavoidable/irreversible impacts on the cultural resources. I 119-5

Therefore, the "No Project" Alternative should be selected. Deny the proposal for development on this land. I 119-5

Secondly, the Pajaro River has been identified in previous years as one of the most polluted rivers in America, and was identified as the #1 Most Endangered River in the USA by American Rivers (See attached images of their 2006 report documenting this.). For such a sensitive watershed, *any* additional stormwater could tip the river into dangerous levels of contamination once again. Would San Benito County be proud of the Pajaro River being re-classified in the top 10 Most Endangered Rivers in the US by American Rivers? I think this is a reason to consider the runoff and soil disturbance impacts listed in Chapter 3 to be at least significantly impactful, and unavoidable. This is another reason to choose the "No Project" alternative - deny this proposal. I 119-6

To reiterate reasons not to allow this development to occur:

- This would desecrate a sacred landscape to the Indigenous community. A violation of human rights, a common practice for our government, that must end.
- There is no mitigating the destruction of a sacred landscape.
- Aesthetics, and scenic highway (resource)- this area is unique, a sacred sentinel area and is the scenic entrance to the County. Do we want a natural entrance to the County, or develop it, to look like another strip mall?
- This is an ecologically sensitive area to an extreme degree, (see attached documents), let's not risk tipping the scale towards the side of extreme contamination and ecological dysfunction. Let's protect it and improve it instead.
- Instead of aesthetically jarring tourist trap and gas station, let's maintain a peaceful and beautiful tone for those who are entering the County.

I19-7

Thank you for receiving and reading public comments on this project proposal. And thank you for your hard work in service to the communities of San Benito.

Respectfully,
Benny Drescher

Letter I19 Benny Drescher (Comment Letter Attachments Provided in Appendix A)

September 6, 2022

- I19-1 The comment states that the project should be denied based on the reasons presented in the comment letter. The opinion of the project expressed in the comment is noted and is included in the record for consideration by the decision makers as part of the project approval process. Comments provided herein are identical to the comments provided in Comment Letter I17.
- I19-2 The comment refers to Chapter 8 and mitigations 1, 2, 3, and 4 and states that this project would go against the wishes and consultations of the AMTB. The comment further states that the project would be a direct act of violence toward the AMTB culture and history.
- The reader is referred to response to comment I17-2.
- I19-3 The comment states that based on records of tribal consultation and information in Chapter 8, the JTCL should be considered eligible for the "Registry of Historical Places," either in the local registry or in the CRHR.
- The reader is referred to response to comment I17-3.
- I19-4 The comment requests that all development and planning procedures for the project be halted until the San Benito County Historical Commission, in collaboration and consultation with the AMTB, asks for CRHR designation of this land.
- The reader is referred to response to comment I17-4.
- I19-5 The comment expresses support for the No Project Alternative. The reader is referred to response to comment I17-5.
- I19-6 The comment states that the Pajaro River was identified in previous years as one of the most polluted rivers in America and was identified as the #1 Most Endangered River in the United States by American Rivers. A report documenting this circumstance (see Appendix A – America's Most Endangered Rivers of 2006 [American Rivers 2006]) was submitted with the comment letter. The comment states that the stormwater impacts of the project would further contaminate the river, resulting in an unavoidable impact.
- The reader is referred to response to comment I17-6.
- I19-7 The comment summarizes concerns related to tribal cultural resource impacts, scenic corridor impacts, and impacts on the Pajaro River.
- The reader is referred to responses to comments I17-1 through I17-6.

**Letter
I20**

From: [Paul Drescher](#)
To: [Abraham Prado](#)
Subject: Betabel development & cultural & archeological disturbance mitigation
Date: Tuesday, September 6, 2022 3:53:45 PM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Mr. Prado,

I appreciate that you and your agency have reached out to the Amah Mutsun Tribal Band and solicited their feedback regarding the proposed Betabel development project, and offered cultural resource disturbance mitigation.

Juristac is the ancestral spiritual gathering place for the indigenous peoples of our area. Its significance in native cultural history cannot be overstated. Given the extensive trauma and death inflicted on the native peoples of this area during and after the Mission period I feel it is paramount that the wishes and sensitivities of the Amah Mutsun and other native tribes must be respected. We cannot fix all the wrongs of the past but we can acknowledge that brutal history by overweighting social and cultural justice issues in considering development projects of this sort that infringe on sacred indigenous lands. Therefore I ask that you do everything possible in deference to the wishes of the Amah Mutsun Tribal Band.

While an outdoor movie theater sounds great, if the tribe says it is inconsistent with the spiritual heritage of the area then it should be rejected. It is the tribe's intention to restore Juristac as a spiritual and cultural gathering place and learning center. Your legacy can be as someone who led the way in acknowledging the crimes of the past, dignified the memory of lost indigenous people and culture, and reinstated the spiritual sensibilities of the native people who lived in harmony with nature here for thousands of years before Western colonization.

Please do not miss this opportunity to advocate for cultural and social justice as it pertains to the indigenous people of our area.

Yours truly,

Paul Drescher
429 Cayuga St.
Santa Cruz, CA 95062

Mobile (831) 239 -5208

I20-1

Letter I20 Paul Drescher

September 6, 2022

I20-1

The comment expresses concerns regarding the impacts of the project on tribal cultural resources associated with the AMTB and requests that the County address the wishes of the AMTB.

Draft EIR Section 3.16, "Tribal Cultural Resources," addresses project impacts on the JTCL associated with the AMTB under Impact 3.16-1. Impact 3.16-1 identifies Mitigation Measures 3.16-1a through 3.16-1d to partially address but not fully mitigate impacts on the JTCL (Draft EIR pages 3.16-11 through 3.16-13). The Draft EIR does conclude that this impact would be significant and unavoidable because development of the project, including its associated traffic, noise, visual obstruction of natural viewsheds, and amusement-oriented atmosphere, would substantially alter the feeling and setting of the project site, a cornerstone feature of the JTCL (see Draft EIR page 3.16-13). As documented on Draft EIR page 3.16-7, the County and the AMTB have been in consultation regarding the parameters of potential additional measures to avoid or mitigate significant effects of the project with regard to tribal cultural resources.

3 REVISIONS TO THE DRAFT EIR

This chapter presents specific text changes made to the Draft EIR since its publication and public review. The changes are presented in the order in which they appear in the original Draft EIR and are identified by the Draft EIR page number. Text deletions are shown in ~~strike through~~, and text additions are shown in underline.

The information contained within this chapter clarifies and expands on information in the Draft EIR and does not constitute “significant new information” requiring recirculation. (See the Master Response regarding recirculation; see also Public Resources Code Section 21092.1; CEQA Guidelines Section 15088.5.)

Revisions to the Executive Summary

Revisions to the Executive Summary consist of edits to mitigation measures as detailed below.

Revisions to the Chapter 2, “Project Description”

The following text edit has been made to the second paragraph under the heading “Water” on page 2.20 of the Draft EIR:

An 80,000-gallon storage tank is proposed west of the restaurant, to provide a source of water for fire sprinklers and hydrants for the gas station, convenience store, restaurant and existing farmstand. This storage tank will have an emergency generator with a diesel pump. A 32,000-gallon domestic water tank (to provide potable water) would also be installed just to the west. The proposed project would construct an additional 270,000-gallon water storage tank, located west of the outdoor event center, to provide a source of water for fire sprinklers and hydrants for the motel and the outdoor event area.

Revisions to the Section 3.4, “Biological Resources”

The following text edit has been made to Table 3.4-1 on page 3.4-5 of the Draft EIR:

Table 3.4-1 Habitat Types on the Project Site

Habitat Types	Project Site (acres)	Disturbance Area (acres)
Ruderal Grassland	79.3	22.4
Developed	11.6	9.4
Drainage Ditch	0.14	0.05
Riparian Woodland	24.9	0.2

Source: Denise Duffy & Associates 2020; compiled by Ascent Environmental in 2022.

The following text edit has been made on page 3.4-5 of the Draft EIR:

Ruderal Grassland

Ruderal grassland areas are those areas which have been subject to historic and ongoing disturbance by human activities and are dominated by nonnative and/or invasive plant species or devoid of vegetation. Ruderal grassland areas on the project site include areas that have been farmed and disked regularly since at least 1993, margins of agricultural areas dominated by nonnative plants, and existing dirt roads (Figure 3.4-1; Table 3.4-1; Denise Duffy & Associates 2020). At the time of the May 16, 2022, reconnaissance-level survey for biological resources, the southern half of the project site had been recently disked and was mostly devoid of vegetation. The northern half of the project site had not been recently disked and contained dense nonnative grasses and forbs. Ruderal grassland on the project site is dominated by poison hemlock (*Conium maculatum*), black mustard (*Brassica nigra*), milk thistle (*Silybum marianum*), bull thistle (*Cirsium vulgare*), bristly ox-tongue (*Helminthotheca echioides*), wild radish (*Raphanus* spp.), and slender wild oat (*Avena barbata*). The Manual of California Vegetation classifications for this habitat type are poison hemlock or fennel patches and upland mustards.

The following text edit has been made on page 3.4-7 of the Draft EIR:

Riparian Woodland

The project site contains approximately 25 acres of riparian woodland, identified as arroyo willow riparian habitat (or arroyo willow thickets), approximately 0.2 acre of which is within the disturbance area (Table 3.4-1; Figure 3.4-1; Denise Duffy & Associates 2020). A larger area of riparian woodland is present adjacent to but outside of the project site associated with the Pajaro and San Benito Rivers. Dominant canopy species in this habitat are arroyo willow (*Salix lasiolepis*), box elder (*Acer negundo*), Fremont cottonwood (*Populus fremontii*), and blue elderberry (*Sambucus nigra caerulea*). Other tree species include northern California black walnut (*Juglans hindsii*) and buckeye (*Aesculus californica*). The edges of the riparian woodland habitat contain shrubby species including poison hemlock, coyote brush (*Baccharis pilularis*), and willow (*Salix* spp.). Native herbaceous understory species include mugwort (*Artemisia douglasiana*), California blackberry (*Rubus ursinus*), stinging nettle (*Hesperocnide tenella*), and California man-root (*Marah fabacea*). Nonnative species present in this habitat include giant reed (*Arundo donax*) and Himalayan blackberry (*Rubus armeniacus*). The riparian woodland habitat adjacent to the Pajaro and San Benito Rivers has a dense understory with copious downed woody debris. The riparian woodland corridor that bisects the project site and that is not adjacent to the Pajaro and San Benito Rivers is less dense than the woodland adjacent to the rivers but composed of the same species.

The following text edits and additions have been applied to Table 3.4-3 beginning on page 3.4-10 of the Draft EIR:

Table 3.4-3 Special-Status Wildlife Species Known to Occur in the Vicinity of the Project Site and Their Potential for Occurrence on the Project Site

Species	Listing Status ¹ Federal	Listing Status ¹ State	Habitat	Potential for Occurrence
Amphibians and Reptiles				
Blunt-nosed leopard lizard <i>Gambelia sila</i>	FE	SE FP	Resident of sparsely vegetated alkali and desert scrub habitats, in areas of low topographic relief. Seeks cover in mammal burrows, under shrubs or structures such as fence posts; they do not excavate their own burrows.	Not expected to occur. The project site is outside of the current range of this species.
California giant salamander <i>Dicamptodon ensatus</i>	–	SSC	Known from wet coastal forests near streams and seeps from Mendocino County south to Monterey County and east to Napa County. Aquatic larvae found in cold, clear streams, occasionally in lakes and ponds. Adults known from wet forests under rocks and logs near streams and lakes.	Not expected to occur. The project site is outside of the current range of this species and there are no nearby documented occurrences.
California red-legged frog <i>Rana draytonii</i>	FT	SSC	Lowlands and foothills in or near permanent sources of deep water with dense, shrubby or emergent riparian vegetation. Requires 11-20 weeks of permanent water for larval development. Must have access to estivation habitat.	May occur. There are many documented occurrences of California red-legged frog in the vicinity of the project site, and the nearest occurrence is approximately 0.4 mile northwest of the project site (CNDDDB 2022). In total, there are approximately 13 California red-legged frog occurrences within 2 miles of the project site (including occurrences in the Pajaro River), which is the typical dispersal distance for the species (CNDDDB 2022).

Species	Listing Status ¹ Federal	Listing Status ¹ State	Habitat	Potential for Occurrence
California tiger salamander – central California DPS <i>Ambystoma californiense</i> pop. 1	FT	ST	Lives in vacant or mammal-occupied burrows throughout most of the year; in grassland, savanna, or open woodland habitats. Need underground refuges, especially ground squirrel burrows, and vernal pools or other seasonal water sources for breeding.	May occur. There are several documented occurrences of California tiger salamander in the vicinity of the project site, and the nearest occurrence is approximately 0.75 mile southwest of the project site (CNDDDB 2022). Small rodent burrows suitable for California tiger salamanders are present throughout the un-disked ruderal grassland habitat on the project site.
Coast horned lizard <i>Phrynosoma blainvillii</i>	–	SSC	Frequents a wide variety of habitats, most common in lowlands along sandy washes with scattered low bushes. Open areas for sunning, bushes for cover, patches of loose soil for burial, and abundant supply of ants and other insects.	May occur. The nearest documented occurrence of coast horned lizard is approximately 15 miles northeast of the project site (CNDDDB 2022). However, the project site is located within the current range of this species. The project site contains sandy soils and sparse vegetation (i.e., un-disked ruderal grassland) that may provide habitat suitable for coast horned lizard.
Coast Range newt <i>Taricha torosa</i>	–	SSC	Coastal drainages from Mendocino County to San Diego County. Lives in terrestrial habitats and will migrate over 0.5 mile to breed in ponds, reservoirs and slow-moving streams.	Not expected to occur. The project site is outside of the current range of this species.
Foothill yellow-legged frog <i>Rana boylei</i>	–	SE SSC	Partly-shaded, shallow streams and riffles with a rocky substrate in a variety of habitats. Need at least some cobble-sized substrate for egg-laying. Need at least 15 weeks to attain metamorphosis.	May occur adjacent to the site. The project site is within the range of foothill yellow-legged frog, and habitat suitable for the species is present in the segment of the Pajaro and Benito Rivers adjacent to the project site.
Northern California legless lizard <i>Anniella pulchra</i>		SSC	Sandy or loose loamy soils under sparse vegetation. Soil moisture is essential. They prefer soils with a high moisture content.	May occur. The nearest documented occurrence of northern California legless lizard is approximately 10 miles southwest of the project site (CNDDDB 2022). However, the project site is located within the current range of this species. The project site contains sandy soils and sparse vegetation (i.e., un-disked ruderal grassland) that may provide habitat suitable for northern California legless lizard.
San Francisco gartersnake <i>Thamnophis sirtalis tetrataenia</i>	FE	SE FP	Vicinity of freshwater marshes, ponds and slow-moving streams in San Mateo County and extreme northern Santa Cruz County. Prefers dense cover and water depths of at least one foot. Upland areas near water are also very important.	Not expected to occur. The project site is outside of the current range of this species.

Species	Listing Status ¹ Federal	Listing Status ¹ State	Habitat	Potential for Occurrence
San Joaquin coachwhip <i>Masticophis flagellum ruddocki</i>	–	SSC	Open, dry habitats with little or no tree cover. Found in valley grassland and saltbush scrub in the San Joaquin Valley. Needs mammal burrows for refuge and oviposition sites.	May occur. The nearest documented occurrence of San Joaquin coachwhip is approximately 8 miles southeast of the project site (CNDDDB 2022). However, the project site is located within the current range of this species. The project site contains un-disked ruderal grassland habitat with many rodent burrows and sandy soils that may provide habitat suitable for San Joaquin coachwhip.
Santa Cruz black salamander <i>Aneides niger</i>	–	SSC	Mixed deciduous and coniferous woodlands and coastal grasslands in San Mateo, Santa Cruz, and Santa Clara counties. Adults found under rocks, talus, and damp woody debris.	Not expected to occur. The project site is outside of the current range of this species.
Santa Cruz long-toed salamander <i>Ambystoma macrodactylum croceum</i>	FE	SE FP	Wet meadows near sea level in a few restricted locales in Santa Cruz and Monterey counties. Aquatic larvae prefer shallow (<12 inches) water, using clumps of vegetation or debris for cover. Adults use mammal burrows.	Not expected to occur. The project site is outside of the current range of this species and there are no nearby documented occurrences.
Western pond turtle <i>Actinemys marmorata</i>	–	SSC	Ponds, marshes, rivers, streams and irrigation ditches, usually with aquatic vegetation, below 6,000 ft elevation. Needs basking sites and suitable (sandy banks or grassy open fields) upland habitat up to 0.3 mile (0.5 km) from water for egg-laying.	May occur. The segment of the Pajaro and San Benito Rivers adjacent to the project site provides aquatic habitat suitable for western pond turtle, and grassland areas within approximately 0.3 mile of these rivers may provide upland habitat suitable for the species.
Western spadefoot <i>Spea hammondi</i>	–	SSC	Occurs primarily in grassland habitats but can be found in valley-foothill hardwood woodlands. Vernal pools are essential for breeding and egg-laying.	Not expected to occur. Vernal pool or seasonal wetland habitat suitable for western spadefoot is not present on the project site.
Birds				
Bald eagle <i>Haliaeetus leucocephalus</i>	FD	SE FP	Ocean shore, lake margins, and rivers for both nesting and wintering. Most nests within 1 mile of water. Nests in large, old-growth, or dominant live tree with open branches, especially ponderosa pine. Roosts communally in winter.	Not expected to occur. Nesting habitat suitable for bald eagles (i.e., large conifer trees adjacent to open water) is not present on the project site.
Bank swallow <i>Riparia</i>	–	ST	Colonial nester; nests primarily in riparian and other lowland habitats west of the desert. Requires vertical banks/cliffs with fine-textured/sandy soils near streams, rivers, lakes, ocean to dig nesting hole.	Not expected to occur. There is one historic (1931) occurrence of nesting bank swallows approximately 0.2 mile west of the project site, associated with the bank of a railroad cut (CNDDDB 2022). The project site otherwise does not contain nesting habitat suitable for bank swallows (i.e., banks, cliffs).

Species	Listing Status ¹ Federal	Listing Status ¹ State	Habitat	Potential for Occurrence
Burrowing owl <i>Athene cunicularia</i>	–	SSC	Open, dry annual or perennial grasslands, deserts and scrublands characterized by low-growing vegetation. Subterranean nester, dependent upon burrowing mammals, most notably, the California ground squirrel.	May occur. The nearest documented occurrence of nesting burrowing owls is approximately 1 mile east of the project site (CNDDDB 2022). Ruderal grassland habitat on the project site may provide habitat potentially suitable for burrowing owls.
California (Ridgway's) clapper rail <i>Rallus obsoletus</i>	FE	SE FP	Salt-water and brackish marshes traversed by tidal sloughs in the vicinity of San Francisco Bay. Associated with abundant growths of pickleweed but feeds away from cover on invertebrates from mud-bottomed sloughs.	Not expected to occur. The project site is outside of the current range of this species.
California brown pelican <i>Pelecanus occidentalis californicus</i>	FD	SD FP	Colonial nester on coastal islands just outside the surf line. Nests on coastal islands of small to moderate size which afford immunity from attack by ground-dwelling predators. Roosts communally.	Not expected to occur. The project site is outside of the current range of this species.
California condor <i>Gymnogyps californianus</i>	FE	SE FP	Require vast expanses of open savannah, grasslands, and foothill chaparral in mountain ranges of moderate altitude. Deep canyons containing clefts in the rocky walls provide nesting sites. Forages up to 100 miles from roost/nest.	Not expected to occur. The project site is outside of the current range of this species.
Golden eagle <i>Aquila chrysaetos</i>	–	FP	Rolling foothills, mountain areas, sage-juniper flats, and desert. Cliff-walled canyons provide nesting habitat in most parts of range; also, large trees in open areas.	May occur. While the project site does not contain nesting habitat suitable for golden eagles (i.e., large trees in open areas), the species may forage on the project site. One juvenile golden eagle was observed soaring over the project site during the reconnaissance-level survey for biological resources on May 16, 2022. <u>Additionally, nesting habitat potentially suitable for golden eagles may be present within approximately 1 mile of the project site.</u>
Grasshopper sparrow <i>Ammodramus savannarum</i>	=	<u>SCC</u>	<u>Dense grasslands on rolling hills, in lowland plains, in valleys, and on hillsides on lower mountain slopes. Favors native grasslands with a mix of grasses, forbs, and scattered shrubs. Loosely colonial when nesting.</u>	<u>May occur. There are several nearby observations of grasshopper sparrows west and north of the project site (eBird 2022). Although grassland habitat on the project site does not provide nesting habitat suitable for this species, grasshopper sparrows may forage on the project site periodically or may nest adjacent to the project site.</u>
Least Bell's vireo <i>Vireo bellii pusillus</i>	FE	SE	Summer resident of Southern California in low riparian in vicinity of water or in dry river bottoms; below 2,000 feet. Nests placed along margins of bushes or on twigs projecting into pathways, usually willow, <i>Baccharis</i> , mesquite.	Not expected to occur. There is one historic (1932) documented occurrence of least Bell's vireo within approximately 1.6 miles of the project site (CNDDDB 2022). However, the current range of this species does not include the project site.

Species	Listing Status ¹ Federal	Listing Status ¹ State	Habitat	Potential for Occurrence
Loggerhead shrike <i>Lanius ludovicianus</i>	–	SSC	Broken woodlands, savannah, pinyon-juniper, Joshua tree, and riparian woodlands, desert oases, scrub and washes. Prefers open country for hunting, with perches for scanning, and fairly dense shrubs and brush for nesting.	May occur. The riparian woodland habitat and associated shrubs (e.g., coyote brush) on and adjacent to the project site may contain nesting habitat suitable for loggerhead shrike.
Marbled murrelet <i>Brachyramphus marmoratus</i>	FT	SE	Feeds near-shore; nests inland along coast from Eureka to Oregon border and from Half Moon Bay to Santa Cruz. Nests in old-growth redwood-dominated forests, up to six miles inland, often in Douglas-fir.	Not expected to occur. The project site is outside of the current breeding range of this species.
Northern harrier <i>Circus hudsonius</i>	–	SCC	Nests and forages in grasslands, from salt grass in desert sink to mountain cienagas. Nests on ground in shrubby vegetation, usually at marsh edge; nest built of a large mound of sticks in wet areas.	May occur. Habitat potentially suitable for northern harrier is present within shrubby vegetation in the riparian woodland habitat on and adjacent to the project site.
Southwestern willow flycatcher <i>Empidonax traillii eximius</i>	FE	SE	Riparian woodlands in Southern California.	Not expected to occur. The project site is outside of the current range of this species.
Swainson's hawk <i>Buteo swainsoni</i>	–	ST	Breeds in grasslands with scattered trees, juniper-sage flats, riparian areas, savannahs, and agricultural or ranch lands with groves or lines of trees. Requires adjacent suitable foraging areas such as grasslands, or alfalfa or grain fields supporting rodent populations.	Not expected to occur. The project site is outside of the current range of this species.
Tricolored blackbird <i>Agelaius tricolor</i>	–	ST SSC	Highly colonial species, most numerous in Central Valley and vicinity. Largely endemic to California. Requires open water, protected nesting substrate, and foraging area with insect prey within a few kilometers of the colony.	May occur. There are several documented occurrences of tricolored blackbird in the vicinity of the project site, the nearest of which is approximately 1 mile northwest of the project site within cattails and willows adjacent to Sargent Creek (CNDDDB 2022). During the reconnaissance-level survey for biological resources on May 16, 2022, a red-winged blackbird colony was observed within a large patch of poison hemlock present in the drainage ditch on the project site. While the habitat requirements for these species don't overlap completely, the presence of a red-winged blackbird colony indicates that this habitat may also be suitable for tricolored blackbirds.

Species	Listing Status ¹ Federal	Listing Status ¹ State	Habitat	Potential for Occurrence
White-tailed kite <i>Elanus leucurus</i>	–	FP	Rolling foothills and valley margins with scattered oaks and river bottomlands or marshes next to deciduous woodland. Open grasslands, meadows, or marshes for foraging close to isolated, dense-topped trees for nesting and perching.	May occur. Trees within the riparian woodland habitat on the project site may provide nesting habitat suitable for white-tailed kite.
Yellow warbler <i>Setophaga petechia</i>	–	SSC	Riparian plant associations in close proximity to water. Also nests in montane shrubbery in open conifer forests in Cascades and Sierra Nevada. Frequently found nesting and foraging in willow shrubs and thickets, and in other riparian plants including cottonwoods, sycamores, ash, and alders.	May occur. During the reconnaissance-level survey for biological resources on May 16, 2022, a yellow warbler was observed within the riparian woodland habitat adjacent to the project site. This riparian woodland habitat may provide nesting habitat suitable for yellow warbler.
Yellow-breasted chat <i>Icteria virens</i>	–	SSC	Summer resident; inhabits riparian thickets of willow and other brushy tangles near watercourses. Nests in low, dense riparian, consisting of willow, blackberry, wild grape; forages and nests within 10 feet of ground.	May occur. Riparian woodland habitat on the project site may provide nesting habitat suitable for yellow-breasted chat.
Fish				
Monterey hitch <i>Lavinia exilicauda harengus</i>	–	SSC	Occupies a wide variety of habitats, although they are most abundant in lowland areas with large pools or in small reservoirs that mimic such conditions.	Known to occur adjacent to site. Monterey hitch has been documented within the Pajaro and San Benito Rivers, which runs adjacent to the project site.
Pacific lamprey <i>Entosphenus tridentatus</i>	–	SSC	Found in Pacific Coast streams north of San Luis Obispo County, however regular runs in Santa Clara River. Size of runs is declining. Swift-current gravel-bottomed areas for spawning with water temperatures between 12-18 degrees C. Ammocoetes need soft sand or mud.	May occur adjacent to site. The segment of the Pajaro and San Benito Rivers, which runs adjacent to the project site, is within the current range of Pacific lamprey.
Riffle sculpin <i>Cottus gulosus</i>	–	SSC	Found in headwater streams with cold water and rocky or gravelly substrate. Prefers permanent streams.	May occur adjacent to site. The segment of the Pajaro and San Benito Rivers, which runs adjacent to the project site, is within the current range of riffle sculpin.
Sacramento hitch <i>Lavinia exilicauda</i>	–	SSC	Most often found in slow, warm water, including lakes and quiet stretches of rivers. Sometimes found in cool and clear, low-gradient streams, hiding among aquatic vegetation in sandy runs or pools.	Not expected to occur. The project site is outside of the current range of this species.

Species	Listing Status ¹ Federal	Listing Status ¹ State	Habitat	Potential for Occurrence
Southern coastal roach <i>Hesperoleucus venustus subditus</i>	–	SSC	Found in the drainages of Tomales Bay and northern San Francisco Bay in the north, and drainages of Monterey Bay in the south.	Not expected to occur. The project site is outside of the current range of this species.
Steelhead – south-central California coast DPS <i>Oncorhynchus mykiss irideus</i> pop. 9	FT	–	Coastal basins from the Pajaro River south to, but not including the Santa Maria River.	May occur. Project is located within the South-Central/Southern California Coast recovery domain for this species. The segment of the Pajaro and San Benito Rivers, which runs adjacent to the project site, is within the current range of riffle sculpin.
Invertebrates				
Bay checkerspot butterfly <i>Euphydryas editha bayensis</i>	FT	–	Restricted to native grasslands on outcrops of serpentine soil in the vicinity of San Francisco Bay. <i>Plantago erecta</i> is the primary host plant; <i>Orthocarpus densiflorus</i> and <i>Orthocarpus purpurscens</i> are the secondary host plants.	Not expected to occur. The project site is outside of the current range of this species.
Crotch bumble bee <i>Bombus crotchii</i>	–	–	Coastal California east to the Sierra-Cascade crest and south into Mexico. Food plant genera include <i>Antirrhinum</i> , <i>Phacelia</i> , <i>Clarkia</i> , <i>Dendromecon</i> , <i>Eschscholzia</i> , and <i>Eriogonum</i> .	Not expected to occur. The nearest documented occurrences are approximately 12 miles west and 12 miles north of the project site, from 1994 and 1959, respectively (CNDDDB 2022). The project area is within the historic range of this species. However, crotch bumble bee has recently undergone a decline in abundance and distribution and is no longer present across much of its historic range. There have been no recent observations of the species in the region of the project site, and it is unlikely that species would occur.
Monarch <i>Danaus plexippus</i>	FC	–	Closed-cone coniferous forest. Winter roost sites extend along the coast from northern Mendocino to Baja California, Mexico. Roosts located in wind-protected tree groves (eucalyptus, Monterey pine, cypress), with nectar and water sources nearby. Along migration routes and within summer ranges, monarch butterflies require two suites of plants: (1) host plants for monarch caterpillars, which are primarily milkweeds (<i>Asclepias</i> spp.) within the family Apocynaceae upon which adult monarchs lay eggs; and (2) nectar-producing flowering plants of many other species that provide food for adult butterflies. Having both host and nectar plants available from early spring to late fall and along migration corridors is critical to the survival of migrating pollinators.	May occur. The project site is outside of the overwintering range of this species. However, the project site contains flowering plants that may provide foraging opportunities for monarch, and may contain milkweed plants, although none were observed during the reconnaissance-level survey for biological resources on May 16, 2022.

Species	Listing Status ¹ Federal	Listing Status ¹ State	Habitat	Potential for Occurrence
Vernal pool fairy shrimp <i>Branchinecta lynchi</i>	FT	–	Endemic to the grasslands of the Central Valley, Central Coast mountains, and South Coast mountains, in astatic rain-filled pools. Inhabit small, clear-water sandstone-depression pools and grassed swale, earth slump, or basalt-flow depression pools.	Not expected to occur. The project site does not contain vernal pool habitat suitable for this species.
Western bumble bee <i>Bombus occidentalis</i>	–	–	Bumble bees have three basic habitat requirements: suitable nesting sites for the colonies, availability of nectar and pollen from floral resources throughout the duration of the colony period (spring, summer, and fall), and suitable overwintering sites for the queens.	Not expected to occur. The project area is within the historic range of this species. However, western bumble bee has recently undergone a dramatic decline in abundance and distribution and is no longer present across much of its historic range. In California, western bumble bee populations are currently largely restricted to high elevation sites in the Sierra Nevada (Xerces Society 2018).
Mammals				
American badger <i>Taxidea taxus</i>	–	SSC	Most abundant in drier open stages of most shrub, forest, and herbaceous habitats, with friable soils. Needs sufficient food, friable soils and open, uncultivated ground. Preys on burrowing rodents. Digs burrows.	May occur. Habitat potentially suitable for American badger dens is present within undisturbed ruderal grassland habitat adjacent to riparian woodland habitat on the project site.
Monterey dusky-footed woodrat <i>Neotoma macrotis luciana</i>	–	SSC	Forest habitats of moderate canopy and moderate to dense understory. Also in chaparral habitats. Nests constructed of grass, leaves, sticks, and feathers. Population may be limited by availability of nest materials	Not expected to occur. The project site is outside of the current range of this subspecies of dusky-footed woodrat (Matocq 2002).
Monterey shrew <i>Sorex ornatus salarius</i>	–	SSC	Riparian, wetland and upland areas in the vicinity of the Salinas River delta. Prefers moist microhabitats. Feeds on insects and other invertebrates found under logs, rocks and litter.	Not expected to occur. The project site is outside of the current range of this species.

Species	Listing Status ¹ Federal	Listing Status ¹ State	Habitat	Potential for Occurrence
Mountain lion <i>Puma concolor</i>	–	SC	Mountain lions inhabit a wide range of ecosystems, including mountainous regions, forests, deserts, and wetlands. Mountain lions establish and defend large territories and can travel large distances in search of prey or mates. <u>In April 2020, the California Fish and Game Commission found that listing of the Central Coast and Southern California Evolutionarily Significant Units (ESUs) may be warranted and designated mountain lion within these ESUs as a candidate species. Were granted emergency listing status in April of 2020, and CDFW is currently completing a 12-month status review and, following the status review, will make its recommendation on listing. Reviewing a petition to list these ESUs as threatened under CESA.</u> The project site is located within the Central Coast ESU.	Not expected to May occur. The region surrounding the project site contains relatively undeveloped open space and riparian corridors that are likely used by mountain lions. <u>Den habitat suitable for mountain lions is not present on the project site. Although</u> However, the project site is disturbed and adjacent to significant sources of human disturbance (e.g., US 101) which would likely prevent mountain lions from using the site more than very rarely, <u>mountain lions have been detected during camera trapping surveys along US 101 approximately 3 miles south of the project site, and mountain lion tracks have been detected approximately 1 mile south of the project site near the San Benito River undercrossing (Diamond et al. 2022).</u> <u>Mountain lions use movement corridors in the vicinity of the project site and could periodically move through the project site.</u>
Pallid bat <i>Antrozous pallidus</i>	–	SSC	Deserts, grasslands, shrublands, woodlands and forests. Most common in open, dry habitats with rocky areas for roosting. Roosts must protect bats from high temperatures. Very sensitive to disturbance of roosting sites.	May occur. Roosting habitat potentially suitable for pallid bat (e.g., trees) is present within riparian woodland habitat on and adjacent to the project site.
Ringtail <i>Bassariscus astutus</i>	–	FP	Riparian habitats, forest habitats, and shrub habitats in lower to middle elevations.	Not expected to occur. The riparian woodland habitat on the project site is marginal due to its density and surrounding level of human disturbance. While the riparian woodland adjacent to the San Benito River and Pajaro River may provide habitat suitable for this species, no project activities would occur within this habitat.
San Francisco dusky-footed woodrat <i>Neotoma fuscipes annectens</i>	–	SSC	Forest habitats of moderate canopy and moderate to dense understory. May prefer chaparral and redwood habitats. Constructs nests of shredded grass, leaves and other material. May be limited by availability of nest-building materials.	Not expected to occur. The project site is outside of the current range of San Francisco dusky-footed woodrat.
San Joaquin kit fox <i>Vulpes macrotis mutica</i>	FE	ST	Annual grasslands or grassy open stages with scattered shrubby vegetation. Need loose-textured sandy soils for burrowing, and suitable prey base.	Not expected to occur. The project site is outside of the current range of San Joaquin kit fox.

Species	Listing Status ¹ Federal	Listing Status ¹ State	Habitat	Potential for Occurrence
Southern sea otter <i>Enhydra lutris nereis</i>	FT	FP	Nearshore marine environments from about Año Nuevo, San Mateo County to Point Sal, Santa Barbara County. Needs canopies of giant kelp and bull kelp for rafting and feeding. Prefers rocky substrates with abundant invertebrates.	Not expected to occur. Marine habitat suitable for this species is not present on the project site.
Townsend's big-eared bat <i>Corynorhinus townsendii</i>	–	SSC	Throughout California in a wide variety of habitats. Most common in mesic sites. Roosts in the open, hanging from walls and ceilings. Roosting sites limiting. Extremely sensitive to human disturbance.	Not expected to occur. Roost habitat potentially suitable for Townsend's big-eared bat (e.g., buildings, bridges, mines, caves) is not present on the project site.
Western mastiff bat <i>Eumops perotis californicus</i>	–	SSC	Many open, semi-arid to arid habitats, including conifer and deciduous woodlands, coastal scrub, grasslands, and chaparral. Roosts in crevices in cliff faces, high buildings, trees, and tunnels.	May occur. Roosting habitat potentially suitable for western mastiff bat (e.g., trees) is present within riparian woodland habitat on and adjacent to the project site.
Western red bat <i>Lasiurus blossevillei</i>	–	SSC	Roosts primarily in trees, 2-40 feet above ground, from sea level up through mixed conifer forests. Prefers habitat edges and mosaics with trees that are protected from above and open below with open areas for foraging.	May occur. Roosting habitat potentially suitable for western red bat (e.g., foliage in broad leaf trees) is present within riparian woodland habitat on and adjacent to the project site.

Notes: CNDDDB = California Natural Diversity Database; CEQA = California Environmental Quality Act; ESU = Evolutionarily Significant Unit

1 Legal Status Definitions

Federal:

FC Federal Candidate for listing (no formal protection)
 FE Federally Listed as Endangered (legally protected)
 FT Federally Listed as Threatened (legally protected)
 FD Federally Delisted

State:

FP Fully protected (legally protected)
 SSC Species of special concern (no formal protection other than CEQA consideration)
 SE State Listed as Endangered (legally protected)
 ST State Listed as Threatened (legally protected)
 SC State Candidate for listing (legally protected)
 SD State Delisted

Sources: CNDDDB 2022; [Diamond et al. 2022](#); Matocq 2002; USFWS 2022; Xerces Society 2018.

The following text edit has been made to the Wildlife Movement Corridor discussion in Section 3.4.2, "Environmental Setting" on page 3.4-20 of the Draft EIR:

Wildlife Movement Corridors

A wildlife movement corridor is generally a topographical/landscape feature or movement zone that connects two or more natural habitat areas. Wildlife corridors link areas of suitable wildlife habitat that are separated by variation in vegetation, rugged terrain, human disturbance and habitat fragmentation, or other biophysical factors. Movement corridors may provide favorable locations for wildlife to travel between different habitat areas, such as foraging sites, breeding sites, cover areas, and preferred summer and winter range locations. They may also function as dispersal corridors allowing animals to move between various locations within their range. Therefore, wildlife movement and migration corridors are considered an important ecological resource by CDFW and other agencies and are protected by many local governments in California.

Some of the important areas for habitat connectivity in California were mapped as Essential Connectivity Areas (ECA) for the California Essential Habitat Connectivity Project, which was commissioned by the California Department of Transportation and CDFW with the purpose of making transportation and land-use planning more efficient and less costly, while helping reduce dangerous wildlife-vehicle collisions (Spencer et al. 2010). The ECAs were not developed for the purposes of defining areas subject to specific regulations by CDFW or other agencies. The project site does not contain any portion of a modeled ECA or natural landscape block. Natural landscape blocks have been identified west of the project site (i.e., within the rolling hills west of the railroad tracks) and a modeled ECA is present along the Pajaro River north of the project site.

The Critical Linkages: Bay Area & Beyond (Penrod et al. 2013) effort identified 14 landscape-level connections or critical linkages in California. Critical linkages were designed to accommodate the full range of target species and ecosystem functions to provide habitat (including movement habitat), support metapopulations, ensure availability of key resources, buffer against edge effects, reduce contaminants in streams, and allow natural processes to operate (Penrod et al. 2013). The Santa Cruz Mountains-Gabilan Range critical linkage was identified adjacent to the project site (Penrod et al. 2013). The project site was included in an "adjacent linkage" because it falls within the riparian buffer zone surrounding the San Benito and Pajaro Rivers adjacent to the project site (Penrod et al. 2013).

A recent study examined the ecological connectivity between the Santa Cruz Mountains, the Gabilan Range, and the Diablo Range using motion-activated cameras at several highway undercrossings (Diamond et al. 2022). The San Benito River Bridge undercrossing and Pajaro River Bridge undercrossing are located approximately 1.1 miles north of the project site and approximately 0.3 mile south of the project site, respectively (Diamond et al. 2022). These two undercrossings accounted for the highest number of native species passages of six total US 101 undercrossings in the Pajaro Valley; primarily consisting of deer (Diamond et al. 2022). Both of these crossings provide a wide riparian corridor through which wildlife may cross under US 101, and this study suggests that wildlife moving from the southern Santa Cruz Mountains to the Gabilan Range and Diablo Range are primarily using riparian habitat associated with the San Benito River and Pajaro River to do so.

Audubon identifies Important Bird Areas (IBAs) throughout the United States, which are distinct areas that provide essential habitat for one or more species of birds for breeding, wintering, or migration. The project site is located on the western edge of the Upper Pajaro River IBA (Audubon 2022). This IBA was designated because it includes San Felipe Lake (approximately 7.5 miles northeast of the project site), Pacheco Creek (approximately 7.5 miles northeast of the project site), and riparian habitat along Llagas Creek (approximately 5 miles northeast of the project site) and the Pajaro River (adjacent to the project site and extending to the northeast) (Audubon 2022).

The project site contains some natural habitat (e.g., riparian woodland) and is adjacent to natural habitat to the west (i.e., San Benito River, Pajaro River), which, as described above, functions as wildlife movement corridors. ~~likely function as wildlife movement corridors.~~ However, the project site is also adjacent to development to the north and US 101 to the east; a significant barrier to wildlife movement. Additionally, the disturbance area within the project site is disturbed or disked and has been farmed and disked regularly since at least 1993. It has been demonstrated that w~~Wildlife moving through the vicinity of the project site would likely use the existing riparian corridors west, north, and south of the project site disturbance area (Diamond et al. 2022), and these riparian corridors provide much better movement habitat (e.g., cover, connectivity) rather than the disturbed habitat on the project site. Further, the project site does not contain any bridges or culverts large enough to facilitate large wildlife movement to the east over or under US 101.~~ Therefore, it is unlikely that the project site currently functions as a critical habitat linkage; however, it likely functions as a movement corridor for some wildlife species.

The following text edit has been made on page 3.4-21 of the Draft EIR:

ISSUES NOT DISCUSSED FURTHER

Golden Eagle

~~While golden eagle may forage within the project site, there is no suitable nesting habitat on the project site (e.g., large trees in open areas). Project implementation would not result in significant loss of foraging habitat or a substantial change in the character of the foraging habitat in the vicinity of the project area. Because project implementation would not result in direct loss of golden eagles because nesting habitat is not present on the project site, this species is not discussed further.~~

The following text edits have been applied to Mitigation Measure 3.4-1, beginning on page 3.4-22 of the Draft EIR:

Mitigation Measure 3.4-1: Conduct Special-Status Plant Surveys and Implement Avoidance Measures and Mitigation

- ▶ Prior to commencement of project construction activities and during the blooming period for the special-status plant species with potential to occur in the development area, a qualified botanist shall conduct protocol-level surveys for special-status plants within the development area following survey methods from CDFW's *Protocols for Surveying and Evaluating Impacts on Special-Status Native Plant Populations and Natural Communities* (CDFW 2018a or most recent version). The qualified botanist shall: 1) be knowledgeable about plant taxonomy, 2) be familiar with plants of the Sierra Nevada region in California, including special-status plants and sensitive natural communities, 3) have experience conducting floristic botanical field surveys as described in CDFW 2018a, 4) be familiar with the *California Manual of Vegetation* (Sawyer et al. 2009 or current version, including updated natural communities data at <http://vegetation.cnps.org/>), and 5) be familiar with federal and state statutes and regulations related to plants and plant collecting.
- ▶ If special-status plants are not found, the botanist shall document the findings in a report to the applicant and San Benito County, and no further mitigation shall be required.

Typical Blooming Period for Special-Status Plants That May Occur within the Project Site¹

Species	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Big-scale balsamroot												
Pinnacles buckwheat												
Hoover's button-celery												
Woodland woollythreads												

¹ This is the published blooming period for the species across their entire range and through history. The actual blooming period for any species at a given location in a given year is variable and should be based on observations of nearby reference populations, as required under CDFW's *Protocols for Surveying and Evaluating Impacts on Special-Status Native Plant Populations and Natural Communities* (CDFW 2018a).

Source: Data compiled by Ascent Environmental in 2022; CNPS 2022

- ▶ If special-status plants are found during special-status plant surveys, the botanist shall document the findings in a report to the applicant and San Benito County. If special-status plants are found during special-status plant surveys and cannot be avoided, the applicant shall, in consultation with CDFW, develop and implement a site-specific mitigation strategy to compensate for loss of occupied habitat or individuals. Mitigation measures shall include, at a minimum, preserving and enhancing existing populations (e.g., offsite), establishing populations through seed collection or transplantation from the site that is to be affected, and/or restoring or creating habitat in sufficient quantities to offset loss of occupied habitat or individuals. Potential mitigation sites could include suitable locations within or outside of the development area. Habitat and individual plants lost (e.g., direct removal, trampling, root

damage) shall be mitigated at a minimum 1:1 ratio through implementation of the above measures, considering acreage as well as function and value. Success criteria for preserved and compensatory populations shall include:

- The extent of occupied area and plant density (number of plants per unit area) in compensatory populations shall be equal to or greater than the affected occupied habitat.
- Compensatory and preserved populations shall be self-producing. Populations would be considered self-producing when:
 - plants reestablish annually for a minimum of five years with no human intervention such as supplemental seeding;
 - reestablished and preserved habitats contain an occupied area and flower density comparable to existing occupied habitat areas in similar habitat types in the project vicinity; and
 - If off-site mitigation includes dedication of conservation easements or other off-site conservation measures, the details of these measures shall be included in the mitigation plan, including information on responsible parties for long-term management, conservation easement holders, long-term management requirements, success criteria such as those listed above and other details, as appropriate to target the preservation of long-term viable populations.

Significance after Mitigation

Implementation of Mitigation Measure 3.4-1 would reduce significant impacts on special-status plants to a **less-than-significant** level by requiring protocol-level surveys for special-status plants and implementation of avoidance measures and compensation for impacts on special-status plants if present on the project site to maintain viable plant populations consistent with General Plan Policy NCR-2.8.

The following text edits have been made to Impact 3.4-2 on page 3.4-23 of the Draft EIR:

Impact 3.4-2: Result in Disturbance to or Loss of Special-Status Wildlife Species and Habitat

Project implementation would include land use conversion and development activities including ground disturbance, vegetation removal, and overall conversion of wildlife habitat, which could result in disturbance, injury, or mortality of several special-status wildlife species if present, reduced breeding productivity of these species, and loss of species habitat. This would be a **significant** impact.

A total of ~~24~~ 26 special-status wildlife species have potential to occur on or immediately adjacent to the project site: California red-legged frog, California tiger salamander, foothill yellow-legged frog, coast horned lizard, northern California legless lizard, San Joaquin coachwhip, western pond turtle, burrowing owl, golden eagle, grasshopper sparrow, loggerhead shrike, northern harrier, tricolored blackbird, white-tailed kite, yellow warbler, yellow-breasted chat, Monterey hitch, Pacific lamprey, riffle sculpin, steelhead (south-central California coast DPR), monarch, American badger, pallid bat, western mastiff bat, ~~and~~ western red bat, and mountain lion. Additionally, native birds without special status protected by California Fish and Game Code and the federal MBTA may also nest on the project site. Project activities (i.e., tree removal, vegetation clearing, ground disturbance, staging, heavy equipment use) may result in direct loss of special-status wildlife species, loss of or disturbance to nests or dens, disturbance leading to abandonment of active nests or dens, or degradation of water quality in adjacent aquatic habitat. This would be a **significant** impact.

The following text edit has been made to the fourth full paragraph on page 3.4-24 of the Draft EIR:

The project site does not contain breeding habitat suitable for California red-legged frogs and direct loss of breeding habitat would not occur as a result of project implementation. However, the drainage ditch on the project site may provide nonbreeding aquatic habitat (e.g., aestivation, refuge) when water is present in the ditch and the ruderal grassland habitat on the project site may provide upland migration or dispersal habitat

during the wet season. Development of the project site would result in loss of this upland and nonbreeding aquatic habitat through conversion to impervious surfaces (e.g., parking areas) and buildings. However, the conversion of this upland and nonbreeding aquatic habitat would not result in substantial loss of aestivation or breeding habitat. As described above in Section 3.4.2, "*Environmental Setting*," the majority of the project site is disturbed or disked and has been farmed and disked regularly since at least 1993. While California red-legged frog individuals could enter the site, frogs are more likely to occur within the Pajaro and San Benito rivers and the associated riparian corridor. Conversion of disturbed habitat on the project site would not result in significant loss of habitat in the vicinity of the project site (i.e., within 2 miles or the typical dispersal distance of the species) or preclude California red-legged frogs from occurring in the vicinity of the project site.

The following text edit has been made to Mitigation Measure 3.4-2a on pages 3.4-25 through 3.4-27 of the Draft EIR:

Mitigation Measure 3.4-2a: Implement Conservation Measures for California Red-Legged Frog and California Tiger Salamander and Consult with CDFW and USFWS

Prior to and during project construction, the following measures shall be implemented to minimize the likelihood of take of California red-legged frogs and California tiger salamanders.

Conservation Measures

- ▶ Because the project site is within the range of California red-legged frog and California tiger salamanders and some marginally suitable habitat for these species is present on the project site (i.e., the drainage ditch), consultation with USFWS under Section 7 of the ESA would occur. USACE would be presumed to be the federal action agency because it has jurisdiction over the drainage ditch on the project site (see Impact 3.4-4). The project shall not proceed until a Biological Opinion is issued by USFWS.
- ▶ An Incidental Take Permit from CDFW shall be obtained for California tiger salamander. The project shall not proceed until the Incidental Take Permit is issued by CDFW.
- ▶ A biologist approved by CDFW and USFWS (approved biologist) shall supervise and implement all conservation measures terms and conditions of the permits. All construction contracts shall expressly include language requiring compliance with the conservation measures permits.
- ▶ At least 30 days prior to the start of project construction activities, the project applicant shall submit to CDFW and USFWS the names and credentials of all biologists proposed to work on the project for approval. No project work shall begin until the project applicant has received approval from CDFW and USFWS that biologists are qualified to implement the proposed conservation measures terms and conditions of the permits.
- ▶ The approved biologist shall provide mandatory worker awareness training for all project construction personnel before work begins, that shall include, at a minimum, the biology, identification, and habitat needs of California red-legged frog and California tiger salamander and the conservation measures terms and conditions of the permits required to protect them.
- ▶ ~~Amphibian exclusion fencing shall be installed around the entire perimeter of the development area under the direction of the approved biologist. The exclusion fencing shall be maintained through the life of the project construction and shall be inspected by the biologist at least once per week.~~
- ▶ The approved biologist shall survey the development area for California red-legged frog and California tiger salamander no more than 48 hours before the start of project construction work (i.e., visual encounter surveys using walking transects of the entire development area). If California red-legged frogs or California tiger salamanders are detected during the survey, all project construction activities shall cease, and CDFW and USFWS shall be notified.
- ▶ ~~Each morning before work begins, the approved biologist shall inspect all vehicles, heavy equipment, and stored pipes for the presence of California red-legged frogs and California tiger salamanders.~~

- ▶ ~~The approved biologist shall be present at work areas during all ground-disturbing activities and shall be available to visit work areas at all other times in the event a California red-legged frog or California tiger salamander is encountered.~~
- ▶ The approved biologist ~~may designate biological monitors to~~ shall oversee on-site compliance with all ~~conservation measures terms and conditions of the permits.~~ The approved biologist shall ensure that ~~monitors receive appropriate training, including identification of California red-legged frogs and California tiger salamanders.~~ If these species are encountered in work areas, ~~biological monitors~~ the approved biologist shall be authorized to stop any construction activities which may pose a threat to the animal, all equipment shall be turned off, and the approved biologist shall be notified immediately. Work shall not continue until the biologist has contacted CDFW and USFWS for guidance.
- ▶ Project construction activities shall not occur during the rainy season when California red-legged frogs and California tiger salamanders may be active (typically November through March), unless the entire development area has been graded and has been completely enclosed with amphibian exclusion fence prior to the onset of winter rains. For any work activities occurring after the onset of winter rains (i.e., usually mid-November, but variable from year to year), the approved biologist or biological monitor trained by the approved biologist shall be present at all times, even if ground disturbing activities have been completed.
- ▶ No construction work shall be performed during rain. If a rain event results in accumulation of less than 0.2 inch in a 24-hour period, work may resume after precipitation ceases. If a rain event results in accumulation of 0.2 inch or greater in a 24-hour period, work may resume after precipitation ceases, a drying-out period of 24 hours is observed, and the approved biologist inspects all work areas to verify the absence of California red-legged frogs and California tiger salamanders.
- ▶ If a work area is to be dewatered by pumping (e.g., the drainage ditch), intakes shall be completely screened with mesh not larger than 0.2 inch to prevent California red-legged frogs and California tiger salamanders from entering the pump system.
- ▶ Nighttime construction work shall not occur.
- ▶ All food-related trash items shall be disposed of in secure, closed containers and removed regularly to reduce the potential to attract predators. After construction, all trash and construction debris shall be removed from work areas for construction and operation of the project.
- ▶ All refueling, maintenance, and staging of equipment and vehicles shall occur at least 60 feet from habitat adjacent to the development area (i.e., Pajaro River, San Benito River, riparian woodland habitat adjacent to these rivers) that may be occupied by any life stage of the California red-legged frog or California tiger salamander.

Wildlife Agency Consultation

- ▶ ~~Prior to implementation of project construction activities, the project applicant shall initiate consultation with CDFW (for California tiger salamander) and USFWS (for California tiger salamander and California red-legged frog). If it is determined, in consultation with CDFW and USFWS, that take of these species could occur after implementation of the conservation measures described above, then the project applicant may be required to obtain incidental take authorization through the through Section 7 consultation or a Section 10 permit pursuant to ESA and through Section 2081 of California Fish and Game Code pursuant to CESA. Additional conservation measures may be recommended by CDFW or USFWS during the consultation process and these measures shall be implemented by the project applicant.~~

Significance after Mitigation

Implementation of Mitigation Measure 3.4-2a would reduce potential impacts on California red-legged frog and California tiger salamander to a **less-than-significant** level by requiring implementation of ~~conservation~~

measures to reduce the likelihood of take of these species, consultation with CDFW (for California tiger salamander) and USFWS (for California red-legged frog and California tiger salamander), and potential incidental take permitting from USFWS and CDFW. This mitigation measure would also be consistent with General Plan Policy NCR-2.8.

The following text edits have been made to last paragraph beginning on page 3.4-27 of the Draft EIR:

Coast Horned Lizard, Northern California Legless Lizard, and San Joaquin Coachwhip

Documented occurrences of coast horned lizard, northern California legless lizard, and San Joaquin coachwhip range from 8 to 15 miles from the project site (CNDDDB 2022); however, the project site is located within the current range of all three species. The majority of the development area has been regularly disked or is otherwise disturbed (e.g., buildings, roadways) and would not provide habitat suitable for these species. However, Hhabitat potentially suitable for coast horned lizard, northern California legless lizard, and San Joaquin coachwhip is present within ruderal grassland habitat that has not been recently disked and shrub habitat adjacent to riparian woodlands on and adjacent to the project site. While this area has not been recently disked, it has been historically disked and subject to agricultural activities for the same duration as the rest of the development area. Additionally, most project activities would avoid the shrub habitat adjacent to riparian woodlands on and adjacent to the project site. As a result, habitat on the project site is considered to be marginal for coast horned lizard, northern California legless lizard, and San Joaquin coachwhip, and impacts on habitat for these species resulting from project implementation would not be substantial. Project activities (i.e., vegetation clearing, ground disturbance, staging, heavy equipment use) may result in direct loss of these species if present on the project site. This would be a **significant** impact.

The following text edits have been made to Mitigation Measure 3.4-2c on page 3.4-28 of the Draft EIR:

Mitigation Measure 3.4-2c: Conduct Preconstruction Surveys for Coast Horned Lizard, Northern California Legless Lizard, and San Joaquin Coachwhip; Implement Avoidance Measures; and Relocate Individuals

- ▶ Within 48 hours of project construction activities (e.g., vegetation removal, ground disturbance), a qualified biologist would conduct a focused visual survey of habitat suitable for coast horned lizard, northern California legless lizard, and San Joaquin coachwhip within the development area, which would include walking linear transects of the development area and inspecting areas under logs or other materials.
- ▶ If coast horned lizard, northern California legless lizard, and San Joaquin coachwhip are not detected during the focused survey, the qualified biologist would submit a report summarizing the results of the survey to the applicant and San Benito County, and further mitigation would not be required.
- ▶ If coast horned lizard, northern California legless lizard, or San Joaquin coachwhip is detected during the focused survey, the qualified biologist would submit a report summarizing the results of the survey to the applicant and San Benito County. If coast horned lizard, northern California legless lizard, and San Joaquin coachwhip are detected, a qualified biologist would be present during initial ground disturbance activities and would inspect the development area before initiation of project activities. If coast horned lizard, northern California legless lizard, and San Joaquin coachwhip are detected, the qualified biologist would move individuals into nearby habitat and out of harm's way (e.g., west of the development area within ruderal grassland habitat or shrub habitat adjacent to the San Benito River). Captured individuals would be held briefly in an appropriate receptacle such that they are protected from thermal stress and moved to the receptor location immediately.

Significance after Mitigation

Implementation of Mitigation Measure 3.4-2c would reduce potential impacts on coast horned lizard, northern California legless lizard, and San Joaquin coachwhip to a **less-than-significant** level by requiring focused surveys for the species, implementation of measures to avoid injury or mortality of western pond

turtles if detected, and relocation of individual turtles by a qualified biologist. This mitigation measure would also be consistent with General Plan Policy NCR-2.8.

The following text edits have been made to the western pond turtle discussion on page 3.4-28 of the Draft EIR:

Western Pond Turtle

Western pond turtle can be found in many different aquatic habitats, including ponds (natural or human-made), marshes, rivers, and irrigation ditches. Western pond turtle uses upland habitat for basking and egg-laying. Upland habitat may include grasslands, scrub, or woodland habitats. Western pond turtles are known to travel into uplands up to 0.3 mile (approximately 1,600 feet) from aquatic habitat (Reese and Welsh 1997). Aquatic habitat suitable for western pond turtle is present within the San Benito River and Pajaro River adjacent to the project site. The majority of the development area has been regularly disked or is otherwise disturbed (e.g., buildings, roadways) and would not provide high-quality habitat for this species. As a result, habitat on the project site is considered to be marginal for western pond turtle, and impacts on habitat for this species resulting from project implementation would not be substantial. However, Upland habitat potentially marginally suitable for this species is present within ruderal grassland areas up to approximately 0.3 mile away from these rivers, which includes most of the project site.

Project activities (i.e., vegetation clearing, ground disturbance, staging, heavy equipment use, fill of wetlands and other waters) may result in direct loss of western pond turtles and occupied burrows if present on the project site. This would be a **significant** impact.

The following text edits have been made to Mitigation Measure 3.4-2d on pages 3.4-28 and 3.4-29 of the Draft EIR:

Mitigation Measure 3.4-2d: Conduct Preconstruction Surveys for Western Pond Turtle, Implement Avoidance Measures, and Relocate Individuals

- ▶ Within 24 hours of commencement of ground disturbing activities, a qualified biologist familiar with the life history of western pond turtle and experienced in performing surveys for western pond turtle shall conduct a focused survey of aquatic and upland habitat suitable for the species within the development area. The qualified biologist shall inspect the development area for western pond turtles as well as suitable burrow habitat.
- ▶ If western pond turtles are not detected during the focused survey, the qualified biologist shall submit a report summarizing the results of the survey to the applicant and San Benito County, and further mitigation shall not be required.
- ▶ If western pond turtles are detected during the focused survey, the qualified biologist shall submit a report summarizing the results of the survey to the applicant and San Benito County. If western pond turtles are detected, a no-disturbance buffer of at least 100 feet shall be established around any identified nest sites or overwintering sites including the nest or overwintering site and enough area to provide a clear path from the site to the nearest aquatic habitat (e.g., San Benito River, Pajaro River) until the nest is no longer active as determined by a qualified biologist, and no project activities shall occur within the no-disturbance buffer. A qualified biologist shall be present during initial ground disturbance activities and shall inspect the development area before initiation of project activities. If western pond turtles are detected, the qualified biologist shall move the turtles to the Pajaro or San Benito River or its tributaries that provide suitable aquatic habitat for western pond turtle.

Significance after Mitigation

Implementation of Mitigation Measures 3.4-2d would reduce potential impacts on western pond turtle to a **less-than-significant** level by requiring focused surveys for the species, implementation of measures to avoid injury or mortality of western pond turtles if detected, and relocation of individual turtles by a qualified biologist. This mitigation measure would also be consistent with General Plan Policy NCR-2.8.

The following text edits have been made to Mitigation Measure 3.4-2e on pages 3.4-29 and 3.4-30 of the Draft EIR:

Mitigation Measure 3.4-2e: Conduct Take Avoidance Survey for Burrowing Owl, Implement Avoidance Measures, and Compensate for Loss of Occupied Burrows

- ▶ A qualified biologist shall conduct a focused survey for burrowing owls in areas of habitat suitable for the species on and within 1,640 feet (500 meters) of the development area no less than 14 days prior to initiating ground disturbance activities using survey methods described in Appendix D of the CDFW Staff Report on Burrowing Owl Mitigation (CDFW 2012).
- ▶ If no occupied burrows are found, the qualified biologist shall submit a report documenting the survey methods and results to the applicant and San Benito County, and no further mitigation shall be required.
- ▶ If active burrows are found, the qualified biologist shall submit a report documenting the survey methods and results to the applicant and San Benito County. If an active burrow is found within 1,500 feet of pending construction activities that would occur during the nonbreeding season (September 1 through January 31), the applicant shall establish and maintain a minimum protection buffer of 164 feet (50 meters) around the occupied burrow throughout construction. The actual buffer size shall be determined by the qualified biologist based on the time of year and level of disturbance in accordance with guidance provided in the CDFW Staff Report on Burrowing Owl Mitigation (CDFW 2012). The protection buffer may be adjusted if, in consultation with CDFW, a qualified biologist determines that an alternative buffer would not disturb burrowing owl use of the burrow because of particular site features or other buffering measures. If occupied burrows are present that cannot be avoided or adequately protected with a no-disturbance buffer, a burrowing owl exclusion plan shall be developed, as described in Appendix E of the CDFW Staff Report. Burrowing owls shall not be excluded from occupied burrows until the project burrowing owl exclusion plan is approved by CDFW. The exclusion plan shall include a compensatory habitat mitigation plan (see below).
- ▶ If an active burrow is found during the breeding season (February 1 through August 31), occupied burrows shall not be disturbed and shall be provided with a protective buffer at a minimum of ~~164~~ 656 feet ~~(200 meters)~~ unless a qualified biologist verifies through noninvasive means that ~~either: (1) the birds have not begun egg-laying, or (2) juveniles from the occupied burrows are foraging independently and are capable of independent survival.~~ The size of the buffer may be adjusted depending on the time of year and level of disturbance as outlined in the CDFW Staff Report. The size of the buffer may be reduced if a broad-scale, long-term, monitoring program acceptable to CDFW is implemented so that burrowing owls are not adversely affected. Once the fledglings are capable of independent survival, the owls can be evicted, and the burrow can be destroyed per the terms of a CDFW-approved burrowing owl exclusion plan developed in accordance with Appendix E of CDFW Staff Report.
- ▶ If burrowing owls are evicted from burrows and the burrows are destroyed by implementation of project construction activities, the applicant shall mitigate the loss of occupied habitat in accordance with guidance provided in the CDFW Staff Report, which states that permanent impacts on nesting, occupied and satellite burrows, and burrowing owl habitat (i.e., grassland habitat with suitable burrows) shall be mitigated such that habitat acreage and number of burrows are replaced through permanent conservation of comparable or better habitat with similar vegetation communities and burrowing mammals (e.g., ground squirrels) present to provide for nesting, foraging, wintering, and dispersal. The applicant shall retain a qualified biologist to develop a burrowing owl mitigation and management plan, which shall be approved by CDFW, that incorporates the following goals and standards:
 - Mitigation lands shall be selected based on comparison of the habitat lost to the compensatory habitat, including type and structure of habitat, disturbance levels, potential for conflicts with humans, pets, and other wildlife, density of burrowing owls, and relative importance of the habitat to the species throughout its range.

- If feasible, mitigation lands shall be provided adjacent or proximate to the development area so that displaced owls can relocate with reduced risk of injury or mortality. Feasibility of providing mitigation adjacent or proximate to the development area depends on availability of sufficient habitat to support displaced owls that may be preserved in perpetuity.
- If habitat suitable for burrowing owl is not available for conservation adjacent or proximate to the development area, mitigation lands can be secured offsite and shall aim to consolidate and enlarge conservation areas outside of planned development areas and within foraging distance of other conservation lands. Mitigation may be also accomplished through purchase of mitigation credits at a CDFW-approved mitigation bank, if available. Alternative mitigation sites and acreages may also be determined in consultation with CDFW.
- If burrowing owl habitat mitigation is completed through permittee-responsible conservation lands, the mitigation plan shall include mitigation objectives, site selection factors, site management roles and responsibilities, vegetation management goals, financial assurances and funding mechanisms, performance standards and success criteria, monitoring and reporting protocols, and adaptive management measures. Success shall be based on the number of adult burrowing owls and pairs using the site and if the numbers are maintained over time. Measures of success, as suggested in the CDFW Staff Report, shall include site tenacity, number of adult owls present and reproducing, colonization by burrowing owls from elsewhere, changes in distribution, and trends in stressors.

Significance after Mitigation

Implementation of Mitigation Measure 3.4-2e would reduce potential impacts on burrowing owl to a **less-than-significant** level by requiring protocol-level surveys for the species, implementation of measures to avoid injury or mortality of burrowing owls and destruction of active burrows if detected, and compensation for loss of burrows. This mitigation measure would also be consistent with General Plan Policy NCR-2.8.

The following text edits have been made on pages 3.4-30 and 3.4-31 of the Draft EIR:

Special-Status Birds and Other Native Nesting Birds

~~Six~~ Eight special-status bird species (other than burrowing owl) have potential to occur on the project site: golden eagle, grasshopper sparrow, loggerhead shrike, northern harrier, tricolored blackbird, white-tailed kite, yellow warbler, and yellow-breasted chat (Table 3.4-3). Most of these species may nest in vegetation associated with the drainage ditch and riparian woodland habitat on adjacent to the project site. Nesting habitat potentially suitable for golden eagles is present outside of the project site, especially undeveloped areas east and west of the project site. Additionally, other raptor species (e.g., Cooper's hawk [*Accipiter cooperi*], red-tailed hawk [*Buteo jamaicensis*], red-shouldered hawk [*Buteo lineatus*]) and other native nesting birds could nest on the project site, and these species and their nests are protected under California Fish and Game Code and MBTA. During the reconnaissance-level survey for biological resources on May 16, 2022, a large raptor nest was observed in a willow tree on the project site and a red-tailed hawk was observed exhibiting territorial behavior.

As described above, nesting habitat suitable for special-status bird species is largely limited to the riparian woodland habitat on and adjacent to the project site. Riparian woodland habitat adjacent to the project site would not be removed during project implementation, and tree removal on the project site would be limited (e.g., during well pipeline installation). Thus, project implementation would not result in significant loss of nesting habitat for special-status birds. Project activities (i.e., tree removal, vegetation clearing, ground disturbance, staging, heavy equipment use) may result in direct loss of special-status birds or active nests if present on the project site. Additionally, operation of heavy equipment and other construction activities could result in noise or visual stimuli that could result in disturbance to nearby nesting birds, which may result in nest abandonment and potential loss of eggs or chicks. This would be a **significant** impact.

The following text edits have been made to Mitigation Measure 3.4-2f on page 3.4-31 of the Draft EIR:

Mitigation Measure 3.4-2f: Conduct Focused Surveys for Special-Status Birds, Nesting Raptors, and Other Native Nesting Birds and Implement Protective Buffers

- ▶ To minimize the potential for loss of special-status bird species, raptors, and other native birds, project activities (e.g., tree removal, vegetation clearing, ground disturbance, staging) shall be conducted during the nonbreeding season (approximately September 1-January 31, as determined by a qualified biologist), if feasible. If project construction activities are conducted during the nonbreeding season, no further mitigation shall be required.
- ▶ Within 14 days before the onset of project construction activities during the breeding season (approximately February 1 through August 31, as determined by a qualified biologist), a qualified biologist familiar with birds of California and with experience conducting nesting bird surveys shall conduct focused surveys for special-status birds, other nesting raptors, and other native birds. Surveys shall be conducted in accessible areas within 1 mile of the development area for golden eagle, within 0.25 mile of the development area for white-tailed kite, within 500 feet of the development area for other raptor species and special-status birds, and within 50 feet of the development area for non-raptor common native bird nests.
- ▶ If no active nests are found, the qualified biologist shall submit a report documenting the survey methods and results to the applicant and San Benito County, and no further mitigation shall be required.
- ▶ If active nests are found, the qualified biologist shall submit a report documenting the survey methods and results to the applicant and San Benito County. If active nests are found, impacts on nesting birds shall be avoided by establishing appropriate buffers around active nest sites identified during focused surveys to prevent disturbance to the nest. Project construction activity shall not commence within the buffer areas until a qualified biologist has determined that the young have fledged, the nest is no longer active, or reducing the buffer would not likely result in nest abandonment. Buffers typically shall be at least 0.5 mile for golden eagle, 0.25 mile for white-tailed kite, and 500 feet for other raptors, and 100 feet for other special-status birds. Buffer size for non-raptor, non-special-status bird species shall be determined by a qualified biologist. Factors to be considered for determining buffer size shall include presence of natural buffers provided by vegetation or topography, nest height above ground, baseline levels of noise and human activity, species sensitivity, and proposed project construction activities. Generally, buffer size for these species shall be at least 20 feet. The size of the buffer may be adjusted if a qualified biologist, determines that such an adjustment shall not be likely to adversely affect the nest. Any buffer reduction for a special-status species shall require consultation with CDFW. Periodic-Daily monitoring of the nest by a qualified biologist during project activities shall be required if the activity has potential to adversely affect the nest, the buffer has been reduced, or if birds within active nests are showing behavioral signs of agitation (e.g., standing up from a brooding position, flying off the nest) during project activities, as determined by the qualified biologist.

Significance after Mitigation

Implementation of Mitigation Measure 3.4-2f would reduce potential impacts on special-status birds, raptors, and other native nesting birds to a **less-than-significant** level by requiring focused surveys for the nesting birds and implementation of measures to avoid disturbance, injury, or mortality of the species if nests are detected. This mitigation measure would also be consistent with General Plan Policy NCR-2.8.

The following text edits have been made to the American badger discussion on page 3.4-32 of the Draft EIR:

American Badger

The majority of the development area has been regularly disked or is otherwise disturbed (e.g., buildings, roadways) and would not provide habitat suitable for American badger. Portions of the development area have not been recently disked; however, these areas have been historically disked and subject to agricultural activities for the same duration as the rest of the development area. Because this habitat has been regularly disturbed, it

is considered to be marginal for American badger occupancy, and project implementation would not result in significant loss of habitat for this species. While this habitat would be only marginally suitable for American badgers, ~~Un~~-disked grassland habitat on the project site may provide den habitat ~~suitable~~ for American badgers. While no sign of American badger use was observed during the reconnaissance-level survey for biological resources on May 16, 2022 (e.g., large burrows), the project site is surrounded by annual grassland habitat optimal for American badgers, and it is possible that a badger could occupy the project site prior to project implementation. Project activities (i.e., vegetation clearing, ground disturbance, staging, heavy equipment use) may result in direct loss of American badgers or active dens if present on the project site. This would be a **significant** impact.

The following text edits have been made to Mitigation Measure 3.4-2h on page 3.4-33 of the Draft EIR:

Mitigation Measure 3.4-2h: Conduct Focused American Badger Survey and Establish Protective Buffers

- ▶ Within ~~30~~ 14 days before commencement of project construction activities, a qualified wildlife biologist with familiarity with American badger and experience using survey methods for the species shall conduct focused surveys of habitat suitable for the species within the development area to identify any American badger dens.
- ▶ If occupied dens are not found, the qualified biologist shall submit a letter report summarizing the results of the survey to the project applicant and San Benito County, and further mitigation shall not be required.
- ▶ If occupied dens are found, the qualified biologist shall submit a letter report summarizing the results of the survey to the project applicant and San Benito County. If occupied dens are found, impacts on active badger dens shall be avoided by establishing exclusion zones around all active badger dens, the size of which shall be determined by the qualified biologist. No project activities (e.g., vegetation removal, ground disturbance, staging) shall occur within the exclusion zone until the den is abandoned, as confirmed by a qualified biologist. The qualified biologist shall monitor each den once per week to track the status of the den and to determine when it is no longer occupied. Other methods, including but not limited to remote cameras, may be used to determine that the den is no longer occupied. When the den is no longer occupied, the den may be collapsed, and project activities within the exclusion zone may occur.

Significance after Mitigation

Implementation of Mitigation Measures 3.4-2h would reduce potential impacts on American badger to **less than significant** by requiring focused surveys for the species, and implementation of measures to avoid injury or mortality of American badger and destruction of active dens if detected. This mitigation measure would also be consistent with General Plan Policy NCR-2.8.

The following text edits have been made to the special-status bats discussion on page 3.4-33 of the Draft EIR:

Special-Status Bats

Three special-status bat species have potential to occur on the project site: pallid bat, western mastiff bat, and western red bat. Roosting habitat potentially suitable for these species on the project site is present within large trees in riparian woodland habitat on and adjacent to the project site (i.e., crevices, cavities, exfoliating bark, foliage). Project activities (i.e., tree removal, either direct or indirect) may result in direct loss of roosting special-status bats and potential loss of roosting habitat if present on the project site. This would be a **significant** impact.

The following text edits have been made to Mitigation Measure 3.4-2i on pages 3.4-33 and 3.4-34 of the Draft EIR:

Mitigation Measure 3.4-2i: Conduct Focused Bat Surveys and Implement Avoidance Measures

- ▶ No more than 30 days pPrior to the start of project construction activities, a qualified biologist familiar with bats and bat ecology, and experienced in conducting bat surveys, shall conduct surveys for bat roosts in suitable habitat (e.g., large trees, crevices, cavities, exfoliating bark, foliage) within and adjacent

to (i.e., within 250 feet) the development area. The qualified biologist shall inspect the aforementioned habitat areas for signs of bat use (e.g., whitewash, guano); shall inspect crevices, cavities, and exfoliating bark for bat presence (e.g., using a flashlight); and may use bat detection devices if needed.

- ▶ If no evidence of bat roosts is found, the qualified biologist shall submit a report summarizing the results of the survey to the applicant and San Benito County, and no further study shall be required.
- ▶ If evidence of bat roosts is found, the qualified biologist shall submit a report summarizing the results of the survey to the applicant and San Benito County. If evidence of bat roosts is observed, the species and number of bats using the roost shall be determined by a qualified biologist. Bat detectors shall be used if deemed necessary to supplement survey efforts by the qualified biologist.
- ▶ A no-disturbance buffer of 250 feet shall be established around active pallid bat, western mastiff bat, or western red bat roosts, and project activities shall not occur within this buffer until after the roosts are unoccupied.
- ▶ ~~If roosts of pallid bat, western mastiff bat, or western red bat are determined to be present and must be removed, the bats shall be excluded from the roosting site before the tree is removed. A program addressing compensation, exclusion methods, and roost removal procedures shall be developed in consultation with CDFW before implementation. Exclusion methods may include use of one-way doors at roost entrances (bats may leave but not reenter) or sealing roost entrances when the site can be confirmed to contain no bats. Exclusion efforts may be restricted during periods of sensitive activity (e.g., during hibernation or while females in maternity colonies are nursing young). The loss of each roost (if any) shall be replaced in consultation with CDFW and may require construction and installation of bat boxes suitable to the bat species and colony size excluded from the original roosting site. If determined necessary during consultation with CDFW, replacement roosts shall be implemented before bats are excluded from the original roost sites. Once the replacement roosts are constructed and it is confirmed that bats are not present in the original roost site by a qualified biologist, the roost tree may be removed.~~

Significance after Mitigation

Implementation of Mitigation Measure 3.4-2i would reduce potential impacts on pallid bat, western mastiff bat, and western red bat to **less than significant** by requiring focused surveys for bat roosts and implementation of no-disturbance buffers around active special-status bat roosts. This mitigation measure would also be consistent with General Plan Policy NCR-2.8.

The following text has been added to Impact 3.4-2on page 3.4-34 of the Draft EIR, immediately before the heading for Impact 3.4-3:

Mountain Lion

Den habitat suitable for mountain lions is not present on the project site or adjacent to the project site. Mountain lions have been detected during camera trapping surveys along US 101 approximately 3 miles south of the project site, and mountain lion tracks have been detected approximately 1 mile south of the project site near the San Benito River undercrossing (Diamond et al. 2022). Although mountain lions may periodically use the project site as a movement corridor, it has been demonstrated that wildlife moving through the vicinity of the project site use the existing riparian corridors west, north, and south of the disturbance area (Diamond et al. 2022), and these riparian corridors provide much better movement habitat (e.g., cover, connectivity) than the disturbed habitat on the project site. The project site does not contain any bridges or culverts large enough to facilitate wildlife movement to the east over or under US 101. Project implementation would not result in removal of riparian habitat within these corridors, because the development footprint completely avoids this habitat.

The majority of the development area has been regularly disked or is otherwise disturbed (e.g., buildings, roadways) and has been farmed and disked regularly since at least 1993. The Betabel RV Resort and US 101, directly adjacent to the project site to the north and east, respectively, provide an existing level of human

activity, noise, and artificial light. Mountain lions typically avoid human development when selecting nursery sites and communication sites, and mountain lions moving through developed areas experience a greater metabolic demand (e.g., travel greater distances, expend more calories) (Wang et al. 2017; Yovovich et al. 2020). The Diamond et al. 2022 study developed cost surface models to describe the relative cost associated with a species' movement across the landscape. The mountain lion cost surface model designated the project site as unsuitable or poor habitat for movement with high movement costs (Diamond et al. 2022).

Because the project site is disturbed and located adjacent to significant existing sources of human disturbance (e.g., US 101, Betabel RV Resort) and because the project site has been identified as unsuitable or poor habitat for movement, mountain lions likely would be present on the project site very rarely. Project implementation would not result in injury or mortality of individual mountain lions or substantial loss of mountain lion habitat, because the project site is already disturbed and unsuitable for this species. Impacts on mountain lion would therefore be less than significant.

Mitigation Measures

No mitigation is required for this impact.

The following text edits have been made to Mitigation Measure 3.4-3 beginning on page 3.4-34 of the Draft EIR:

Mitigation Measure 3.4-3: Provide Riparian Setbacks, Best Management Practices, and Compensate for Unavoidable Loss of Riparian Habitat

The project applicant shall implement the following protection measures prior to implementation of project activities (e.g., construction, staging) within 50 feet of riparian woodland habitat on the project site:

- ▶ Setbacks shall be established around all riparian woodland habitat on the development area and shall be flagged or fenced with brightly visible construction flagging and/or fencing under the direction of the qualified biologist and no project activities (e.g., vegetation removal, ground disturbance, staging) shall occur within these areas. Setback distances shall be determined by a qualified biologist in consultation with the appropriate agency (e.g., CDFW), but will be a minimum of 50 feet. The final siting of all project features, including the livestock corral, will be at least 50 feet from riparian woodland habitat. Foot traffic by personnel shall also be limited in these areas to prevent the introduction of invasive or weedy species or inadvertent crushing of plants and soil compaction. Periodic inspections (e.g., once per week at a minimum) during construction shall be conducted by a qualified biologist to maintain the integrity of exclusion fencing/flagging throughout the period of construction involving ground disturbance.
- ▶ Best management practices to limit the introduction and spread of invasive plants to adjacent natural habitat will be implemented, including but not limited to cleaning clothing, footwear, and equipment; inspecting heavy equipment, vehicles, and tools; and staging equipment in areas free of invasive plant infestations.
- ▶ Before the building permit is issued, the project applicant shall update its landscaping plan to remove species considered invasive by the California Invasive Plant Council. This shall include removing the Canary Island date palm and common olive tree from the currently proposed landscaping plan.
- ▶ If project implementation cannot avoid and thus may adversely affect riparian habitat subject to CDFW jurisdiction under California Fish and Game Code Section 1602, the following measures shall apply.
 - A Streambed Alteration Notification shall be submitted to CDFW, pursuant to Section 1602 of the California Fish and Game Code. If proposed project activities are determined to be subject to CDFW jurisdiction, the project applicant shall abide by the measures to protect fish and wildlife resources required by any executed agreement prior to any vegetation removal or activity that may affect the resource. Measures to protect fish and wildlife resources shall include a combination of the following mitigation.

- The project applicant shall compensate for the loss of riparian habitat and habitat function and value of this habitat at a ratio sufficient to offset the loss of riparian habitat function (at least 1:1) by:
 - restoring riparian habitat function and value within the project site;
 - restoring degraded riparian habitat outside of the project site;
 - purchasing riparian habitat credits at a CDFW-approved mitigation bank; or
 - preserving existing riparian habitat of equal or better value to the affected riparian habitat through a conservation easement ~~at a sufficient ratio to offset the loss of riparian habitat function (at least 1:1).~~
- The project applicant shall prepare and implement a Compensatory Mitigation Plan that shall include the following:
 - For preserving existing riparian habitat outside of the project site in perpetuity, the Compensatory Mitigation Plan shall include a summary of the proposed compensation lands (e.g., the number and type of credits, location of mitigation bank or easement), parties responsible for the long-term management of the land, and the legal and funding mechanism for long-term conservation (e.g., holder of conservation easement or fee title). The project applicant shall provide evidence in the plan that the necessary mitigation has been implemented or that the project applicant has entered into a legal agreement to implement it and that compensatory habitat shall be preserved in perpetuity.
 - For restoring or enhancing riparian habitat within the project site or outside of the project site, the Compensatory Mitigation Plan shall include a description of the proposed habitat improvements, success criteria that demonstrate the performance standard of maintained habitat function has been met, legal and funding mechanisms, and parties responsible for long-term management and monitoring of the restored or enhanced habitat.
 - Compensatory mitigation may be satisfied through compliance with permit conditions, or other authorizations obtained by the project applicant (e.g., Lake and Streambed Alteration Agreement), if these requirements are equally or more effective than the mitigation identified above.
- ▶ Fencing and signage shall be installed between the development footprint and the riparian woodland habitat associated with the Pajaro River to discourage trespassing into stream and riparian habitat. Fencing design shall be at the discretion of the project applicant and may include permeable, symbolic fencing (e.g., post and cable).

Significance after Mitigation

Implementation of Mitigation Measure 3.4-3 would reduce potential impacts on riparian woodland habitat to a **less-than-significant** level by requiring implementation of avoidance measures, compensation for permanent loss of these to offset the loss with a minimum 1:1 ratio, potentially including a streambed alteration agreement with CDFW, and installation of fencing and signage to prevent trespassing into this habitat after project construction is completed. This mitigation measure would also be consistent with General Plan policies NCR-2.8 and NCR-2.10.

The following text edit has been made to Mitigation Measure 3.4-4 beginning on page 3.4-36 of the Draft EIR:

Mitigation Measure 3.4-4: Identify State or Federally Protected Wetlands, Implement Avoidance Measures, and Obtain Permits for Unavoidable Impacts on Wetlands

- ▶ The project applicant would retain a qualified biologist, hydrologist, or wetland ecologist to prepare a formal delineation of the boundaries of potential state or federally protected wetlands within the development area according to methods established in the USACE wetlands delineation manual (Environmental Laboratory 1987) and the Arid West regional supplement (USACE 2008), as well as the *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State* (State

Water Resources Control Board 2021). The qualified biologist would also delineate the boundaries of wetlands that may not meet the definition of waters of the United States, but would qualify as waters of the state, according to the state wetland procedures (SWRCB 2021). If the project could not be designed to avoid state or federally protected wetlands and other waters, the delineation report would be submitted by the applicant to USACE and a preliminary jurisdictional determination would be requested.

- ▶ If state or federally protected wetlands are determined to be present within the development area that can be avoided, the qualified biologist would establish a buffer around wetlands and mark the buffer boundary with high-visibility flagging, fencing, stakes, or clear, existing landscape demarcations (e.g., edge of a roadway). The buffer would be a minimum width of 25 feet but may be larger if deemed necessary. The appropriate size and shape of the buffer zone would be determined in coordination with the qualified biologist and would depend on the type of wetland present (e.g., stream, fresh emergent wetland), the timing of project construction activities (e.g., wet or dry time of year), environmental conditions and terrain, and the project activity being implemented.

Project construction activities (e.g., ground disturbance, vegetation removal, staging) would be prohibited within the established buffer. The qualified biologist would periodically inspect the materials demarcating the buffer to confirm that they are intact and visible, and wetland impacts are being avoided.

- ▶ If it is determined that fill of waters of the United States would result from project implementation, authorization for such fill would be secured from USACE and the RWQCB through the Clean Water Act Sections 401 and 404 permitting processes. In association with the Section 404 permit (if applicable) and prior to the issuance of any grading permit, Section 401 Water Quality Certification from the Central Valley RWQCB would be obtained. For impacts on waters of the state that are not also waters of the United States and are therefore not covered by the 401 Water Quality Certification, the applicant would apply to the RWQCB for Waste Discharge Requirements following the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (State Water Resources Control Board 2021). Any waters of the United States or waters of the state that are affected by the project shall be replaced or restored on a no-net-loss basis (i.e., a mitigation ratio of at least 1:1) in accordance with the applicable USACE and California Water Board mitigation standards in place at the time of construction.
- ▶ Prior to implementing any vegetation removal, grading, earth moving, or dredge or fill activities that could alter aquatic resources on the project site (i.e., activities within a close enough proximity to directly remove the resource or indirectly affect the hydrology of the resource through ground disturbance), the applicant would notify CDFW, through issuance of a Lake and Streambed Alteration Notification (notification), before commencing activity that may divert the natural flow or otherwise alter the bed or bank, of any lake or stream. If CDFW determines, based on the notification, project construction activities trigger the need for a Lake and Streambed Alteration Agreement, the proponent would obtain an agreement from CDFW before the activity commences. The applicant would conduct project construction activities in accordance with the agreement, including implementing reasonable measures in the agreement necessary to protect fish and wildlife resources, when working within the bed or bank of waterways or in riparian habitats associated with those waterways. These measures may include but not be limited to demarcation of the construction area, biological monitoring, environmental awareness training for construction crews, and compensatory measures (e.g., restoration, long-term habitat management).

Significance after Mitigation

Implementation of Mitigation Measure 3.4-4 would reduce significant impacts on state and federally protected wetlands to a **less-than-significant** level by requiring delineation of state or federally protected wetlands within the drainage ditch on the project site and permitting and compensation for unavoidable impacts on state or federally protected wetlands such that there is no net loss of these resources. This mitigation measure would be consistent with General Plan Policy NCR-2.5 and NCR-4.1.

The following text edit is made to Impact 3.4-5 on page 3.4-37 of the Draft EIR:

Impact 3.4-5: Interfere with Wildlife Movement Corridors or Impede the Use of Wildlife Nurseries

While the project site contains some riparian woodland habitat that may provide habitat for roosting bats and provide some habitat connectivity for wildlife, the project site is largely disturbed and located adjacent to significant barriers to wildlife movement (e.g., US 101). Further, there are no modeled ECAs or natural landscape blocks on the project site. As a result, the project site likely does not currently function as a significant wildlife nursery site or wildlife movement corridor. Therefore, the impact related wildlife movement corridors or wildlife nurseries would be **less than significant**.

The riparian woodland habitats on the project site may provide roosting habitat potentially suitable for common bat species. However, based on the number and size of the trees on the project site, it is unlikely that the project site would support a large colony of common bats. Further, as discussed above in Impact 3.4-2, while implementation of the project may affect special-status birds and bats, mitigation measures, including preconstruction surveys and avoidance of active bird nests and bat roosts, would be implemented to reduce impacts to less than significant. These mitigation measures would also result in protection of active bat roosts that would be considered nursery sites.

The project site does not contain any portion of a modeled ECA or natural landscape block. Although the project site is located adjacent to the Santa Cruz Mountains-Gabilan Range critical linkage, it is not included within this linkage (Penrod et al. 2013). ~~While the project site contains some natural habitat (e.g., riparian woodland); however,~~ most of the development area of the project site is disturbed and is located adjacent to US-101 to the east, which is a significant barrier to wildlife movement. Wildlife moving through the vicinity of the project site ~~would likely have been demonstrated to use the existing riparian corridors (Diamond et al. 2022)~~ and undisturbed habitat in the undeveloped area (approximately 80 acres) on the project site that would not be developed. The retention of the 80 acres of undeveloped area would be consistent with General Plan policies NCR-2.1, NCR-2.4, and NCR-4.4.

Although project implementation could result in increased traffic, human activity, and artificial lighting in the project site compared to current conditions, the Betabel RV Resort north of the project site and US 101 east of the project site provide an existing level of human activity, noise, and artificial light. Section 3.12, "Noise," on pages 3.12-1 through 3.12-28 of the Draft EIR, describes the potential noise impacts resulting from project construction and operation and notes that existing ambient noise in the vicinity of the project site is dominated by traffic on US 101. As noted in Section 3.12, maximum noise generated during daytime project construction activities and operation is not predicted to substantially exceed baseline maximum noise levels currently experienced in the vicinity of the project site. Additionally, as described in Section 3.1, "Aesthetics," on pages 3.1-1 through 3.1-16 of the Draft EIR, the project would be required to comply with the County's Dark Sky Ordinance, and all lighting would be consistent with International Dark Sky Standards, which include standards that would reduce impacts from artificial lighting on wildlife (e.g., minimizing blue light, fully shielding lights).

Project construction activities are not expected to significantly impede wildlife movement in the vicinity of the project site or the region, and this impact would be **less than significant**.

Revisions to the Section 3.5, "Cultural Resources"

The following text edit is made to Mitigation Measure 3.5-1a, on page 3.5-13 of the Draft EIR:

Mitigation Measure 3.5-1a: Prepare and Implement a Treatment Plan for the Sanchez Adobe

Before ground disturbance associated with the project, the County and the applicant shall finalize a treatment plan specific to the Sanchez Adobe site. The plan shall be developed in collaboration with the Amah Mutsun

Tribal Band and submitted to the Tribe for final approval 30 days prior to ground disturbance. If the Tribe does not reply within this time, work may commence. The treatment plan shall include, but is not limited to:

- ▶ A research design which includes both pre-contact and historic-era questions;
- ▶ excavation strategy;
- ▶ archaeological and tribal monitoring (as outlined in Mitigation Measure 3.16-1b);
- ▶ resource significance assessment methods;
- ▶ discovery, preservation, and evaluation methods;
- ▶ acquisition of a curation agreement and identification of the party responsible for paying the fees,
- ▶ reporting requirements; and
- ▶ health and safety procedures.

The following text edit is made to Mitigation Measure 3.5-1b on Draft EIR pages 3.5-13 and 3.5-14:

Mitigation Measure 3.5-1b: Archaeological Monitor

Before the start of ground disturbing activities, a qualified archaeologist meeting the United States Secretary of Interior guidelines for professional archaeologists shall be retained to monitor construction activities. The monitor shall complete daily monitoring logs that describe each day's activities, including construction activities, locations, soil, and any cultural materials identified.

Before any ground disturbing construction activities, the monitor shall develop a construction worker awareness brochure for all construction personnel and supervisors who will have the potential to encounter cultural resources. The brochure shall be prepared in collaboration with the Amah Mutsun Tribal Band and submitted to the Tribe 14 days prior to ground disturbance for final approval. If the Tribe does not reply within this time, work may commence. The topics to be addressed in the Worker Environmental Awareness Program will include, at a minimum:

- ▶ types of cultural resources expected in the project area;
- ▶ what to do if a worker encounters a possible resource;
- ▶ what to do if a worker encounters bones or possible bones; and
- ▶ penalties for removing or intentionally disturbing cultural resources, such as those identified in the Archeological Resources Protection Act.

Revisions to the Section 3.8, "Greenhouse Gas Emissions"

The following text edit is made to Mitigation Measure 3.8-1a on Draft EIR page 3.8-9:

Mitigation Measure 3.8-1a: Install Photovoltaics

As part of site development, the project applicant shall include solar photovoltaics onsite capable of generating at least the equivalent of electricity required for project consumption per year based on final project design and electrical demand as part of the building permit submittal. The amount of megawatt hours that would be installed to offset electricity consumption would be based on feasibility of siting solar on the project site as part of the building permit submittal. If complete offset is not feasible because of final building and site design, electrical demand, and the area required to accommodate photovoltaic panels, the project applicant shall provide documentation demonstrating infeasibility to the satisfaction of the County and identify the extent of solar power generation that can be accommodated. Solar photovoltaics may be installed on building rooftops and ground-mounted over parking areas and other areas. As noted above, ~~e~~Evidence of solar generation shall be included in final overall site plans and building plans to the County prior to issuance of building permits.

The following text edit is made to Mitigation Measure 3.8.1f on Draft EIR page 3.8-10:

Mitigation Measure 3.8-1f: Purchase Carbon Offset Credits

To reduce the remaining emissions after Implementation of Mitigation Measures 3.8-1a through 3.8-1e, the applicant shall compensate by purchasing offset GHG reduction credits for the remaining mass emissions associated with construction and operations after implementation of onsite GHG reductions associated with Mitigation Measure 3.8-1a through 3.8-1e. The level of GHG offsets needed to achieve the threshold may be calculated prior to approval of final construction drawings, so long as GHG estimates are prepared by a qualified GHG specialist retained by the County and based on substantial evidence. Further, to comply with this measure, any GHG offset purchased shall comply with the following parameters.

The GHG reductions achieved through an offset or through the purchase of a carbon credit must meet the following criteria:

- ▶ Real: They represent reductions actually achieved (not based on maximum permit levels).
- ▶ Additional/surplus: They are not already planned or required by regulation or policy (i.e., not double counted).
- ▶ Quantifiable: They are readily accounted for through process information and other reliable data.
- ▶ Enforceable: They are acquired through legally binding commitments/agreements.
- ▶ Validated: They are verified through the accurate means by a reliable third party.
- ▶ Permanent: They will remain as GHG reductions in perpetuity.

The purchase of GHG offsets shall prioritize implementation of offsets generated within or as close to San Benito County as possible but may also include offsets from the rest of California and from other states with offset validity laws at least as strict as California's, in order of preference. All carbon offsets must be purchased from programs verified by a major third-party registry; examples include, but are not limited to, Climate Action Reserve (CAR), American Carbon Registry, and Verra (formally the Verified Carbon Standard). The County will retain designated third party individual or consultant, qualified and versed in the GHG offset industry (this may include the use of CARB Accredited Offset Verifiers) to facilitate the procurement, purchase, and retirement of GHG Offsets for the purpose of CEQA mitigation funded by the applicant to confirm the calculation of the GHG offset required for the project after factoring final site design and compliance with Mitigation Measures 3.8-1a through 3.8-1e and ensure that the offsets purchased are derived using protocols that meet the same criteria (i.e., real, additional, permanent, enforceable, quantifiable, verifiable), as described in CCR, Title 14, Sections 95972 and 95973(a)(1). The purchase and retirement of the GHG offsets consistent with the requirements of this mitigation measure must be demonstrated to the satisfaction of the County prior to construction activities and issuance of any building permits.

Revisions to the Section 3.16, "Tribal Cultural Resources"

The following text edit is made to the first paragraph under the heading "Environmental Setting," on page 3.16-3 of the Draft EIR:

The project area is within the aboriginal territory of the Ohlone, referred to by the Spanish as Costanoan. three independent tribelets occupied lands in the southern Santa Clara Valley: the *Ausaima* occupied the eastern side of the valley between Hollister and where Pacheco Creek enters the lowlands; the *Mutsun* lived on the southwestern side of the valley around the present City of San Juan Bautista; and the *Unijaima* claimed the Gilroy area. All of these groups spoke dialects of the Costanoan/Ohlone language, a dialect chain that extended from San Francisco Bay south to Monterey Bay. The Amah Mutsun Tribal Band (AMTB or Tribe) is traditionally and culturally affiliated with the project site (see AmahMutsun.org/language and AmahMutsun.org/history). The Amah Mutsun Tribal Band trace their lineage to several Mutsun villages including *Uñijaima*, *Xisca*, *Orestac*, *Ochentac*, *Pagsin*, *Teboatac*, *Ausaima*, *Tiuvta*, *Chitatac*, and *Tamarox*. They are indigenous to the Pajaro River drainage basin, which is called *Popeloutchom* (Albion 2022: 38).

The following text edit is made on page 3.16-5 of the Draft EIR, immediately prior to the heading “Juristac Tribal Cultural Landscape”:

Kuksui doctoring involved the ailing person (or his family) organizing a Kuksui healing ceremony, which included ceremonial dancing and feeding of the attendees. Kuksui would come down the hills in a zigzag motion, and dance in the ceremony with four other dancers selected by the spiritual leader/shaman. In the Big Head Dance, the shaman and spiritual leader became the deity himself by wearing the elaborate head dress and other regalia. The AMTB explains that these dances were referred to as “Big Head” dances because of the regalia worn by the shaman/spiritual leader. Chairman Lopez reports that the Big Head Dances were among the most important and most spiritual of all dances for the Tribe. These dances drew people from many villages and from considerable distances, including Yosemite, and would last for days (Albion 2022: 39).

Colonialism

Spanish colonization in the Ohlone and Mutsun traditional lands started with the founding of Mission San Carlos Borroméo del Río Carmelo (Mission Carmel) and a presidio at Monterey in 1770, Mission San Francisco de Asis in 1776, and continued with Mission San Juan Bautista in 1779. The colonization was focused on coercive recruitment of the Native people resulting in loss of traditional lands and culture to depopulation through hardships, disease and trauma inflicted by the missionaries. Resistance to missionization was addressed with strict and merciless punishments and escaped people were captured and returned to the Mission. Given that the economy of the Missions was based on the enslaved labor of the Native people, all the Missions worked hard to continue recruitment from more distant lands once the people in the immediate region around the Missions were brought in. Some Missions, especially early on, allowed the Native people to return to their traditional lands if and when the food resources within the Mission walls were in low supply (Albion 2022: 16).

Life inside the Mission walls was equally traumatic. The Spanish intended to bring about a new order and control over the Native Americans by introducing European urban planning and religion. Native people were forced to learn and adopt new lifeways including religion, how their homes were built, and who lived with them. The residential structures, typically adobe buildings, were strategically built to both segregate and control the Native Americans. Families and people from different cultures were forced to live together. Unmarried men and women were separated from the families so that they could be more easily indoctrinated into European and Catholic ways. They were also taught farming and animal husbandry of Old and New World domesticated plants and animals. Outside the Mission walls, the natural landscape was impacted through the introduction of new plants and animals. Livestock were allowed to graze and were in direct competition with the local wild animals. Native Americans were forced into a foreign cultural landscape that involved them having to navigate spaces that had unfamiliar elements – such as animal corrals, agriculture fields, crop processing areas, man-made water control and distribution features, separation of young men and women from families, and regular church services. By 1795, the majority of the Native people of the Mutsun territory were baptized, and by 1805 none were left living within Native villages (Albion 2022: 16).

Once Mexico gained independence from Spain in 1821, there was a concerted effort by the Mexican government to privatize the many and large properties of the Spanish Missions so that Mexican citizens could ranch and farm these lands. The Mission padres managed the Mission lands and livestock outstations, until secularization in 1834. Subsequently, all the land holdings and church belongings of Mission San Juan Bautista were confiscated by civil authorities at this time. This transition was administered by Tiburcio Castro who oversaw this transfer between 1835 and 1836. Official church documents indicated that 250 Indians were emancipated from Mission San Juan Bautista, and there may have been 100 Indians living in the immediate vicinity or scattered throughout the region (Albion 2022: 17).

The following text edit is made to the last paragraph on page 3.16-8 of the Draft EIR:

Ascensión Solórsano de Cervantes

Ascensión (also spelled Ascensión) Solórsano de Cervantes (1857–1930) was an elder who was knowledgeable about Ohlone and Mutsun traditions, history, Tribal lore. Her house became the place to gather where Native people and relatives gathered to talk about their lineages, share information about relatives, and solicit her help. She was an elder and a leader as she provided help to the Ohlone and Mutsun who came to her, including food, medicine, and helping them find employment. Her guidance and leadership were critical because they shaped the future of the Tribe (Albion 2022: 18).

Born in the mid-1800s (perhaps around 1855 or 1857) near Mission San Juan Bautista, Ascensión Solórsano's parents Miguel Solórsano and Barbara Sierra de Solórsano were Mutsun, and she was the last "full-blooded" Mutsun. Both of Ascensión's grandfathers had served as alcaldes at Mission San Juan Bautista during the Mexican Period. She grew up on ranches in the area, one near Watsonville and at another time near the Pinnacles. During her life, she gained a reputation as a healer or *doctora*, someone well-versed in the arts of Mutsun herbal medicine and the use of plants. Ascensión Solórsano was not only well-connected to the Native American community, and she especially engaged with the elders and interacted with many people who had helped build the mission. Ms. Solórsano was also well connected to the communities so local people, both Native Americans and non-Indians, came to her for medical information and help. She learned about the old ways (Native American traditions) from her parents and old survivors of the Mission period. She had 16 children, and when she died in 1930, she was buried at the cemetery at Mission San Juan Bautista. Ascensión Solórsano's lineage continues into the present day, and Ed Ketchum is her great-great grandson (Albion 2022: 18; 35-36).

Ms. Solórsano was the last Mutsun original speaker, and she is considered a culture bearer of the Mutsun culture by the AMTB. She left behind a rich record of tradition, beliefs, and history through recordings, maps, and notes. For this reason, AMTB traditions are being carried forward such that many were not lost and are practiced today. She carried the pre-contact traditions and cultural practices of the Tribe into the 20th century. Furthermore, towards the end of her life, she passed on much of her knowledge to her descendants (Albion 2022: 6; 35-36).

The following text edit is made to Draft EIR beginning on page 3.16-8:

Ethnographic Study Report

At the AMTB's request the County contracted with Albion Environmental, Inc. to prepare an ethnographic study of the project location to supplement the Integrative Cultural Resources Survey which is intended to further inform the ongoing tribal consultation process. The ethnographic study report will be completed during the public comment period for the Draft EIR and incorporated in the confidential appendix for the EIR as part of the administrative record and will be reflected in the Final EIR for certification, and the Mitigation Measure Monitoring and Reporting Program which may be adopted in conjunction with any project approval.

Ethnographic and ethnohistoric studies provide insights into Native American cultures, lifeways, and cultural landscapes. In doing so, such studies provide an understanding into the nature of Tribal beliefs and cultures as they are expressed today. Archival research and interviews with the AMTB occurred concurrently and were guided by research themes. The Ethnographic Study was divided into four phases: archival research, project area visits, tribal interviews, and reporting. Four research themes were identified: (1) Tribal History, Traditional Knowledge, Tribal Resources, and Cultural Landscapes; (2) Colonialism and Historic Trauma; (3) Cultural Persistence and Culture Bearers; and (4) Periods of Significance for the Tribe. These data were used in the analysis of the Tribal resources as tribal cultural resources (Albion 2022: 56).

TRIBAL CULTURAL RESOURCES

During the AB 52 consultation process, AMTB shared that JTCL is a tribal cultural resource and that it had been evaluated and recommended eligible for listing in the CRHR. Subsequently, the Ethnographic Study investigated the potential presence of tribal cultural resources within and directly adjacent to the project site through archival research and interviews with the AMTB. The AMTB shared that the project is also located within the following tribal cultural resources (Albion 2022):

- ▶ Ascensión Solórsano's Historical Period Traditional Plant Gathering Area,
- ▶ Juristac and Isleta/Isleta Village Area,
- ▶ Sanchez Adobe (CA-SBN-149H),
- ▶ Medicine Man Hill and Layaani Medicine Man Pole Viewshed, and
- ▶ Mount Pajaro and Sargent Hills Viewshed.

As described in detail below, AMTB identified contributing elements of two of these resources. The California Blackberry Gathering Area is a contributing element of Ascensión Solórsano's Historical Period Traditional Plant Gathering Area, and the Juristac Ceremonial Grounds, Dancing Grounds, and La Poza are contributing elements to the Juristac and Isleta/Isleta Village Area (Albion 2022).

The Ethnographic Study also identified three additional resources that are located immediately adjacent to and outside the project site and that are of importance because of their close proximity to the project area: Betevel Bluff and indigenous archaeological sites CA-SCL-579 (P-43-000574) and P-35-000528.

Juristac Tribal Cultural Landscape

JTCL spans 21,122.92 acres in the rugged hills overlooking Gilroy to the north and Watsonville to the south (see Figure 3.16-1). It has been evaluated against CRHR significance and recommended eligible under criteria 1, 2, 3, and 4. JTCL is recommended eligible for the CRHR under Criterion 1 for its association with several important events in the AMTB Tribal history. It is recommended eligible for the CRHR under Criterion 2 for its association with several important historic-era Mutsun and pre-contact Ohlone people, ancestral figures, and spirits. Under Criterion 3, JTCL is recommended eligible for its association with the prominent shamanic and doctoring traditions of the Mutsun and the AMTB. Finally, under Criterion 4, it is recommended eligible for its potential to be used to teach Tribal history, culture, and ecology to AMTB members. JTCL retains the integrity of location, setting, association, and feeling; the integrity of design, materials, and workmanship is not a contributing aspect (Albion and Environmental Science Associates 2021:112-122). For these reasons, JTCL meets the definition of a tribal cultural resource for the purposes of CEQA under PRC Section 21074.

The following text edit is made on Draft EIR page 3.16-10, after the description of JTCL is complete and just before the beginning of Section 3.16.3:

Ascensión Solórsano's Historical Period Traditional Plant Gathering Area

This resource consists of an important historical period traditional plant gathering area that was frequented during the early 20th century by the Mutsun and the AMTB elder, healer, and culture bearer, Ascensión Solórsano. She plays a critical role in the Tribe's cultural persistence, identity, and revitalization. She is revered by the Tribe because she carried the traditions, practices, and ancestral history of the Tribe through her words, as shared with scholars. Her knowledge, her role as a traditional healer and a traditional food practitioner, and her dedication to preserving Tribal lifeways have been and will continue to be vital to the Tribe. The defining elements of Ascensión Solórsano's Historical Period Traditional Plant Gathering Area include plants and animals collected by precontact Mutsun, Ascensión Solórsano, her granddaughter, and other Mutsun. Based on the Integrative Survey, the California Blackberry Gathering Area, a dense patch of native plants that are important natural resources and that are used by the AMTB and other Native people for food, medicine, and dye, is a character-defining component of the resource (Albion 2022: 78-83).

Ascensión Solórsano's Historical Period Traditional Plant Gathering Area is eligible as an individual tribal cultural resource. It is recommended eligible under Criteria 2, 3, and 4 of the CRHR under the research themes Tribal History, Traditional Knowledge Tribal Resources, and Cultural Landscapes; Colonialism and Historic Trauma; Culture Bearers and Cultural Persistence; and Periods of Significance for the Tribe. The resource retains integrity of feeling, setting and location, association, materials, and workmanship; integrity of design is not applicable. Furthermore, this resource is also a contributing element to two existing tribal cultural resources: JTCL and Betevel Bluff (Albion 2022: 78–83).

Juristac and Isleta/Isleta Village Area

This resource includes several contributing elements, including the locations of Isleta/Isleta Village, Juristac Village, the Juristac Ceremonial Grounds, the Dance Grounds, La Poza, CA-SCL-579 (P-43-000574), and P-35-000528. Together, these components constitute a distinct cultural and sacred spatial area. Of these contributing elements, two (CA-SCL-579 and P-35-000528) are located outside the project site and are not discussed further (Albion 2022: 83–90).

Isleta/Isleta Village is the location of a historical period family ranch where Ms. Ascensión Solórsano lived with her family. The village of Juristac (distinct from the Juristac tribal cultural landscape) is an Indigenous village where people congregated at different times of the year for important ceremonies, including healing and renewal ceremonies, that were attended by Kuksui the Mutsun deity and spiritual leader. It is a place that has deep and strong connections with shaman, healers, and medicine men (Albion 2022: 83–90).

The Juristac Ceremonial Grounds and Dance Grounds were defined by the AMTB as one of the locations where ceremonies and ceremonial and cultural dances were conducted by the shaman, healers and medicine men, and individuals who were inducted into this practice (Albion 2022: 83–90).

La Poza is the sacred pond, and a natural feature, where the shaman, healers, and medicine men bathed before the ceremonies. It is also a place well known and present in Tribal memories, where families visited and gathered for social events (Albion 2022: 83–90).

The Juristac and Isleta/Isleta Village Area is eligible as an individual tribal cultural resource. It is recommended eligible under Criteria 1, 2, 3, and 4 of the CRHR under the research themes Tribal History, Traditional Knowledge, Tribal Resources, and Cultural Landscapes; Colonialism and Historic Trauma; Culture Bearers and Cultural Persistence; and Periods of Significance for the Tribe. It retains integrity of association, location, feeling, materials, and workmanship; integrity of design is not applicable. In addition, this resource is a contributing element to the existing JTCL tribal cultural landscape (Albion 2022: 83–90).

Sanchez Adobe

This resource is the historic-era archaeological site CA-SBN-149H (P-35-000143), also known as the Sanchez Adobe. Native Americans, including Mutsun people, worked as laborers and built the adobe for Juan Maria and Encarnacion Sanchez in 1844. These Native people were skilled builders and were ancestors of today's Mutsun, AMTB members, and other Indigenous people. In addition, the Native laborers lived near the adobe even after construction was completed because Native people worked at the adobe and also in the orchards and fields associated with the adobe (Albion 2022: 90–92).

The Sanchez Adobe is eligible as an individual tribal cultural resource. It is eligible under Criteria 1 and 4 of the CRHR under the research themes Tribal History, Traditional Knowledge, Tribal Resources, and Cultural Landscapes; Colonialism and Historic Trauma; and Periods of Significance for the Tribe. It retains integrity of association, setting, location, and feeling. Integrity of workmanship, integrity of materials, and integrity of design are not considered for these criteria (Albion 2022: 90–92).

Medicine Man Hill and Layaani Medicine Man Pole Viewshed

Medicine Man Hill and the location of the Layaani Medicine Man Pole together form a Tribal resource located outside the project site. Nevertheless, it plays a key role in the viewshed Tribal resources. Medicine Man Hill is a place of significance for the Tribe both because it serves as a landmark as a place of spiritual

power associated with shamans and because it is located within JTCL. The *Layaani* Pole, which was located on Medicine Man Hill, lends additional importance to this resource because it was a cultural and spiritual landmark that was seen from a distance by Mutsun people. In addition, their viewshed and view of both of them is of great significance to the AMTB and the Mutsun people because they are “associated with traditional ceremonies and with Mutsun cultural memories of visiting *La Poza* and traditional ceremonial grounds” (Apodaca 2022: 23). The view of Medicine Man Hill and the location of *Layaani* are also of immense cultural importance because this view from the project site provides a “prominent line-of-sight vantage point” and an unobstructed view (Apodaca 2022: 24). Viewsheds from the project site provide excellent views of this resource (Albion 2022: 92–96).

The defining elements of the Medicine Man Hill and *Layaani* Medicine Man Pole Viewshed include the location of these places within the larger JTCL near *La Poza*, the *Juristac* Ceremonial and Dance Grounds, and *Betevel* Bluff (Albion 2022: 92–96).

The Medicine Man Pole, the location of the *Layaani* Medicine Man Pole, and their viewshed are eligible as an individual tribal cultural resource. It is recommended eligible under Criteria 1, 2, and 4 of the CRHR under the research themes Tribal History, Traditional Knowledge, Tribal Resources, and Cultural Landscapes; Colonialism and Historic Trauma; and Periods of Significance for the Tribe. It retains integrity of association, setting, location, and feeling. Integrity of workmanship, integrity of materials, and integrity of design are not considered for these criteria (Albion 2022: 92–96).

Mount Pajaro and Sargent Hills Viewshed

The viewshed of Mount Pajaro and Sargent Hills is a panoramic view from the project site and stretches from the mountain peak in the distant west to the Sargent Hills (including the JTCL) to the west and the northwest. Sargent Hills are an integral component of the JTCL associated with traditional ceremonies, specific spirit beings, and ancestral routes of travel. The upper and lower benches at Betabel provide unique vantage points from which to view these culturally significant landforms. From a Tribal cultural standpoint, being in the presence of and within sight of sacred mountains confers spiritual wellness. The viewshed includes prominent geographical natural features that are important in the Tribe’s worldview and culture. This viewshed of these important spiritual and ceremonial places bestows spiritual wellness to the Mutsun people and the AMTB. The resource has immense potential to provide important cultural information to the AMTB as part of the Tribe’s revitalization efforts to teach and transfer traditional knowledge to the youth of the Tribe and to continue with their persistence and revitalization efforts. The viewshed of Mount Pajaro and Sargent Hills from the central and southern portions of the project site is excellent. The view of Mount Pajaro from the northern portion of the project site is obstructed but not that of the Sargent Hills. The defining elements of the viewshed of Mount Pajaro and Sargent Hills include a significant portion of the Ascensión Solórsano’s Historical Period Traditional Plant Gathering Area, JTCL, *Betevel* Bluff, and Mount Pajaro (Albion 2022: 97–100).

The Mount Pajaro and Sargent Hills Viewshed is recommended eligible for the CRHR under Criterion 4 under the research themes Tribal History, Traditional Knowledge, Tribal Resources, and Cultural Landscapes; Colonialism and Historic Trauma; and Periods of Significance for the Tribe. The resource retains the integrity of location, setting, association, feeling and workmanship. The integrity of design is not a contributing aspect (Albion 2022: 97–100).

***Betevel* Bluff**

The *Betevel* Bluff holds a special place and plays a central role in the Mutsun and the AMTB sacred ceremonies, spirituality, and oral history. It is a place of power because it is the route that the creator deity *Kuksui* took as he descended the slope to the nearby village of *Juristac* as part of the Big Head Dance, and it is also the location where an important Mutsun storyteller, *Noyola*, faced the Mutsun Evil Spirit. The shamans, healers, and medicine men of the village of *Juristac* and the JTCL used *Betevel* Bluff for their ceremonial events. Ascensión Solórsano collected medicinal plants at the base of the *Betevel* Bluff. It is important to the Mutsun and the AMTB for its place in different time periods, including Indigenous lifeways before

colonialism, Indigenous resistance and survival, and the life and times of Ascensión Solórsano. The *Betevel* Bluff is a place of power in the Indigenous lives of the past and the present (Albion 2022: 100–101).

The *Betevel* Bluff has been previously evaluated and recommended eligible for listing as a tribal cultural resource under CRHR Criteria 1, 2, 3, and 4 under the research themes Tribal History, Traditional Knowledge, Tribal Resources, and Cultural Landscapes; Culture Bearers and Cultural Persistence; and Periods of Significance for the Tribe. This resource was evaluated as an individual tribal cultural resource and also as a contributing element to JTCL (Albion 2022: 100–101).

Impact 3.16-1, beginning on page 3.16-11 of the Draft EIR, is revised as follows:

Impact 3.16-1: Cause a Substantial Adverse Change in the Significance of a Tribal Cultural Resources

Consultation with AMTB identified JTCL as a tribal cultural resources that has been recommended eligible under CRHR criteria 1, 2, 3, and 4. JTCL therefore meets the definition of a tribal cultural resource for the purposes of CEQA under PRC Section 21074. Since release of the Draft EIR, five additional tribal cultural resources have been identified on the project site and within the boundaries of JTCL, pursuant to PRC Section 21074. Because development of the project (including project-related ground-disturbing activities) would result in damage to ~~this~~ these tribal cultural resources, the project could cause a **significant** impact.

The JTCL has been identified as a tribal cultural resource pursuant to PRC Section 21074. As described in the Integrative Cultural Resource Survey, JTCL constitutes a tangible place of connection with tribal ancestors, and place of reverence and remembrance. Development in this tribal cultural resources landscape and the associated traffic, noise, and visual obstruction of natural viewsheds, could alter the natural setting potentially causing a substantial adverse change in the significance of this tribal cultural resource. Specific areas of concern identified in the Integrative Survey included: 1) La Poza and the river confluence; 2) Medicine Man Hill Viewshed; 3) Mount Pajaro and Sargent Hills Viewshed; and 4) the Peninsula (riparian corridor, around the existing greenhouse).

No development is proposed in the La Poza and the river confluence area or the Peninsula; this area is of concern primary related to ethnobotanical resources in the area. Previous site plans had included public access trails in the La Poza area; however, after AMTB expressed concerns, the project applicant removed these features. As described in Chapter 2, "Project Description," trails are no longer included in the proposed project. This area most closely corresponds to the "Riparian Woodland" description provided in Section 3.4, "Biological Resources." As discussed in that section, only 0.2 acres of riparian woodland would be disturbed by project implementation. The Integrative Cultural Resource Survey provides recommendations related to ethnobotanical management in these areas, including the protection of mature elderberry (*Sambucus nigra*) trees and continued preservation of existing populations of California blackberry (*Rubus ursinus*), mugwort (*Artemisia douglasiana*), arroyo willow (*Salix lasiolepis*), California rose (*Rosa californica*).

Since release of the Draft EIR, the Ethnographic Study for the Betabel project site has been completed, as described above. The study identified five additional tribal cultural resources on the project site and within the boundaries of JTCL, pursuant to PRC Section 21074:

- ▶ Ascensión Solórsano's Historical Period Traditional Plant Gathering Area. The California Blackberry Gathering Area is a contributing element to this traditional plant gathering area. Together, they signify the strong relationship between the natural environment and the AMTB. The area includes a riparian corridor along the Pajaro River and at the base of the bluffs. This resource is also a contributing element to two existing tribal cultural resources: JTCL and *Betevel* Bluff.
- ▶ *Juristac* and *Isleta/Isleta* Village Area. Three additional contributing elements are located within the project site: the *Juristac* Ceremonial Grounds, the Dance Grounds, and *La Poza*. The village of *Juristac* is the location where people congregated for important ceremonies that were attended by *Kuksui* the Mutsun deity and spiritual leader. *Isleta/Isleta* Village is the location of a historical period family ranch

where Ascensión Solórsano, the AMTB's elder, healer, and culture bearer lived with her family. In addition, this resource is a contributing element to the existing JTCL tribal cultural resource.

- ▶ Sanchez Adobe (CA-SBN-149H). The historic-era archaeological site is located within the traditional ancestral lands of the Mutsun. The adobe and its associated fields and orchard(s) have importance in oral tribal history given that Native people, including Mutsun, built the adobe and worked there. The resource is not a contributor to the JTCL tribal cultural resource.
- ▶ Medicine Man Hill and *Layaani* Medicine Man Pole Viewshed. Although Medicine Man Hill and the *Layaani* Medicine Man Pole are located outside the project site, their viewshed and the view of both of them are of great significance to the AMTB and the Mutsun people because they are associated with traditional ceremonies and cultural memories. The resource is a contributor to the JTCL tribal cultural resource.
- ▶ Mount Pajaro and Sargent Hills Viewshed. Although Mount Pajaro and Sargent Hills are located outside the project site, their viewshed is associated with traditional ceremonies, specific spirit beings, and ancestral routes of travel. These prominent geographical natural features are important in the Tribe's worldview and culture. The resource is a contributor to the JTCL tribal cultural resource.

Grading, excavation, and construction of the project would directly affect portions of the *Juristac* and *Isleta/Isleta* Village Area and Ascensión Solórsano's Historical Period Traditional Plant Gathering Area. As related to the *Juristac* and *Isleta/Isleta* Village Area, the contributing elements of the Ceremonial Grounds and La Poza would not be developed or disturbed. A small portion of the northern boundary of the village location's contributing element would be disturbed, as would the northern portion of the Dance Grounds. As related to Ascensión Solórsano's Historical Period Traditional Plant Gathering Area, the contributing element of the California Blackberry Gathering Area would not be developed or disturbed.

Development of the project could also affect the Sanchez Adobe because excavation would be required for underground fuel storage tanks and building foundations, as discussed in Section 3.5, "Cultural Resources." This would require deep soil excavations, which could encounter indigenous materials. During the Integrative Survey, two auger units were carried out in the area adjacent to the Betabel RV Resort storage parking lot fence line. These augers along the fence line were placed in an effort to encounter historical refuse deposits related to the location of the Sanchez Adobe. The survey did not identify any new indigenous archaeological sites on the project site. Isolated artifacts were encountered in one section of the southern portion of the disturbance area and near the existing greenhouse (Apodaca 2022).

As related to the Medicine Man Hill viewshed, portions of the proposed project that would be clustered around the existing development (Betabel RV Park, approved farm stand), the gas station, convenience store, restaurant, concession stand and visitors center, would result in only moderate impacts to the Medicine Man Hill viewshed. However, proposed structures on the southern portion of the site including the motel, outdoor movie screen, outdoor 500-seat event center and restroom building represent significant development of open space lands that would obstruct the Medicine Man Hill Viewshed from vantages including much of the surrounding open space area. Visual impacts to the landscape are also addressed in Section 3.1, "Aesthetics."

The Mount Pajaro and Sargent Hills viewshed is anticipated to be minimally impacted by the project, due to the concentration of proposed structures along Betabel Road. Unobstructed views of Mount Pajaro and the Sargent Hills of the JTCL will still be obtained from open space areas on the southern portion of the project site.

The project site is located immediately adjacent to the *Betevel* Bluff tribal cultural resource. Although the project would not directly affect the resource, given its nature as a place of sacred significance and power, development within the project site would have significant indirect adverse effects on the viewshed of the tribal cultural resource. AMTB has shared that the project would alter the view of *Betevel* Bluff, given that the project site is immediately adjacent to it; therefore, the indirect impacts would adversely affect the tribal cultural resource (Albion 2022: 100–101).

Historical records show that large portions of the project site have been used for intensive agricultural activities, including row crop and orchard cultivation, a railroad spur and packing and shipping facilities and operations which are likely to have disturbed older pre-existing Native American cultural resources on the site. The project site's inclusion in JTCL evidences a very high likelihood of locating, and potentially damaging or destroying, physical objects connected to the AMTB during development of the project. Implementation of the project would involve ground disturbing activities (e.g., excavation) to develop commercial buildings and associated utilities and infrastructure. Although the study area is largely disturbed by past agricultural activities and residential development, research in the area has demonstrated there is high potential for the presence of subsurface cultural resources, including objects and features that would qualify as tribal cultural resources.

Because development of the project would result in damage to tribal cultural resources, the potential impact would be **significant**.

Mitigation Measure 3.16-1b on page 3.16-13 of the Draft EIR is revised as follows:

Mitigation Measure 3.16-1b: Implement Tribal Monitoring

All ground disturbing activities, including any preparatory grading, tree removal, or vegetation clearing, within the project site will be monitored by a paid tribal monitor provided by the AMTB. Notification shall be provided a minimum of ~~seven~~ 14 days prior to earth-disturbing activities; if AMTB does not respond in this time, activities may commence. The County shall contact the participating tribe a minimum of ~~seven~~ 14 days before beginning earthwork or other ground disturbing activities to ensure a tribal monitor is available; construction activities will proceed if no response is received 48 hours before ground disturbing activities. The tribal monitor shall complete daily monitoring logs that describe each day's activities, including construction activities, locations, soil, and any cultural materials identified. In the event that unanticipated archaeological or tribal cultural resources are discovered, including human remains, compliance with Mitigation Measure 3.16-1c would be required. The tribal monitor has the ability to halt work if a discovery occurs.

Mitigation Measure 3.16-1c on page 3.16-12 of the Draft EIR is revised as follows:

Mitigation Measure 3.16-1c: Halt Ground Disturbance Upon Discovery of Subsurface Tribal Cultural Resources and Evaluate Discovered Resource

If any suspected tribal cultural resources or unique archaeological resources are discovered during ground disturbing construction activities, all work shall cease within 100 feet of the find, or a distance agreed upon by the tribal monitor, archaeological monitor, the County, and the construction foreman based on the location and nature of the find and type of work occurring. If no agreement can be reached, all work shall cease within 100 feet of the find. The tribal monitor shall determine if the find is a tribal cultural resource. The tribal monitor will make recommendations for further evaluation and culturally appropriate treatment of discovered tribal cultural resources as necessary in consultation with the archaeological monitor. No data recovery or curation of any physical tribal cultural resource will be allowed unless this is the preference of the tribe, as confirmed in writing. Preservation in place is the preferred mitigation. If the County determines that preservation in place is not feasible, reburial if culturally appropriate will take place on site in a location not subject to further disturbance. The reburial site will be agreed upon in advance by the tribe and the project applicant.

Work at the discovery location cannot resume until all necessary investigation, evaluation, and treatment of the discovery under the requirements of the CEQA, including AB 52, have been satisfied.

Mitigation Measure 3.16-1d on page 3.16-13 of the Draft EIR is revised as follows:

Mitigation Measure 3.16-1d: Establish a Tribal Cultural Resources Conservation Easement

~~The County, applicant, and AMTB shall enter into a Memorandum of Agreement (MOA) to implement authorized activities identified in a~~ shall offer a grant of cultural conservation easement to AMTB and/or Amah Mutsun Land Trust (AMLT). This ~~The cultural conservation easement shall apply to the undeveloped area adjacent to the riparian corridor of the property of approximately 50-80 acres. The purposes of the~~

~~proposed cultural conservation easement shall be to protect and preserve~~ include, but not be limited to, protection and preservation of tribal cultural resources, and to facilitation of AMTB and AMLT's use of the area for cultural, ethnobotanical, restoration, stewardship, research, and education activities, in perpetuity. ~~The MOA have to be compatible~~ The cultural conservation easement shall contain terms to ensure its compatibility with the vegetation management plan identified in Mitigation Measure 3.18-2.

Revisions to the Section 3.17, "Utilities and Service Systems"

The following text is added to Draft EIR page 3.17-2, as the first paragraph under "State":

Executive Order N-7-22

On March 28, 2022, Governor Newsom issued Executive Order N-7-22 to provide further water resource protections during drought conditions. Item 9 in the executive order requires written verification from groundwater sustainability agencies that proposed groundwater wells or modifications to existing wells would not be inconsistent with the sustainable groundwater management program in an applicable groundwater sustainability plan or result in interference with nearby wells and adversely affect or damage nearby infrastructure.

Revisions to the Section 3.18, "Wildfire"

The following text edit is made to Mitigation Measure 3.18-2 on Draft EIR page 3.18-12:

Mitigation Measure 3.18-2: Implementation of Vegetation Management and Maintenance Plan for Undeveloped Area

Prior to project construction activities, the project applicant shall prepare a vegetation management and maintenance plan for the undeveloped area consistent with the requirements of PRC Section 4291. The vegetation management and maintenance plan outline shall address routine maintenance activities for the management of fuel loads and maintaining defensible space during project construction and operation to the satisfaction of the San Benito County Fire Marshall. Implementation actions and performance standards that shall be considered as part of ~~for~~ the plan will include, but are not limited to:

- ▶ Establishment of a 100-foot defensible space for project buildings, structures, and water storage facilities within the development site, but not beyond the boundary of the development area as shown in Figure 2-1. This defensible space shall be maintained in two zones (Zone 1 and Zone 2) from each building, structure, and water storage facility. The vegetation treatment requirements for each zone will be consistent with the requirements of CCR Title 14, Section 1299.03:
 - Vegetation management techniques for fire hazard mitigation within the defensible space area, including thinning, pruning, removing or otherwise altering vegetation to reduce the potential for ignitions and to modify potential fire behavior; different vegetation management techniques shall be identified, depending on vegetation type, location, condition, and configuration;
 - Treatment actions will be limited to eradication or control of invasive plants, removal of uncharacteristic fuel loads (e.g., removing dead or dying vegetation), trimming of woody species as necessary, and select thinning of vegetation to restore densities that are characteristic of healthy stands of the vegetation;
- ▶ Fire protection measures for vegetation removal activities associated with construction of the project and vegetation management activities that may will include:
 - Fire watch personnel responsible for watching for the occurrence of fire during and after equipment use shall be identified.
 - Equipment shall not be refueled while in operation and not until after a cooldown period.
 - Water and tools dedicated to firefighting shall be on hand in the area of vegetation removal activities at all times.

- ▶ ~~Fuel management requirements, including clearing vegetation within 100 feet of structures;~~
- ▶ Schedule of vegetation management activities during the year;
- ▶ Identification of the funding source for vegetational management activities;
- ▶ Installation of fire-resistant fencing along the development perimeter of the open space development area to prohibit trespass into the undeveloped area (with the exception of access to the proposed livestock corral and greenhouse structures); and
- ▶ Best management practices required by the state and County standards (e.g., implementation of a stormwater pollution prevention plan) implemented to avoid and/or minimize impacts associated with soil erosion, biological resources, cultural resources, and tribal cultural resources. This will include implementation of applicable mitigation measures adopted for the project that address biological resources, cultural resources, and tribal cultural resources adopted for the project.

Revisions to the Chapter 6, “Alternatives”

The following text edits are made on Draft EIR page 6-19 under “Tribal Cultural Resources”:

The project would result in significant impacts to tribal cultural resources that would remain significant and unavoidable with mitigation incorporated. While the extent of site development, building massing and operation would be less, the Reduced Intensity Alternative would also impact tribal cultural resources under project and cumulative conditions because of the occurrence of development within the tribal cultural resources landscape. Overall, impacts under this alternative would be **less** because it would reduce the overall extent of site development, building massing reductions would lessen the visual extent of the impact to the viewshed of elements of the Juristac Tribal Cultural Landscape, and operations associated with the elimination of the outdoor event center in the southern portion of the site. Elimination of the outdoor event center would partially also address the tribal concern related to the entertainment atmosphere that would be prevalent under the proposed project, but would not mitigate significant and unavoidable impacts on the JTCL and associated tribal cultural resources.

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