

Attachment 1
Advisory Report



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Planning, Building & Environmental Services

1195 Third Street, Suite 210
Napa, CA 94559
www.countyofnapa.org

David Morrison
Director

ADVISORY REPORT

To:	Board of Supervisors	From:	David Morrison, Director Planning, Building & Environmental Services
Date:	May 17, 2022	Re:	Walt Ranch Vineyard Conversion Project – Greenhouse Gas Emissions Mitigation Advisory Report

This advisory report addresses the proposed revisions to Mitigation Measure 6-1 for the Walt Ranch Vineyard Project, originally approved by the County in 2016. As the Board is aware, the Court of Appeal upheld the County's approval on all grounds except for the method of mitigation for greenhouse gas (GHG) emissions resulting from the construction and operation of the Project. The original mitigation provided for the preservation of 248 acres of woodland habitat, but the Court of Appeal held that the record did not contain sufficient evidence to conclude that the preserved acreage would be threatened with development. The Superior Court issued a judgment and writ directing the County to set aside its findings relating to GHG mitigation and to consider evidence that would substantiate the certified finding that the Project, as mitigated, would have a less-than-significant GHG emissions impact. This is the sole issue before the Board.

On April 19, 2022, the Board considered a proposal submitted by the Applicant, Hall Brambletree, L.P., and reviewed by County staff. The proposal consisted of a detailed map of 292.6 acres of woodland habitat that met the conditions required by the Court to show that they were subject to, and therefore threatened with, future development. Specifically, the maps identified land that was: (1) mapped as woodland habitat; (2) not within areas to be cleared as part of the project; (3) not located within the Milliken Reservoir watershed; (4) on slopes of 30 percent or less; (5) not within areas mapped as wetlands or riparian corridors, or associated setbacks; and (6) not within areas subject to conservation under other mitigation requirements for the Project. County staff reviewed the mapping and confirmed that the 292.6 acres identified by the Applicant met the Court's criteria. As a result, County staff recommended approval of the revised mitigation measure.

After presentations by staff, the Appellant, and the Applicant, and after receiving public comment, the Board closed the public hearing and directed the PBES Director to return at a later date with an advisory report, specifically addressing three main concerns raised during the hearing. The Board requested the PBES Director do the following:

1. Address the issues raised relating to contiguity and the potential impacts of edge effects on the viability of the conserved woodland with respect to green house gas emissions;
2. Specify the requirements and qualifications required for a biologist to assist in identifying the specific boundaries of the easement; and
3. Define the monetary security required to ensure the accredited land trust would have sufficient resources to manage and defend the conservation easement.

This advisory report sets forth the PBES Director's consideration of each of these issues, including revisions made to the proposed mitigation at the direction of County staff. As discussed below,

the PBES Director recommends adoption of the revised Mitigation Measure 6-1, along with the conditions of approval provided below. In the terms of the Superior Court Judgment, the PBES Director believes sufficient evidence exists to support the finding that the revised Mitigation Measure 6-1 will reduce the GHG emissions impact of the project to a less-than-significant level.

Revisions to the Project

1. Address contiguity to the maximum extent feasible to minimize edge effects from human activity.

At the April 19, 2022, hearing, the Appellant argued that the effectiveness of conservation to sequester greenhouse gases (GHG) depends on the continued health of the conserved woodland habitat. According to the Appellant, that required the application of concepts such as contiguity of conserved habitat and the extent of interface between conserved habitat and adjoining areas, which are generally applicable to consideration of impacts to biological resources. In doing so, however, Appellants relied on studies relating to forest systems that are not analogous to the woodland habitat on the Project site. Specifically, Appellants cited studies analyzing the impact of human activities on the GHG sequestration capacity of trees on the edges of sub-tropical and tropical forests in China and Brazil. In the latter case, the study analyzed stands of trees surrounded by monoculture sugar cane crops. Those studies concluded that these edge effects had an impact on the capacity of trees to sequester carbon, resulting in some reduction of that capacity.

Staff described the use of the CalEEMod software for calculating GHG sequestration for woodland habitat on the Project Site. The County's use of that model, which is recommended by the California Air Resources Board and the San Francisco Bay Area Air Quality Management District, was upheld by the Court of Appeal. That model incorporates a large number of local factors in arriving at a working model for GHG emissions and sequestration. The Appellant's argument, to the extent that it seeks to challenge the County's use of CalEEMod to determine the number of acres required to be conserved, is precluded by the Court's decision.

Additionally, in response to the Appellant's argument, County staff consulted with Ascent Environmental to determine whether the impact of such edge effects would be meaningful enough to require a change to the calculation provided in the EIR, and upheld by the Court. Ascent concluded, essentially, that the issue of edge effects is much more complex than the conclusions presented by the Appellant. Further, Ascent provided studies analyzing edge effects on deciduous forests in North America that tended to show an increase in GHG sequestration at the edge of temperate forests, analogous to those found at the Project site.

Furthermore, the Appellants presented maps showing that only 5% of the potential eligible woodland habitat bordered the clearing limits associated with the Project. The vast majority of the "edges" reflected on the maps were natural transitions between woodland and other habitat types or between steeper and shallower slopes. These "edges" are not impacted by human activities in the ways addressed in the studies.

Nevertheless, the Board directed the Director to review and consider the arguments further. Staff met with the Applicant to discuss the Director's expectations for how to address the Board's concerns. On April 29, 2022, the Applicant submitted a proposal to create a 30-foot buffer between the clearing limits and eligible woodland conservation areas, resulting in the preservation of approximately 20 additional acres of otherwise eligible woodland habitat that borders the clearing limits of the approved Project. This would provide a buffer between the clearing limits of the Project and the areas that are eligible for GHG sequestration. Since these buffered areas are otherwise eligible for preservation according to the standard applied by the Court, the proposal would increase the total area preserved for purposes of GHG mitigation to approximately 267.7 acres, resulting in an additional offset of approximately 2,000 MTCO₂e, according to the calculations provided in the CalEEMod.

With respect to the other concerns relating to contiguity in general, staff believes that the legal constraints on the Project site, including constraints imposed by the certified EIR for the Project and by County, state, and federal law and regulations, create conditions where the proposed conservation easement areas are, in fact, largely contiguous. Staff, with the assistance of consultants for the Applicant, have prepared maps to show the extent of land on the Project Property that will be undevelopable after implementation of mitigation measures required by the EIR, including the proposed mitigation for GHG emissions. There is no factual basis on the record to say that the few discrete non-contiguous areas of eligible woodland habitat will not be as effective in mitigating GHG emissions as previously calculated by the CalEEMod modelling software used by staff.

Based on this analysis, the Director recommends revision to the proposed Mitigation Measure 6-1 to incorporate the 30-foot buffer from approved clearing areas, as described below.

2. Provide definition and standards for identifying a qualified expert to assist in identifying specific boundaries of mitigation.

The previous proposal considered by the Board on April 19, 2022, incorporated the conservation easement into the Biological Resources Management Plan ("BRMP"). The BRMP requires that areas to be covered by an easement be determined by a qualified botanist or biologist and submitted to Napa County for review and approval.

At the hearing, the Appellant requested that the Board require the involvement of "biologists, government agencies, and other stakeholders" in determining the boundaries of the easement. Despite the inclusion of the mitigation into the BRMP, which effectively requires the use of a qualified biologist, the Appellant asked for additional assurance that the biologist would independently determine the appropriate boundaries of the easement areas. The Appellant suggested that the County use a staff biologist from a state agency.

The Board directed the PBES Director to provide more specificity regarding the qualifications required for a biologist who would perform the services required under the BRMP. To address this concern, staff asked the Applicant to incorporate the qualifications set forth in the County's formal guidelines for preparing biological reports. To ensure independence, the County would retain the consultant, who would act at the County's direction, with the costs to be paid by the Applicant.

These requirements are included in a proposed condition of approval, set forth below. The process generally reiterates the County's established practice when hiring a biologist to confirm or peer review studies in connection with CEQA reviews of projects. This should provide confidence that the actual conservation easement boundaries will consist of 268 acres of woodland habitat and offset the necessary GHG emissions, which assumptions were upheld by the Court of Appeal. Therefore, the Director recommends the adoption of the condition of approval set forth below.

3. Establish standards for the monetary security required for the land trust to manage the conservation easement.

A conservation easement is generally held by an organization that commits to ensuring that the conservation goals are met in perpetuity. To accomplish these conservation goals, the easement holder must have the resources that may be required over the life of the easement. The original Mitigation Measure, adopted by the Board in 2016, requires that the conservation easement be held by an accredited land trust organization, such as the Land Trust of Napa County. Accreditation is provided by the Land Trust Alliance ("LTA"), which requires land trusts to adhere to certain standards and practices to obtain accreditation. Such practices include the requirement that the land trust have sufficient resources to monitor and enforce the conservation easement in perpetuity.

As discussed at the April 19, 2022, hearing, the specific requirements for an endowment or other financial arrangement required to manage the conservation easement are generally subject to the third-party relationship between the Applicant and the future easement holder. The land trust will have its own financial security requirement, in compliance with the accreditation policies of the LTA. However, the Appellant requested that the Board require the Applicant to make further assurances that the endowment or financial security is sufficient. The Board directed the PBES Director to provide more specificity to the financial security arrangements.

At County staff's request, the Applicant provided additional information regarding a methodology used by many land trusts to calculate the amount of the endowment necessary to serve the purposes of the conservation easement. The Property Analysis Record ("PAR") allows the land trust to input detailed information about the conservation goals, including the conservation values and stewardship tasks contemplated for the management of the easement, to generate a perpetual stewardship amount, along with a detailed report supporting the basis for that amount. The system is transparent, objective, and comprehensive. The use of the PAR, or an equivalent modeling software that meets the same standards of objectivity and comprehensiveness, will provide sufficient assurance that the conservation values of the easement are protected forever.

This requirement is captured in a proposed condition of approval, detailed below, which requires the provision of an endowment in an amount to be determined by the accredited land trust using the PAR methodology, or an equivalent one accepted by the LTA. The PBES Director recommends the adoption of this condition of approval.

Recommendation

Based on the information provided by the Applicant at County staff's request, as discussed above, the Director recommends that the Board approve the revised Mitigation Measure 6-1, and the conditions of approval set forth below.

Mitigation Measure 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~~267.7 acres of woodland habitat. The 267.7 acres to be protected shall be identified from the eligible woodland habitat depicted in the map and spreadsheet attached to this measure. The area to be protected shall include a buffer of 30 feet from the edges of any areas to be cleared that would otherwise be eligible for preservation, as indicated on the map 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.

Condition of Approval 20

The County shall retain, at the permittee's expense, a consultant to verify the suitability of the woodland habitat serving as mitigation for the Project's GHG emissions. The consultant shall be selected by the County and shall serve at the County's direction.

The consultant shall meet the County's standards for persons qualified to perform biological surveys under the County's adopted "Guidelines for Preparing Biological Resources Reconnaissance Surveys (Appendix B, Erosion Control Plan (ECP) Review Application Packet for General Land Clearing & Agricultural Projects) (August 2016)." In addition, the consultant shall have demonstrated expertise and experience working with GIS mapping of landscapes in the region. Specifically, using the survey work and GIS mapping prepared by the County during the CEQA process for the Project, the consultant shall have sufficient demonstrable expertise to verify that the conservation easement addressing GHG emissions meets the following criteria:

- 267.7 acres mapped as woodland habitat;
- Not within areas to be cleared as part of the project;
- Not located in the Milliken Reservoir watershed;
- Mapped as having a slope of 30 percent or less;
- Not within areas mapped as wetlands or riparian corridors, or within setbacks to such features required by County Code; and
- Not within areas that are subject to conservation under the adopted Biological Resource Management Plan ("BRMP").

The consultant shall be available to County Counsel in its review and approval of the conservation easement addressing the protection of woodland habitat as GHG mitigation.

Condition of Approval 21

With respect to the 267.7 acres of woodland habitat protected under Mitigation Measure 6-1, the permittee shall provide an endowment to the accredited land trust that is sufficient to ensure that the conservation easement is monitored, enforced, and defended in perpetuity. The amount of the endowment shall be calculated using the Center for Natural Land Management's Property Analysis Record software, or an equivalent methodology if preferred by the land trust and accepted by the Land Trust Alliance, which provides for the systematic and objective determination of the amount of the endowment in light of the conservation values to be protected by the easement. The record showing

how the amount of the endowment was calculated shall be provided to County Counsel as part of its review of the conservation easement required by BRMP section 6.1.