

3.8 BIOLOGICAL RESOURCES

3.8.1 ENVIRONMENTAL SETTING

The project site is an undeveloped parcel with generally level topography, with elevations ranging from 10 to 15 feet above mean sea level. The site contains no significant trees or topographic features, and is subject to periodic disking. Vegetation consists of non-native grasses and forbs. There are several mature non-native ornamental trees surrounding an agricultural well on the adjacent parcel to the north, along Taylor Lane. There are no natural watercourses on the project site.

San Joaquin County Multi-Species Habitat Conservation and Open Space Plan

Background

Several regional planning efforts that address the protection of the diversity of biological resources have been undertaken in the area. The most significant of these is the creation in 2000 of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP), the stated purpose of which is to provide a strategy for balancing the conversion of open space to non-open space uses with the need for the long-term management of plant, fish and wildlife species, especially those that are currently listed, or may be listed in the future, under the Federal Endangered Species Act (FESA) or the California Endangered Species Act (CESA).

The SJMSCP resulted from the San Joaquin Council of Governments' efforts to develop a regional approach to managing the biological resources of the County. The Council of Governments established a steering committee in 1994 to guide the planning process. Representatives of local governments, state and federal agencies, business groups and environmental organizations participated in the process, which included the production of two technical documents and a public and agency participation program. Prior to 1994, habitat conservation plans had been developed for Swainson's hawk (City of Stockton, 1990) and San Joaquin kit fox (San Joaquin County, 1993), however, implementation of these plans resulted in a fragmented approach to mitigating impacts to special status species and their habitats which was not only unreliable, but was ineffective in planning new development.

Mitigation Requirements

The SJMSCP describes best management practices and establishes testing protocols and mitigation procedures for the loss of habitat and associated incidental Takes resulting from the conversion of open space in the County over the next 50 years, for a list of species contained in the SJMSCP. All permanent impacts to habitats within San Joaquin County and the species to which associated impacts could occur are covered by the SJMSCP. The SJMSCP is implemented by the various local permitting jurisdictions within the County, including the City of Lodi. Mitigation of unavoidable impacts to species covered in the SJMSCP emphasizes compensation for habitat losses through the establishment, enhancement and management of habitat preserves. The preserves are normally located outside of designated existing and planned urban boundaries on productive agricultural lands

throughout the County. Acquisition of preserve lands is accomplished primarily through the purchase of easements from landowners willing to sell urban development rights.¹

In lieu of dedication of preserve land, the SJMSCP allows project proponents the option of providing mitigation through the payment of development fees on a per-acre basis, according to the type of habitat that is converted to non-open space uses. The development fees are divided into three categories: Vernal Pool Habitat Conversion Fee; Natural Land and Agricultural Habitat Land Conversion Fee; and Multi-Purpose Open Space Conversion Fee. The fees for these three categories were determined by dividing the total cost of acquiring, enhancing, managing and administering habitat preserves to compensate for converting open spaces in all three categories. The City of Lodi is a participating agency and has established a development fee for new development pursuant to the SJMSCP.

The proposed project would be subject to the mitigation provisions of the SJMSCP, as deemed appropriate by the City, for any loss of sensitive species habitat resulting from the development of the project.

Field Surveys

Reconnaissance-level field surveys of the property were conducted by EIP Associates in June 2002 and H.T. Harvey & Associates in January 2003. Reports containing summaries, findings, conclusions and recommendations based on the surveys are included in Appendix G. The major findings of the reports are summarized in the following paragraphs.

Biotic Habitats

H.T. Harvey & Associates identified ruderal field/former agricultural-row crop as the only habitat type on the project site. The vegetation found within this habitat type consists of assemblages of plants that thrive in disturbed areas and weedy, non-native annual forbs and grasses. The dominant ruderal species observed on the site included field mustard, filaree, common mallow and perennial ryegrass. Other species observed included yellow star-thistle, pigweed, common sowthistle, cocklebur and horseweed. A row of walnut and apricot trees were observed along the western boundary of the site, and a few ornamental trees, including olive and Chinese tallow were present near the agricultural well on the north side of the site. A small willow tree and a small patch of giant reed were also observed near the well. Patches of hydrophytic species including salt grass, flatsedge, vervain, smartweed and sandspurry were observed in shallow swales located along the eastern and southern boundaries of the site, adjacent to the roadways.

Wildlife species found in ruderal habitat areas include many of the same species found in developed areas such as western fence lizards, killdeer, house finches, western meadowlarks, red-winged blackbirds, American goldfinches, mourning doves, house mice, black-tailed hares and California ground squirrels. Many species using adjacent areas are likely to forage in and move through the ruderal habitat, as well. Overall, the H.T. Harvey report described the site as being generally low in quality for wildlife, due to its recent disturbance, lack of native vegetation, proximity to human developments, and frequent presence of dogs.

¹ San Joaquin County Multi-Species Habitat Conservation and Open Space Plan, Ch.5 – Conservation Strategy, November 2000.

Regulated Habitats

EIP Associates prepared a Preliminary Wetland Assessment for the project site, based on a field reconnaissance conducted in June 2002. The field reconnaissance consisted of walking the site in transects at suitable intervals and searching for evidence of jurisdictional wetlands or other waters of the United States, as defined by the U.S. Army Corps of Engineers (USACE). The three basic parameters investigated to identify and delineate the boundaries of jurisdictional wetlands are vegetation, soils and hydrology. The site was therefore searched for hydrophytic vegetation, standing water, topographic depressions, surface scouring, vernal pools, swales, seeps, ditches, or any other potential evidence of jurisdictional wetlands. The Assessment concluded that the site did not contain any areas that would be considered jurisdictional wetlands subject to USACE regulation, based on the lack of seasonal wetlands, vernal pools, swales, inundated areas, drainages or other areas that exhibited channel bed and bank.

The results of a reconnaissance-level field survey conducted by H.T. Harvey & Associates similarly concluded that the site would not be considered jurisdictional wetlands. H. T. Harvey's survey did note the presence of a topographic depression and two swales supporting a few hydrophytic species, and a patch of giant reed adjacent to the agricultural well (as described above). The depression was mostly devoid of vegetation, although a few hydrophytic species were present. However, no hydric soil indicators were present that would qualify the area as jurisdictional wetlands. The hydrophytic vegetation in the swales was supported by surface runoff from the adjacent roadways, and consisted mostly of upland species. In addition, the swales exhibited none of the characteristics (litter deposition, incision or water lines) that would indicate jurisdictional wetlands. The presence of giant reed was likely due to leakage from the well, which would provide sufficient soil moisture to support this species.

In addition to jurisdictional wetlands, the H.T. Harvey survey included a search for stream habitats potentially under the regulatory jurisdiction of the California Department of Fish and Game (CDFG). Such habitats would include intermittent and ephemeral streams, rivers, creeks, dry washes, sloughs, blue-line streams (USGS) and watercourses with subsurface flows. Canals, aqueducts, irrigation ditches and other means of water conveyance can also be considered streams if they support aquatic life, riparian vegetation, or stream-dependent terrestrial wildlife, according to CDFG definitions. The survey results indicated that no habitats potentially regulated by the CDFG were identified on the project site.

Special-Status Plant and Animal Species

The Preliminary Wetland Assessment prepared by EIP Associates discussed the results of a records search performed with the California Natural Diversity Database (CNDDDB) and special-status species habitat survey that was also conducted during their field reconnaissance of the site. The Wetland Assessment stated that based on the field reconnaissance, the site does not exhibit the essential components necessary to support the special-status plant and wildlife species identified in the CNDDDB that could have potentially been present, with the exception of Swainson's hawk. Swainson's hawk, listed as a state threatened species under the California Endangered Species Act, forages in open fields, low-growing agricultural crop areas, and grain fields in the San Joaquin Valley. The data base search revealed that the species has been known to nest within five to six miles of the project site. Based on the field reconnaissance, the Wetlands Assessment determined that the site could contain foraging habitat for Swainson's hawk.

H.T. Harvey's report confirmed the assertion by EIP Associates that the site does not provide suitable habitat capable of supporting any special status plant species identified in the CNNDDB.

H.T. Harvey stated that several of the wildlife species identified in the CNNDDB occur in habitat types that are not found on the project site, such as riparian habitat and freshwater streams. The report identified Swainson's hawk, burrowing owl, northern harrier, white-tailed kite, loggerhead shrike and California horned lark as the special-status species identified by the CNNDDB that may breed on the site and/or pose potential constraints to development of the project. Their field reconnaissance, however, revealed no evidence of past nesting by any raptor species within the project area, and led to the conclusion that Swainson's hawks would not be likely to breed on the site due to the generally poor quality of the habitat and lack of suitable nesting trees. Similarly, the ground-nesting birds such as burrowing owl, northern harrier and California horned lark were also determined unlikely to nest on the site due to the generally low quality of the habitat as well as the level of ground disturbance from disking and dogs. The H.T. Harvey report stated that although EIP's assessment was based on a search of the CNDDDB for recorded occurrences of special-status species in the project vicinity and a comparison of those species' habitat requirements with resources available on the project site, the absence of recorded occurrences for a species in the CNDDDB would not preclude the possibility of its existence in an area if the site is within the species' range and suitable habitat is present. For this reason, the H.T. Harvey report concluded that, in addition to Swainson's hawk, the other special-status species previously described may occur on the site.

H. T. Harvey's analysis concurs with the SJMSCP's classification of the project site as Category B, Multi-Purpose Open Space Land, and verifies that the habitat type found on the site is covered under the SJMSCP.

Relevant General Plan Policies

The City of Lodi General Plan contains goals, policies and implementation programs related to the conservation, utilization, and development of natural resources, including vegetation, wildlife and fisheries. Goal E of Section 7 (Conservation Element) strives "to protect sensitive native vegetation and wildlife habitats and fisheries resources." The following are the policies under Goal E that are considered relevant to the proposed project:

Conservation Element, Goal E:

- ❖ Policy #2: The City shall regulate the removal of trees that are defined as "heritage trees".
- ❖ Policy #3: New development shall be sited to maximize the protection of native tree species and sensitive plants and wildlife habitat.
- ❖ Policy #4: The City shall encourage the use of native plant species for landscaping roadsides, parks, and urban developments.
- ❖ Policy #5: The City shall require site-specific surveys to identify significant vegetation and wildlife habitat for development projects located in or near sensitive habitat sites.
- ❖ Policy #6: The City shall support federal and state laws and policies preserving rare, threatened, and endangered species by ensuring that development does not adversely affect such species or by fully mitigating adverse effects consistent with

the recommendations of the U.S. Fish and Wildlife Service and California Department of Fish and Game.

- ❖ Policy #14: The City should work with the California Department of Fish and Game in identifying an area or areas suitable for Swainson's hawk and burrowing owl habitat; this land should be preserved and put into a mitigation land bank to mitigate impacts on existing habitat for these species. A mechanism should be established for developer funding of acquisition and management of lands in the mitigation bank.
- ❖ Policy #15: The City shall manage portions of storm drainage detention ponds and drainage ponds and other areas as wildlife habitat.

3.8.2 ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Thresholds of Significance

The following thresholds of significance are based on Appendix G of the State CEQA Guidelines. For the purposes of this analysis, an impact to biological resources is considered significant if the project would:

Biotic Habitats

- ❖ Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.

Regulated Habitats

- ❖ Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.
- ❖ Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.

Special Status Plant and Animal Species

- ❖ Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.
- ❖ Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

- ❖ Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

IMPACT 3.8.A: Open Space and Wildlife Habitat: Implementation of the project would result in the conversion of approximately 29 acres of land categorized as Multi-Purpose Open Space Land in the SJMSCP to urban uses (commercial/retail development). However, potential open space and wildlife habitat impacts would be mitigated by the project sponsor's conformance with the mitigation requirements of the SJMSCP and conducting of pre-construction surveys. (Less Than Significant With Mitigation).

Development of the project site would eliminate approximately 29 acres of open space. Field investigations and habitat assessments conducted on the property indicated that the site does not contain jurisdictional wetlands that would be subject to USACE regulations, nor is it likely to contain nesting habitat for special status wildlife species. It was determined, however, to fall within the Multi-Purpose Open Space Land classification for mitigation under the SJMSCP. In addition, it was determined that the special status species, although unlikely to nest on the site, could potentially be present.

SJMSCP Mitigation Requirements

The SJMSCP defines the Multi-Purpose Open Space Land classification as including lands that do not qualify as Natural lands, Agricultural Lands or Urban Lands, but if converted, contribute to the overall loss of open space for agriculture, recreation, scenic values and other beneficial uses of open space. The conversion of this land also affects plants and wildlife by eliminating habitat. Although H. T. Harvey's report describes the site as having low quality to most wildlife of interest, the site is consistent with the Multi-Purpose Open Space Land classification, and is subject to the mitigation requirements. This loss of open space and potential on-site habitat would be offset by the payment of SJMSCP mitigation fees, which would be used for the acquisition of off-site habitat land. The potential impacts of the conversion, therefore, would be reduced to less than significant levels with the implementation of the following mitigation measure:

Mitigation 3.8-A: In-lieu Fees: The project sponsor will pay an in-lieu mitigation fee of \$845 per acre, in accordance with SJMSCP and City of Lodi requirements, to compensate for loss of open space and habitat resulting from the development of the project site. (Less Than Significant Impact).

IMPACT 3.8-B Special Status Species: Implementation of the project would remove the agricultural and agricultural perimeter biotic habitats on the site, which could contain potential foraging areas for Swainson's hawk, nesting raptors, and burrowing owls. The loss of foraging areas for these species would result in a potentially significant impact. (Less Than Significant With Mitigation).

The significance of Swainson's hawk as a special status species in San Joaquin County has been recognized by local governments since prior to 1990, when the City of Stockton developed a habitat

conservation plan for the species. Along with the San Joaquin kit fox, the conservation of this species was one of the primary objectives in the development of the SJMSCP. Swainson's hawks were once found throughout the state, except in the mountainous regions. Currently, their range is limited to a few areas of the Central Valley and the Great Basin, and their numbers have been substantially reduced since the beginning of the twentieth century. There are hundreds of records of Swainson's hawks for San Joaquin County, including nests in isolated trees. However, the best habitat is concentrated along permanent waterways with a continuous canopy of large trees for nesting and grassland, irrigated pasture, alfalfa or grain fields nearby for foraging.² The EIP report identified the project site as potentially representing foraging habitat for Swainson's hawk.

The H.T. Harvey report concurred with findings of the EIP report regarding the site's potential to contain foraging habitat for Swainson's hawk, but in addition found that the possibility of other special-status species raptors and ground-nesting species including burrowing owl, northern harrier, white-tailed kite, loggerhead shrike and California horned lark occurring on the site could not be ruled out. The report recommends, therefore, that in addition to the payment of SJMSCP mitigation fees, pre-construction surveys be conducted for all nesting raptors that include the project site as well as the area within 250 feet of all project site boundaries, in order to meet CDFG standards. Potential impacts to these species resulting from development of the project will be reduced to less than significant levels by implementing the following mitigation measures.

Mitigation 3.8 B.1: – Nesting Raptors: Prior to any grading on the site, the project applicant shall conduct pre-construction surveys for nesting raptors that include the project site as well as the area within 250 feet of all project site boundaries. If nesting raptors are found, the project sponsor shall consult with CDFG on appropriate steps to avoid impacts and shall be required to implement CDFG measures. (Less Than Significant Impact).

Mitigation 3.8 B.2: – Burrowing Owls: Prior to any grading on the site, the project sponsor shall conduct pre-construction surveys for burrowing owls in accordance with the Survey and Protocol and Mitigation Guidelines prepared by the Burrowing Owl Consortium³, and shall consult with the CDFG for appropriate additional mitigation in the event that owls are present on the site. The project applicant shall be required to implement CDFG mitigation measures. (Less Than Significant Impact).

² SJMSCP, 2000.

³³ The Burrowing Owl Consortium is a research/conservation organization based at UC Santa Cruz that prepared the Burrowing Owl Survey Protocol and Mitigation Guidelines that was adopted by the California Department of Fish & Game.

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