

Attachment 8
Applicant's Good Cause Request

Whitman F. Manley
WManley@rmmenvirolaw.com

March 29, 2022

Via e-mail

Jason M. Dooley
Deputy County Counsel
Office of the Napa County Counsel
1195 Third Street, Suite 301
Napa, CA 94559

Re: Walt Ranch – Appeal of Director Morrison’s approval; Mitigation Measure 6-1

Dear Mr. Dooley:

Pursuant to section 2.88.090(B) of the County Code, and as discussed more fully below, we request that the Board of Supervisors consider the attached materials in considering the appeal filed by the Center for Biological Diversity (“Appellant”) at the hearing on April 19, 2022. The following materials are attached:

- Attachment 1 – Letter from Mike Reynolds to David Morrison, with attachments (March 8, 2022). This letter sets forth Hall Brambletree’s revised proposal to address the project’s GHG emissions.
- Attachment 2 – Revised Figures and Table showing woodland habitat available for conservation as GHG mitigation.
- Attachment 3 – Excerpts of transcript of the Board of Supervisors’ hearing on December 14, 2022.
- Attachment 4 – Excerpt of Appellant’s November 5, 2021, letter setting forth the bases for its appeal.

This letter sets forth the applicant’s showing of good cause to consider these materials.

1. March 8 Letter

Mike Reynolds’ March 8 letter, including its attachments, consists of Hall Brambletree’s revised proposal for Mitigation Measure 6-1. The proposal includes a figure, labeled “Figure 1,” showing +/- 312 acres of woodland habitat suitable as GHG mitigation. The figure was prepared using existing surveys and GIS mapping of the property. The surveys and GIS mapping are the same as those that the County relied upon in preparing the

Final EIR. Figure 1 to this letter portrays this information in ways that we believe will be useful to the Board because it identifies the specific woodland habitat acreage available as mitigation to address GHG impacts. This is the specific information that the Court of Appeal stated is needed to support the County's finding that GHG emissions would be mitigated. The figure thus provides the substantial evidence necessary to support the mitigation measure that the County already adopted when it approved the project. The figure is not based on new or different survey data or GIS mapping. It simply portrays this same data in a way that focuses on the issue at hand.

The March 8 letter also includes proposed revisions to Mitigation Measure 6-1. The revisions reflect the following proposed changes:

- The revised text states that the 248 acres of woodland habitat to be preserved must be located as shown in the figure attached to our March 8 proposal. This is to ensure that the land to be preserved is otherwise developable and thus meets the criteria identified by the Court of Appeal.
- The revised text requires that the BRMP be modified to include the conservation easement required by this measure. This revision strengthens the proposal.

Good cause exists to consider this proposal. The proposal responds directly to the Court of Appeal's decision, eliminates the tree planting program to which the Appellant objected, and provides GHG mitigation in a manner that all parties agree is appropriate.

2. Revisions to March 8 Proposal

We request that the County consider the following modifications to our March 8 proposal. The March 8 proposal states that none of the woodland habitat available as GHG mitigation is located in the Milliken Reservoir watershed. This statement is incorrect. Parcels 24, 25, 26, 29 and 32 straddle the Milliken Reservoir and Capell Creek watersheds. Parcels 27, 28, 30 and 31 are within the Milliken Reservoir watershed. Taken together, these parcels contain 19.4 acres of available woodland habitat within the Milliken Reservoir watershed.

The woodland habitat in the Milliken Reservoir watershed is available as GHG mitigation because this habitat can be converted to other uses, so long as at least 60% of the canopy cover is retained. (Napa County Code, § 18.108.027(b).)¹ Even if the woodland habitat acreage on Parcels 24 – 32 shown on our March 8 proposal were converted, over 60% of the canopy cover (indeed, over 70% of the canopy cover) would be retained. Because the County Code does not prohibit converting this woodland habitat, it could be converted to other uses and is therefore available as GHG mitigation.

¹ The 60% required canopy cover is the standard that existed at the time the County approved the Walt Ranch ECP. The County since increased the required canopy cover to 70%. The change is not relevant here; Walt Ranch retains over 70% of the canopy cover in the Milliken Creek watershed.

We nevertheless wish to revise our proposal to eliminate all woodland habitat in the Milliken Reservoir watershed. Our reasoning is straightforward: we want to make our proposal as simple as possible. Moreover, we do not need the woodland habitat in the Milliken Reservoir watershed to provide the requisite 248 acres of woodland habitat conservation. If the woodland habitat in the Milliken Reservoir watershed is excluded from our proposal, then 292.6 acres of suitable woodland habitat remain available as suitable conservation for GHG mitigation.

A revised figure, entitled “Walt Ranch GHG Mitigation (March 29, 2022),” appears at Attachment 2. This figure shows, shaded in green, the +/- 292.6 acres of woodland habitat that is eligible as GHG mitigation. The green-shaded area is identical to the figure attached to our March 8 letter, except that the woodland habitat in the Milliken Reservoir has been excluded.

We also include in Attachment 2 a revised spreadsheet breaking down the acreage of woodland habitat by parcel. The figure and table are identical to those we submitted on March 8, except that the woodland habitat acreage in the Milliken Reservoir watershed has been excluded from our proposal.

We also include in Attachment 2 an additional figure. This figure shows the same +/- 292.6 acres of woodland habitat eligible as GHG mitigation. This figure also shows, shaded in grey, all the areas on the property that are not considered available for conservation as GHG mitigation. The reasons why these areas are not considered available as GHG mitigation are: (1) they are within approved vineyard clearing limits, (2) they are within the Milliken Reservoir watershed, (3) they are protected under other, adopted mitigation (e.g., for biological resources), (4) they are within required stream setbacks, or (5) they consist of areas with slopes in excess of 30%. The areas shaded in grey are therefore considered “off the table” as woodland habitat potentially available for conservation to mitigate the project’s GHG emissions.

Good cause exists to consider these materials. They revise our proposal to eliminate potential confusion regarding whether woodland habitat in the Milliken Reservoir watershed is available as suitable GHG mitigation. The figures and table also provide greater specificity regarding the location of the 248 acres of woodland habitat to be conserved.

The second figure is particularly helpful because it shows that there is no overlap between the areas shaded grey and those shaded green. Thus, all the +/- 292.6 acres meets the criteria necessary to serve as GHG mitigation, because (absent the conservation easement required by Mitigation Measure 6-1), this acreage is developable under County policy.

This figure presents only information that is already in the record and that was before Director Morrison when he approved the May 5, 2021, proposal. The figure presents, on a single map, information that currently appears in different figures addressing various resource areas. Because the information is presented in a way that focuses on the issue at

hand, we believe this figure will be useful to the Board. We therefore believe that good cause exists to consider this figure.

3. Excerpts of testimony before Board of Supervisors (December 14, 2021)

Attachment 3 consists of excerpts of the transcript of the Board's December 14, 2021, hearing. At that hearing, Appellant opposed our previous proposal to revise Mitigation Measure 6-1. Our previous proposal consisted of preserving 124 acres of woodland habitat, plus implementing a tree planting program. At the Board's hearing, Appellant attacked the tree planting program, and argued that we should instead preserve 248 acres of woodland habitat. Here is what Appellant's representative stated:

We recognize the narrowness of this appeal. We have no illusions about that.... [¶]

The last time [Hall] stood before the Board, they promised to preserve 248 acres of woodland. Now they're coming back and they want to cut that in half. The County should hold them to their initial promise.

Effective mitigation in this case would be to identify 248 acres of otherwise developable woodland that is on the project site, and to protect it in perpetuity. Sometimes the most obvious option is also the best.

We shouldn't complicate things here. There has been no demonstration that 248 acres of developable land cannot be preserved. That is what the County should require. [¶] ... Preservation of developable land must be the priority. [¶] Preservation is not just sound policy. In this case, it's the only legally viable option because the planting program does not meet CEQA's requirements for mitigation.

★ ★ ★

There [are] a lot of reasons for the County to not leave anything up to chance. There is a lot of chance involved in the planting program. But there's already a pathway on the table that can lead to successful mitigation – identifying land that would otherwise be developable on the project site and require that that be set aside in a conservation easement – 248 acres.

[¶]

So what we're urging for you to do is to send this to – back to staff, and let's have a demonstration of what is available, what is developable, and what can be set aside in a conservation easement. . . . That is what the science demands and it's what your citizens demand.

(Transcript, Napa County Board of Supervisors Public Hearing on Walt Ranch Appeal (December 14, 2021), pp. 26–29, 114–116.)

Attachment 4 is an excerpt of the transcript from this hearing. Good cause exists to consider this excerpt because it reflects Appellant's position concerning the efficacy of the mitigation that we now propose. Because Appellant made these statements to the Board at a public hearing, there is no basis for disputing whether these statements reflect Appellant's position.

4. Excerpts from Appellant's appeal (November 5, 2021)

On November 5, 2021, Appellant filed a packet setting forth the reasons why it opposed our previous proposal. As its first ground of appeal, Appellant states:

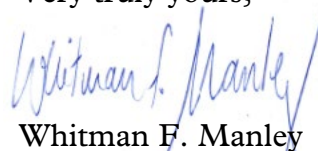
The County's original approval of the Project required extensive oak woodland preservation as mitigation for both biological resources and GHG impacts. (Addendum at 2.) The Court of Appeal did not invalidate the practice of preserving existing oak woodlands as a viable means of mitigation, it simply held that the County's failure to identify the areas to be preserved made it impossible to determine whether or not the mitigation was additive. (Court of Appeal Decision at 52.) The logical fix for the EIR's shortcomings would be to identify 248 acres of oak woodland that would otherwise be developable, because the areas have slopes under 30% and are outside stream setbacks and permanently protect those lands through conservation easement.

(Letter from Ross Middlemiss, Center for Biological Diversity, to Napa County Board of Supervisors (November 5, 2021), p. 3.)

Attachment 4 is an excerpt of this letter. Good cause exists to consider this excerpt because it reflects Appellant's position concerning the efficacy of conserving woodland habitat that is less than 30% slope and outside of stream setbacks. In addition, the letter is already part of the County's record for this proceeding.

Thank you for the opportunity to submit this information. Please do not hesitate to contact us if you would like additional information or have any questions about this request. Thank you for your attention.

Very truly yours,



Whitman F. Manley

cc (with attachments): Ross Middlemiss
 Aruna Prabhala

Letter to Jason M. Dooley
Attachment 1

**Hall Brambletree Associates
401 St. Helena Highway South
St. Helena, CA 94574**

March 8, 2022

David Morrison
Director
Planning, Building & Environmental Services
Napa County
1195 Third Street, 2nd Floor
Napa, CA 94559

Re: Walt Ranch ECP – GHG Mitigation

Dear Mr. Morrison:

This letter sets forth Hall Brambletree's revised proposal to address the greenhouse gas emissions from the Walt Ranch Erosion Control Plan ("ECP").

As approved, Mitigation Measure 6-1 requires Hall to "place in permanent protection no less than 248 acres of woodland habitat." The Court of Appeal held that the requirement to place 248 acres of woodland habitat in a conservation easement was appropriate mitigation. The Court also held, however, that, because the EIR did not identify the specific acreage, there was insufficient evidence to show that such habitat could be converted to other uses. (Slip op., pp. 51-53.) Simply put, the Court said: show the County the acreage; and show that the woodland habitat could otherwise be converted.

With this revised proposal, we have done that. We have mapped +/- 312 acres of woodland habitat that could be converted to other uses under County policy. The location of this habitat is shown and described on the attached map and spread sheet. This information is based on the same surveys and mapping that was performed as part of the environmental review process. We encourage the County to review the mapping and data to confirm its accuracy.

We propose to place a conservation easement on not less than 248 acres out of the total of 312 acres. The difference between these numbers will provide Hall and the land trust flexibility to adjust the boundaries of the easement to account for roads or other features that would diminish a particular location's suitability as preserved woodland habitat. The final boundaries of the 248 acres of woodland habitat designated for protection will be subject to review and approval by the County. The essential point here, however, is that there is ample woodland habitat available on the site to meet the concerns expressed by the Court of Appeal. Specifically, the 312 acres shown and described on the attached map and spreadsheet meet the following criteria:

- They are all mapped as woodland habitat.
- They are not located on slopes of 30% or greater.
- They are not located in the Milliken Reservoir watershed.

- They are not located within required setbacks from riparian corridors.
- There is no overlap with the land to be converted to other uses as part of the project.
- They are not designated for preservation under adopted mitigation measures requiring the protection of other resources on the property (e.g., sensitive plants or habitats or cultural resources), as set forth in the approved Biological Resources Management Plan.

Thus, absent Mitigation Measure 6-1, 248 acres of this woodland habitat would be available for conversion to other uses. The 248 acres to be preserved are entirely additive and are on top of the acreage that will already be protected for other purposes.

In May 2021, we proposed that the County revise Mitigation Measure 6-1 to require preservation of 124 acres of identified woodland habitat. We also proposed an extensive tree planting program to accompany the 124-acre easement requirement. We thought this proposal made sense because it provided an opportunity restore the property in the wake of wildland fires in 2017 and 2020. To our surprise, our proposal met with resistance. We therefore propose to simply address, directly, the Court of Appeal's concern. This proposal also addresses the appellant's objections to our original proposal.

This is the same mitigation that the County approved unanimously in December 2016. The only difference is that now we are identifying the woodland habitat to be conserved. This is what the Court of Appeal asked us to do, and we are now doing it. We have also responded to the appellant's objections. There are no valid reasons why our proposal should be rejected.

We note that the information upon which this revised proposal is based is not new. The woodland habitat on the property was mapped as part of the EIR process, based on extensive surveys. The proposal is based on the same GIS data that the County relied upon in mapping biological resources and habitats on the property. This same data has been used to prepare the attached figure showing the location of woodland habitat available for conservation, meeting the criteria outlined above.

We request that the County revise Mitigation Measure 6-1 as shown in the attached document. These modifications are to make clear that the woodland habitat to be protected meets the criteria established by the Court of Appeal. We also wish to incorporate modifications to Mitigation Measure 6-1 made in response to our May 2021 proposal that we believe strengthen the mitigation.

We appreciate your consideration of this request. Please let us know if you would like additional information or have any questions. We look forward to hearing from you.

Very truly yours,



Mike Reynolds
Hall Brambletree Associates

Attachments:

Figure 1 – location of conservation easement for woodland habitat for GHG mitigation

Attachment 1 – spreadsheet identifying woodland habitat for GHG mitigation

Attachment 2 – proposed revisions to Mitigation Measure 6-1

Guide to Assessor Parcel Numbers

- | | |
|-----------------|-----------------|
| 1. 032-120-028 | 18. 032-480-027 |
| 2. 032-480-007 | 19. 032-480-028 |
| 3. 032-480-008 | 20. 032-490-004 |
| 4. 032-480-011 | 21. 032-490-005 |
| 5. 032-480-012 | 22. 032-490-006 |
| 6. 032-480-013 | 23. 032-490-008 |
| 7. 032-480-014 | 24. 032-490-009 |
| 8. 032-480-015 | 25. 032-490-010 |
| 9. 032-480-016 | 26. 032-490-011 |
| 10. 032-480-017 | 27. 032-490-012 |
| 11. 032-480-018 | 28. 032-490-013 |
| 12. 032-480-019 | 29. 032-490-014 |
| 13. 032-480-020 | 30. 032-490-015 |
| 14. 032-480-021 | 31. 032-490-016 |
| 15. 032-480-022 | 32. 032-490-017 |
| 16. 032-480-023 | 33. 032-490-018 |
| 17. 032-480-024 | 34. 032-490-019 |
| | 35. 032-490-020 |

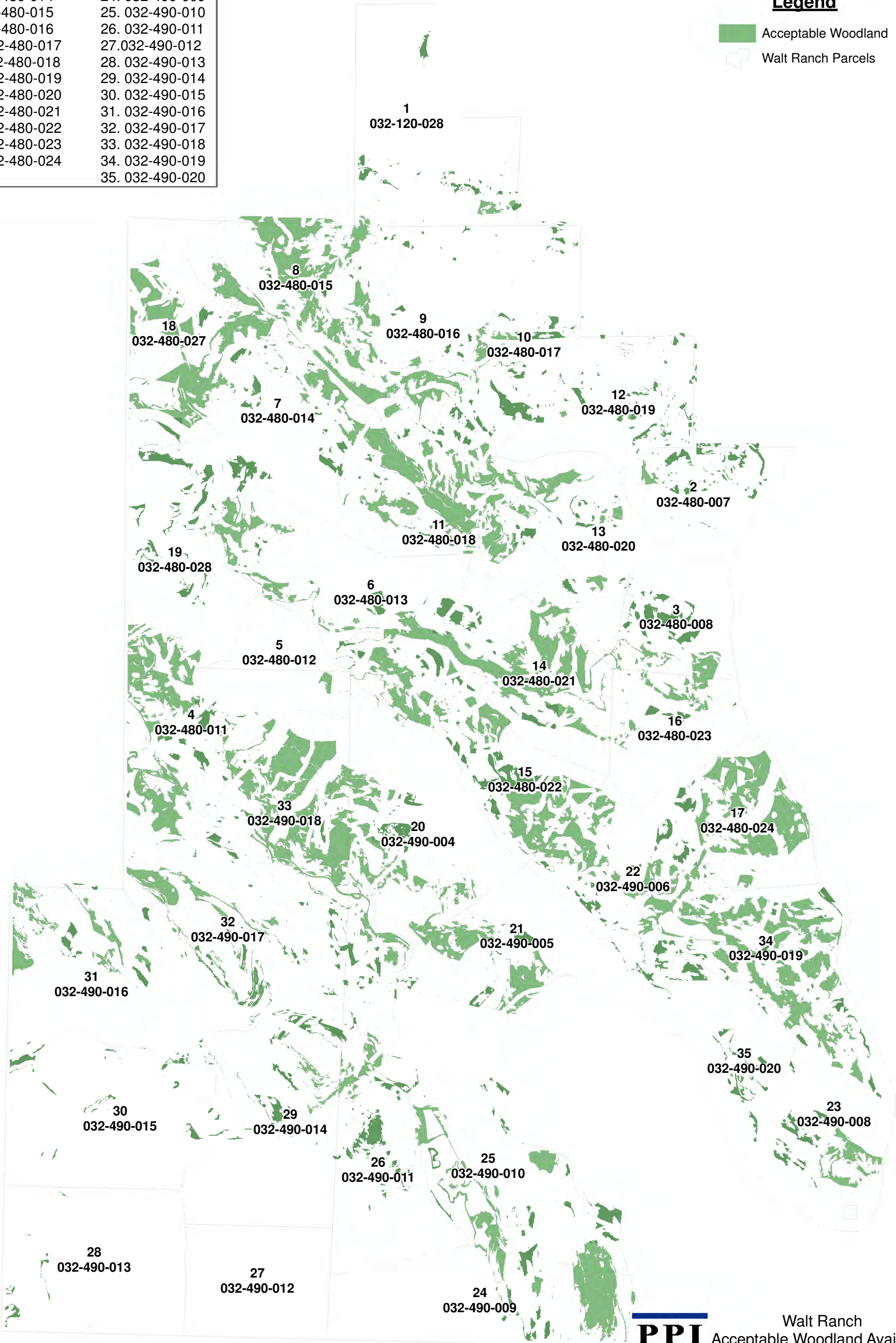
Figure 1



0 550 1,100 2,200 Feet

Legend

- Acceptable Woodland
- Walt Ranch Parcels



Attachment 1

Label	APN	GHG Acceptable Woodland (acres)
1	032-120-028	2.6
2	032-480-007	2.9
3	032-480-008	5.5
4	032-480-011	8.5
5	032-480-012	0.0
6	032-480-013	7.9
7	032-480-014	10.7
8	032-480-015	17.5
9	032-480-016	9.0
10	032-480-017	10.1
11	032-480-018	13.1
12	032-480-019	2.8
13	032-480-020	7.1
14	032-480-021	14.9
15	032-480-022	21.5
16	032-480-023	3.1
17	032-480-024	16.6
18	032-480-027	10.5
19	032-480-028	11.8
20	032-490-004	9.1
21	032-490-005	8.7
22	032-490-006	14.0
23	032-490-008	7.5
24	032-490-009	9.9
25	032-490-010	15.0
26	032-490-011	4.7
27	032-490-012	0.0
28	032-490-013	0.5
29	032-490-014	3.8
30	032-490-015	0.9
31	032-490-016	7.0
32	032-490-017	12.5
33	032-490-018	21.7
34	032-490-019	17.6
35	032-490-020	3.2
Total (acres):		312.3

Attachment 2

Proposed Revisions to Adopted Mitigation Measure 6-1 (new text underlined)

6-1: In order to offset the construction emissions from development of the Proposed Project, the Applicant shall place in permanent protection no less than 248 acres of woodland habitat. The 248 acres to be protected shall be provided from the woodland habitat depicted in the map and spreadsheet attached to this measure. All acreage designated for preservation shall be identified as such in a conservation easement with an accredited land trust organization such as the Land Trust of Napa County as the grantee, or other means of permanent protection. The conservation easement shall be prepared in a form acceptable to County Counsel and entered into and recorded with the Napa County Recorder's office prior to any ground disturbing activities, grading or vegetation removal, or within 12 months of project approval, or whichever occurs first.

Any request by the permittee for an extension of time to record the conservation easement shall be considered by the Planning Director and shall be submitted to Napa County prior to the 12 month deadline, and shall provide sufficient justification for the extension.

Land placed in protection shall be restricted from development and other uses that would potentially degrade the quality of the habitat (including, but not limited to, conversion to other land uses such as agriculture, residential, or urban development, and excessive off-road vehicle use that increases erosion), and should otherwise be restricted by the existing goals and policies of Napa County.

The Biological Resource Management Plan and MMRP shall be revised to incorporate the conservation easement required by this mitigation measure, including the map and spreadsheet attached hereto.

Letter to Jason M. Dooley
Attachment 2

Guide to Assessor Parcel Numbers

- | | |
|-----------------|-----------------|
| 1. 032-120-028 | 18. 032-480-027 |
| 2. 032-480-007 | 19. 032-480-028 |
| 3. 032-480-008 | 20. 032-490-004 |
| 4. 032-480-011 | 21. 032-490-005 |
| 5. 032-480-012 | 22. 032-490-006 |
| 6. 032-480-013 | 23. 032-490-008 |
| 7. 032-480-014 | 24. 032-490-009 |
| 8. 032-480-015 | 25. 032-490-010 |
| 9. 032-480-016 | 26. 032-490-011 |
| 10. 032-480-017 | 27. 032-490-012 |
| 11. 032-480-018 | 28. 032-490-013 |
| 12. 032-480-019 | 29. 032-490-014 |
| 13. 032-480-020 | 30. 032-490-015 |
| 14. 032-480-021 | 31. 032-490-016 |
| 15. 032-480-022 | 32. 032-490-017 |
| 16. 032-480-023 | 33. 032-490-018 |
| 17. 032-480-024 | 34. 032-490-019 |
| | 35. 032-490-020 |



0 550 1,100 2,200 Feet

Legend

- Acceptable Woodland
- Walt Ranch Parcels



11:35:54 AM 3/29/2022 R:\KHWAL\IMAGES\000 Post-Approval maps\Conservation Easement\2022-03-29 GHG Mitigation outside Milliken Watershed\2022-03-29 Acceptable Woodland by Parcel.mxd

Label	APN	GHG Acceptable Woodland (acres)
1	032-120-028	2.6
2	032-480-007	2.9
3	032-480-008	5.5
4	032-480-011	8.5
5	032-480-012	0.0
6	032-480-013	7.9
7	032-480-014	10.7
8	032-480-015	17.5
9	032-480-016	9.0
10	032-480-017	10.1
11	032-480-018	13.1
12	032-480-019	2.8
13	032-480-020	7.1
14	032-480-021	14.9
15	032-480-022	21.5
16	032-480-023	3.1
17	032-480-024	16.6
18	032-480-027	10.5
19	032-480-028	11.8
20	032-490-004	9.1
21	032-490-005	8.7
22	032-490-006	14.0
23	032-490-008	7.5
24	032-490-009	9.9
25	032-490-010	14.3
26	032-490-011	2.0
27	032-490-012	0.0
28	032-490-013	0.0
29	032-490-014	0.6
30	032-490-015	0.0
31	032-490-016	0.0
32	032-490-017	5.8
33	032-490-018	21.7
34	032-490-019	17.6
35	032-490-020	3.2
N/A*	N/A	2.1
Total (acres):		292.6

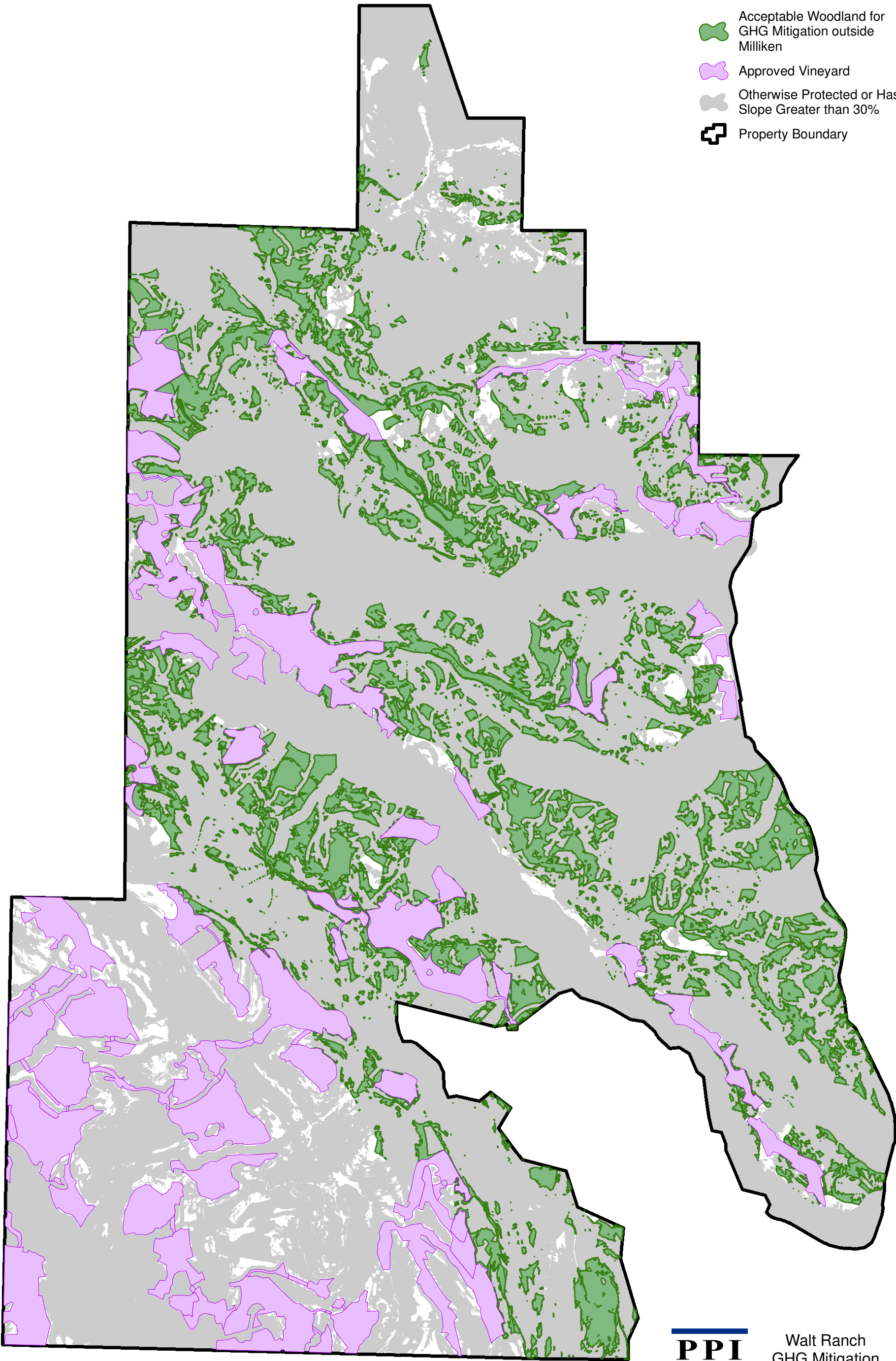
*Note: Due to differences in GIS data for the internal parcel splits and outer property boundary, there are 2.1 acres of acceptable woodland within the surveyed outer property boundary that are not accounted for in the breakdown of individual parcels.



0 550 1,100 2,200 Feet

Legend

- Acceptable Woodland for GHG Mitigation outside Milliken
- Approved Vineyard
- Otherwise Protected or Has Slope Greater than 30%
- Property Boundary



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Napa County Board of Supervisors

December 14, 2021

PUBLIC HEARING 2:00 P.M.

Walt Ranch Appeal

21-1269

<p>1 On the second challenge, the court 2 upheld the County's reliance on the Bay Area Air 3 Quality Management District guidelines used to 4 calculate greenhouse gas emissions. Neither the 5 calculation of carbon sequestration loss or 6 greenhouse gas emissions are before the Board of 7 Supervisors today.</p> <p>8 Those issues have been decided by the 9 Court. On the third challenge, the court found 10 that under the US Forest Protocols, conservation 11 easements can only be used to mitigate carbon 12 sequestration only if the forest being protected 13 is under significant threat of conversion.</p> <p>14 Because the EIR did not specify the 15 location of the easements, and because it may 16 have included development on 30 percent slopes, 17 the court found the County did not provide 18 substantial evidence to show that the land 19 proposed for conservation is subject to the 20 threat of development.</p> <p>21 Therefore, consistent with the 22 direction of the Appellate Court and the order of 23 the Superior Court, the recommended mitigation 24 measure before you today has removed all 25 conservation easements on slopes of more than 30</p> <p style="text-align: right;">Page 22</p>	<p>1 So as Mr. Dooley indicated, this is a 2 very, very narrow scope within which the Board is 3 being asked to operate today. Consistent with 4 that very narrow scope of the court order, staff 5 has the following options provided for the 6 Board's consideration -- deny the appeal in its 7 entirety and uphold the approval of the revised 8 mitigation Measure 6.1 with or without 9 modification, uphold one or more grounds of the 10 appeal and reverse the decision, or remand the 11 matter back to the Planning and Building and 12 Environmental Services Department with direction 13 for further consideration.</p> <p>14 In staff's opinion, the revisions to 15 Mitigation Measure 6.1, including the 16 modifications recommended are supported by 17 substantial evidence and notwithstanding the 18 arguments in the appeal are sufficient to reduce 19 the greenhouse gas emissions to a less than 20 significant level.</p> <p>21 We recommend that the Board deny the 22 appeal and uphold the approval of the revised 23 Mitigation Measure 6.1 as shown in Attachment 8. 24 And that concludes staff's presentation. Both 25 Mr. Dooley and Mr. Bordone and myself and the</p> <p style="text-align: right;">Page 24</p>
<p>1 percent, and specifies location of the easement, 2 as you saw in this slide earlier.</p> <p>3 The mitigation measure's also been 4 revised and recommended by staff to incorporate 5 the Biological Resource Management Plan, which 6 includes detailed monitoring and reporting 7 criteria to ensure and enforce that the measure 8 is fully implemented.</p> <p>9 I would like to reiterate real -- very 10 briefly in their May 6th, 2020 decision, the 11 Appellate Court issued Judgment 3.b, which stated 12 the County shall not consider -- I'm sorry -- the 13 County shall not reconsider whether it adopts 14 such findings unless and until they are supported 15 by substantial evidence in the record, emphasis 16 without making changes to other aspects of the 17 project and our EIR that have been approved and 18 are not subject to the partial (indiscernible) 19 mandate.</p> <p>20 What that means is, that the County has 21 already vacated Measure 6.1. They have to 22 approve another Mitigation Measure 6.1 that is 23 consistent with a court order. But you have to 24 do that without changing substantially the 25 project or the EIR.</p> <p style="text-align: right;">Page 23</p>	<p>1 Ascent team are all available for any questions 2 that the Board may have.</p> <p>3 CHAIR ALFREDO PEDROZA: Thank you, 4 Director Morrison. Board, is there any initial 5 questions? I don't see any. I'm officially 6 going to open up the public hearing and invite 7 the Appellant to provide their testimony.</p> <p>8 Mr. Middlemiss and Ms. Yap, you have 30 9 minutes. We'll remind you at 15 minutes. And 10 again, if you want to preserve any time for 11 rebuttal, that's for you to manage your time. Go 12 ahead. And we won't start the clock, Mr. 13 Middlemiss, until we load up your PowerPoint.</p> <p>14 ROSS MIDDLEMISS: Thank you. And Mr. 15 Dooley, if I ask you to change slides?</p> <p>16 CHAIR ALFREDO PEDROZA: We can give you 17 a clicker, (indiscernible). Ms. Hoskins, as soon 18 as they start, you can go ahead and start the 19 timer, please.</p> <p>20 ROSS MIDDLEMISS: All right. Thank 21 you, Chair Pedroza, Supervisors. My name is Ross 22 Middlemiss, an attorney with Appellant Center for 23 Biological Diversity. I'm joined today by my 24 colleague, Dr. Tiffany Yap, Senior Scientist with 25 the Center, who will speak shortly after myself.</p> <p style="text-align: right;">Page 25</p>

<p>1 I appreciate Staff's presentation.</p> <p>2 Thank you for laying out the background and the</p> <p>3 history. Taking a step back, I'd like to say,</p> <p>4 you know, since the moment the Center began our</p> <p>5 work in Napa, particularly with this project a</p> <p>6 number of years ago, our goal has been simple.</p> <p>7 It is to maximize conservation benefits, to</p> <p>8 protect the ecosystems and the unique</p> <p>9 biodiversity that makes Napa such a beautiful and</p> <p>10 cherished place for its residents and visitors</p> <p>11 alike.</p> <p>12 Those same goals have brought us to</p> <p>13 file this appeal, to maximize conservation</p> <p>14 outcomes and environmental benefit. No matter</p> <p>15 how inevitable project approval may seem, we will</p> <p>16 always push for scientifically guided decision</p> <p>17 making that complies with the law.</p> <p>18 We brought this appeal because the</p> <p>19 revised mitigation measure as approved is neither</p> <p>20 scientifically nor legally acceptable. We</p> <p>21 brought this appeal because we are in a climate</p> <p>22 crisis, and the County has a legal and moral</p> <p>23 obligation to mitigate the destructive projects</p> <p>24 that it approves.</p> <p>25 We recognize the narrowness of this</p> <p style="text-align: right;">Page 26</p>	<p>1 CEQA are not met, and Dr. Yap will follow by</p> <p>2 showing that the program is not capable of</p> <p>3 achieving the sequestration that's claimed by the</p> <p>4 Applicant and the County's consultants.</p> <p>5 Before addressing the specific grounds</p> <p>6 of our appeal, I think it's important to take a</p> <p>7 step back and discuss why we're here and what</p> <p>8 options are presented to the County.</p> <p>9 The key question for the Applicant and</p> <p>10 the County is how to make up for the destruction</p> <p>11 of over 14,000 trees that will forever change the</p> <p>12 character and nature of the beautiful property</p> <p>13 that's at stake here.</p> <p>14 The last time the Holl stood before the</p> <p>15 Board, they promised to preserve 248 acres of</p> <p>16 woodland. Now they're coming back and they want</p> <p>17 to cut that in half. The County should hold them</p> <p>18 to their initial promise.</p> <p>19 Effective mitigation in this case would</p> <p>20 be to identify 248 acres of otherwise developable</p> <p>21 woodland that is on the project site, and to</p> <p>22 protect it in perpetuity. Sometimes the most</p> <p>23 obvious option is also the best.</p> <p>24 We shouldn't complicate things here.</p> <p>25 There has been no demonstration that 248 acres of</p> <p style="text-align: right;">Page 28</p>
<p>1 appeal. We have no illusions about that. But</p> <p>2 properly mitigating the destruction of over</p> <p>3 14,000 trees is of critical importance.</p> <p>4 The revised mitigation has two parts --</p> <p>5 the preservation of over -- or of 124 acres of</p> <p>6 woodland that is otherwise developable, and the</p> <p>7 planting program, which will plant 16,790 oak</p> <p>8 saplings.</p> <p>9 Our appeal focuses on the planting</p> <p>10 program. Those two parts together must address</p> <p>11 the -- or must sequester enough carbon to offset</p> <p>12 the project's impacts over its 30 year lifespan -</p> <p>13 - 27,528 metric tons of carbon equivalent.</p> <p>14 And because of the flawed planting</p> <p>15 program, which we will detail throughout our</p> <p>16 presentation, the math simply does not add up.</p> <p>17 In the past, the post approval appeal or --</p> <p>18 sorry. The post approval revisions suggested by</p> <p>19 the Applicant and the recently added information</p> <p>20 from the County and the County's consultants</p> <p>21 don't change this reality.</p> <p>22 Dr. Yap and I will demonstrate why the</p> <p>23 planting program falls short, both legally,</p> <p>24 scientifically and informationally. Also, this</p> <p>25 is my portion on why the legal requirements of</p> <p style="text-align: right;">Page 27</p>	<p>1 developable land cannot be preserved. That is</p> <p>2 what the County should require.</p> <p>3 Because even with some fixes to the</p> <p>4 glaring issues in the planting program, which</p> <p>5 we'll lay out, it may still not be enough.</p> <p>6 Preservation of developable land must be the</p> <p>7 priority.</p> <p>8 Preservation is not just sound policy.</p> <p>9 In this case, it's the only legally viable option</p> <p>10 because the planting program does not meet CEQA's</p> <p>11 requirements for mitigation.</p> <p>12 There are four main issues with the</p> <p>13 planting program. The carbon calculations are</p> <p>14 misleading, 80 percent survival rate is</p> <p>15 unrealistic and unsupported, current site</p> <p>16 conditions are misrepresented, and there's a lack</p> <p>17 of enforcement and unclear funding of the</p> <p>18 program.</p> <p>19 Again, I will touch on the CEQA</p> <p>20 violations and why the requirements for</p> <p>21 mitigation are not met, and Dr. Yap will talk</p> <p>22 about how the factual and scientific shortcomings</p> <p>23 undermine the mitigation's effectiveness.</p> <p>24 CEQA was enacted to prioritize</p> <p>25 environmental protection. It pursues this goal</p> <p style="text-align: right;">Page 29</p>

<p>1 the way it is for a reason. That's how nature 2 evolved and adapted.</p> <p>3 There aren't more trees for various 4 reasons, and some -- the young trees don't always 5 survive. We should let nature, you know, let it 6 be. We should stop thinking that we can go in 7 and change everything just because we say we'll 8 reach 80 percent.</p> <p>9 And beyond that, it -- for the purposes 10 of this mitigation, it doesn't matter what 11 happens after 30 years. The scope of this EIR is 12 30 years. After that, the County doesn't have 13 control over this anymore.</p> <p>14 We need those mitigation measures now. 15 We need that mitigation to occur now. Your 16 community has demanded as much of you. You've 17 heard today in the emails, in the public comment. 18 This is urgent.</p> <p>19 There is a lot of reasons for the 20 County to not leave anything up to chance. There 21 is a lot of chance involved in the planting 22 program. But there's already a pathway on the 23 table that can lead to successful mitigation -- 24 identifying land that would otherwise be 25 developable on the project site and require that</p> <p style="text-align: right;">Page 114</p>	<p>1 demonstrate that we can achieve that mitigation. 2 So what we're urging for you to do is 3 to send this to -- back to staff, and let's have 4 a demonstration of what is available, what is 5 developable, and what can be set aside in a 6 conservation easement. Okay. That is what the 7 science demands and it's what your citizens 8 demand.</p> <p>9 CHAIR ALFREDO PEDROZA: You have less 10 than a minute, Mr. Middlemiss.</p> <p>11 ROSS MIDDLEMISS: Thank you. So again, 12 we urge you to prioritize the preservation of 13 existing woodland that would otherwise be cut 14 down. Don't allow the Applicant to hold aside 15 some lands with the slope below 30 percent to 16 develop at a later date and rely on this 17 uncertain planting plan. Thank you.</p> <p>18 CHAIR ALFREDO PEDROZA: Thank you, Mr. 19 Middlemiss and Dr. Yap as well, for your 20 presentation. So at this point, we're going to 21 take a quick break and we'll be back at 4:45. 22 And then the Board will start our deliberation 23 and ask any questions of all parties. So again, 24 we'll be back at 4:45. Thank you all.</p> <p>25 AUTOMATED VOICE: Recording stopped.</p> <p style="text-align: right;">Page 116</p>
<p>1 that be set aside in a conservation easement -- 2 248 acres.</p> <p>3 And if that isn't feasible, then make 4 that known and we'll go from there. But don't 5 just jump straight to a speculative uncertain 6 planting program, where there's not been a 7 demonstration that will be effective.</p> <p>8 And again, just addressing a few other 9 points about our appeal. We haven't asked for 10 the GHG emissions calculations to be changed. We 11 acknowledged that what was in the EIR is the 12 universe within which our appeal operates, just 13 to clarify that.</p> <p>14 So you know, I'll finish with, again, 15 what we're asking for. We understand, Mr. Manley 16 put it well, we don't like the project. We don't 17 like that this is a common occurrence in Napa. 18 But again, CEQA has certain requirements and it 19 doesn't prohibit the approval of vineyard 20 development projects. That's the reality.</p> <p>21 What CEQA does require is effective 22 mitigation and a clear demonstration to the 23 public and decision makers that mitigation can 24 occur and that will be followed through. There 25 are clear methods that are available to</p> <p style="text-align: right;">Page 115</p>	<p>1 (Recess) 2 AUTOMATED VOICE: Progress.</p> <p>3 CHAIR ALFREDO PEDROZA: All right. We 4 are back from our short break. Thank you to the 5 public. So now, we've heard from the Appellant. 6 We've heard from the public. We've heard from 7 the Applicant. At this time, I'll bring it back 8 to the Board to initiate some initial questions 9 we may have for staff. Supervisor Ramos?</p> <p>10 VICE CHAIR BELIA RAMOS: Thank you. 11 Thank you to the Applicants, Appellants and to 12 all of the public who contributed to this 13 dialogue today. I have two questions, possibly 14 three, depending on your answers specifically.</p> <p>15 One is, the survival rate of 80 percent 16 that is in the assumptions by Ascent has been 17 mentioned many times as not attainable, and 18 therefore, does not meet the requirement of CEQA. 19 Can someone, maybe at Ascent, speak to whether 20 that -- what science was used to determine the 80 21 percent survivability of the tree planting 22 program? Do you want me to keep adding questions 23 or do you want me to let you do one?</p> <p>24 JASON DOOLEY: Is Josh available on our 25 panel? Or Brenda?</p> <p style="text-align: right;">Page 117</p>

Letter to Jason M. Dooley
Attachment 4

6. Require a minimum 7-year monitoring program for plantings with specific, measurable, performance criteria and adaptive management strategies to accommodate climate change conditions (e.g., extended drought, increased wildfire frequency) and ensure an 80% success rate 16,790 of planted seedlings surviving to maturity.
7. Provide a clear definition of how tree planting survival is determined.

I. Preservation of Existing Oak Woodland Must be Prioritized

The County's original approval of the Project required extensive oak woodland preservation as mitigation for both biological resources and GHG impacts. (Addendum at 2.) The Court of Appeals did not invalidate the practice of preserving existing oak woodlands as a viable means of mitigation, it simply held that the County's failure to identify the areas to be preserved made it impossible to determine whether or not the mitigation was additive. (Court of Appeals Decision at 52.) The logical fix for the EIR's shortcoming would be to identify 248 acres of oak woodland that would otherwise be developable, because the areas have slopes under 30% and are outside stream setbacks and permanently protect those lands through a conservation easement. County policy demonstrates a preference for preserving existing habitat, and the Board should not depart from this scientifically-backed approach now.

Instead of the preservation route set forth in the EIR, Applicants proposed, and the County approved, a revised measure that halves the preserved acreage and commits to planting 16,790 oak seedlings. (Addendum at 3.) There is no discussion of why this approach is favored now, nor is there discussion of why preserving 248 developable acres within the project site is infeasible. The Center urges the County to reconsider this approach, and instead follow the science and prioritize the preservation of existing oak woodland, either within or outside the Project site, over the uncertain and risky tree planting proposal. As discussed more fully below, unless the County can provide substantial evidence demonstrating the effectiveness and adequacy of the tree planting program, the County should require the conservation of existing habitats to mitigate the Project's GHG emissions as required by CEQA. (*Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1027.)

The amendment is also unclear regarding the locations of the different land uses planned for the Project in relation to the GHG mitigation lands. The failure to include the revised project footprint and the areas of undevelopable land (including the 525 acres the letters refer to) precludes a determination of whether or not development will occur within the proposed easement area or the available acceptable woodland area, or that 124 acres of oak woodland that is outside riparian setbacks on slopes less than 30% will be protected. The original project footprint provided in the FEIR appears to show a substantial amount of project footprint within and adjacent to the proposed easement area (FEIR at Figure 3-4), which would have direct and indirect impacts to the proposed mitigation. The amendment should be revised to provide more information so that the public can determine that at least 124 acres of oak woodlands outside riparian setbacks on slopes under 30% will be avoided for the purposes of GHG mitigation.