
From: Whit Manley <WManley@rmmenvirolaw.com>
Sent: Thursday, July 7, 2022 1:06 PM
To: Tiffany Yap; Dooley, Jason; mreynolds@hallwines.com; Aruna Prabhala; Peter Broderick
Cc: Bordona, Brian; Morrison, David; Theresa Rettinghouse
Subject: RE: Walt Ranch Appeal - Findings of Fact
Attachments: Draft resolution re. CBD Appeal (RMM comments 07-07-2022) (00639523xB0A85).docx

[External Email - Use Caution]

Jason –

Thank you for providing us with the opportunity to review the draft findings.

Tiffany –

Thank you for sharing your proposed edits with us.

The attached file provides our proposed edits. In order to simplify things, we've added our edits atop the file Tiffany sent to us earlier today. All suggested edits tracked.

Tiffany tracked her edits, too. We think her edits are fine, with one exception. She proposes inserting a paragraph regarding edge effects and carbon sequestration. We are fine with inserting a paragraph along those lines, but do not agree with her insert. We've inserted a margin bubble explaining why we do not agree. We also offer a revised version of her paragraph for the County's consideration. We propose that the County either insert our version of this paragraph, or not insert either version.

Our other suggested edits (also tracked) are for purposes of clarification or to fix small typos. We think they are self-explanatory, but if you find them puzzling, please feel free to call. We offer them for the County's consideration – whether to use them is up to you.

Thanks.

Whit

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From: Tiffany Yap <TYap@biologicaldiversity.org>
Sent: Thursday, July 7, 2022 10:56 AM
To: Dooley, Jason <Jason.Dooley@countyofnapa.org>; Whit Manley <WManley@rmmenvirolaw.com>; mreynolds@hallwines.com; Aruna Prabhala <APrabhala@biologicaldiversity.org>; Peter Broderick <pbroderick@biologicaldiversity.org>
Cc: Bordona, Brian <Brian.Bordona@countyofnapa.org>; Morrison, David <David.Morrison@countyofnapa.org>; Theresa Rettinghouse <trettinghouse@biologicaldiversity.org>
Subject: RE: Walt Ranch Appeal - Findings of Fact

Hi Jason,

Thank you for sharing the document. I've provided some revisions in track changes to properly reflect what some of our arguments presented to the county were. Please let me know if the draft will be updated with this information.

Tiffany

Tiffany Yap, DEnv/PhD (she/her)
Senior Scientist, Wildlife Connectivity Advocate
Urban Wildlands Program
Center for Biological Diversity – Oakland
510.847.5838

From: Dooley, Jason <Jason.Dooley@countyofnapa.org>

Sent: Tuesday, July 5, 2022 2:25 PM

To: Tiffany Yap <TYap@biologicaldiversity.org>; wmanley@rmenviolaw.com; mreynolds@hallwines.com; Aruna Prabhala <APrabhala@biologicaldiversity.org>; Peter Broderick <pbroderick@biologicaldiversity.org>

Cc: Bordona, Brian <Brian.Bordona@countyofnapa.org>; Morrison, David <David.Morrison@countyofnapa.org>; Theresa Rettinghouse <trettinghouse@biologicaldiversity.org>

Subject: RE: Walt Ranch Appeal - Findings of Fact

Ms. Yap,

Thank you for your request. The Board set the date for consideration of the Findings of Fact and the rendition of a final decision at the May 17, 2022, hearing. Any continuance from that date would have to be approved by the Board. We will present your request to the Board, but in the interest of full disclosure, and for the reasons set forth below, staff will not support a continuance.

First, as already mentioned, the date for this item has been set for months. There has been ample opportunity for CBD to communicate with me regarding availability and coverage for the July 12, 2022, meeting.

Second, the purpose of the meeting is solely for the consideration of the proposed Resolution of Findings of Fact and the only question the Board is considering is whether the proposed Resolution accurately reflects the tentative action taken on May 17, 2022. This is not a public hearing and the parties will not be presenting any testimony or argument other than through participation during public comment.

Lastly, the purpose of the review for which I sent the draft findings, is simply to identify any issues regarding the accuracy of the findings in representing the decision of the Board. The County provides this opportunity as a courtesy to the parties; we are not legally obligated to present the draft sooner than the publication of the agenda. CBD is welcome to raise any issues they have with the accuracy of the findings during public comment at the meeting.

As I mentioned, Staff will present your request to the Board, but will not support the continuance. Staff will recommend that the Board adopt the findings and render the action final. Thanks,

Jason M. Dooley (he/him)
Deputy County Counsel
Office of the Napa County Counsel
1195 Third St., Ste. 301
Napa, California 94559
(707) 259-8246 - direct
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From: Tiffany Yap <TYap@biologicaldiversity.org>

Sent: Tuesday, July 5, 2022 1:07 PM

To: Dooley, Jason <Jason.Dooley@countyofnapa.org>; wmanley@rmmenvirolaw.com; mreynolds@hallwines.com; Aruna Prabhala <APrabhala@biologicaldiversity.org>; Peter Broderick <pbroderick@biologicaldiversity.org>

Cc: Bordona, Brian <Brian.Bordona@countyofnapa.org>; Theresa Rettinghouse <trettinghouse@biologicaldiversity.org>

Subject: RE: Walt Ranch Appeal - Findings of Fact

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Hi Jason,

Thank you for providing us with the Resolution of Findings of Fact.

As you know, Aruna is out on parental leave. Peter Broderick is the lead attorney taking over for her on this case, but he is in Alaska and off the grid until July 11th. Would it be possible to postpone the hearing to the following Board of Supervisors meeting on July 26th so we have adequate time to review these materials?

Thanks for considering,

Tiffany

Tiffany Yap, DEnv/PhD (she/her)
Senior Scientist, Wildlife Connectivity Advocate
Urban Wildlands Program
Center for Biological Diversity – Oakland
510.847.5838

From: Dooley, Jason <Jason.Dooley@countyofnapa.org>

Sent: Friday, July 1, 2022 3:32 PM

To: Whitman Manley (wmanley@rmmenvirolaw.com) <wmanley@rmmenvirolaw.com>; Mike Reynolds <mreynolds@hallwines.com>; Aruna Prabhala <APrabhala@biologicaldiversity.org>

Cc: Bordona, Brian <Brian.Bordona@countyofnapa.org>; Theresa Rettinghouse <trettinghouse@biologicaldiversity.org>

Subject: Walt Ranch Appeal - Findings of Fact

Hi All,

Attached is a draft of the Resolution of Findings of Fact to be considered by the Board on July 12, 2022. The matter is scheduled for 2:00 pm on the 12th. Public comment will be limited to the issue of whether the findings accurately reflect the tentative action taken by the Board on May 17, 2022.

Please let me know if you have any comments, edits, or suggestions regarding the attached draft resolution. Any comments will be considered, though the purpose of this review is to ensure that the Resolution accurately reflects the Board's tentative action. Thank you, and hope you have a great holiday weekend.

Jason M. Dooley (he/him)

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**BEFORE THE BOARD OF SUPERVISORS
OF NAPA COUNTY**

In the Matter of:

An Appeal by Center for Biological Diversity to a decision by the Director of the Napa County Department of Planning, Building and Environmental Services on October 6, 2021, to approve a revision to Mitigation Measure 6-1 and to incorporate the revised mitigation measure into the Mitigation Monitoring and Reporting Plan applicable to the Walt Ranch Vineyards Agricultural Erosion Control Plan - File No. P11-00205-ECPA submitted by Hall Brambletree Associates, LP to allow earthmoving associated with the development of approximately 209 net acres of vineyard ($\pm$ 316 gross acres) located on the west side of Monticello Road, approximately one mile southwest of its intersection with Highway 128, and approximately one-half mile north of its intersection with Waters Road, approximately 6.25 miles east of the Town of Yountville; Assessor Parcel Numbers 032-120-028, 032-480-007, -008, -011 through -024, -027, -028, 032-490-004, -005, -006, -008 through -020.

RESOLUTION NO. 2022-

**FINDINGS OF FACT AND
DECISION ON APPEAL**

WHEREAS, on December 20, 2016, the Napa County Board of Supervisors (the Board) certified an Environmental Impact Report (EIR) (SCH #2012102046) for the Hall Brambletree Associates, LP (the Applicant) – Walt Ranch Vineyard Conversion – File No. P11-00205-ECPA, which consisted of an erosion control plan for the earthmoving associated with the development of approximately 209 net acres of vineyard on approximately 316 acres of disturbed land (the Project);

WHEREAS, on January 19, 2017, the Center for Biological Diversity (the Appellant or CBD) filed a petition for writ of mandate challenging the approval of the Project and the certification of the EIR and related California Environmental Quality Act (CEQA) findings adopted by the Board. On April 5, 2018, the Napa County Superior Court denied the Appellant's petition in full and the Appellant appealed to the Court of Appeal;

WHEREAS, on September 30, 2019, the Court of Appeal issued a decision upholding the Superior Court's decision on all grounds except one. The Court of Appeal held that the record before the County lacked substantial evidence to support the finding that the Project would have a less-than-significant Greenhouse Gas (GHG) emission impact because the record evidence did not show that the trees being preserved by Mitigation Measure 6-1 would have reasonably remained intact without the proposed 248-acre conservation easement. Specifically,

the Court held that the evidence did not show that the conservation easement would preserve trees on slopes less than 30 percent and otherwise subject to development in Napa County;

WHEREAS, on May 6, 2020, the Superior Court issued a judgment and writ consistent with the Court of Appeal's decision, ordering the County to set aside its findings "concerning whether the Project, as mitigated, will have a less-than-significant impact with respect to GHG emissions." The judgment did not set aside the approval of the Project or decertify the EIR applicable to the Project or invalidate any of the other CEQA findings made by the County. Instead, the judgment and writ ordered the County to reconsider mitigation of the GHG impacts of the Project, without changing any other aspects of the Project;

WHEREAS, on July 14, 2020, the Board adopted Resolution No. 2020-98, which vacated and set aside the finding in Attachment A to Resolution No. 2016-184 regarding Impact 6-1, which stated:

Compliance with MM6-1, which has been required or incorporated into the Project, will reduce impacts from GHG emissions through preservation of woodland on the property. The Board hereby directs that this mitigation measure be adopted. Pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), the Board hereby finds that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen this impact to a less-than-significant level;

WHEREAS, on May 5, 2021, the Applicant submitted a proposed revision to Mitigation Measure 6-1 that would reduce the conservation easement from 248 acres overlapping with other mitigation to 124 additive acres of land. In addition, the proposal would require planting 16,790 oak trees and the implementation of a tree-planting program to ensure at least 80% survival rate after five years. The proposal was supported by a study performed by Ascent Environmental, which concluded that the tree-planting alone would be sufficient to mitigate the GHG impact;

WHEREAS, pursuant to CEQA Guidelines, Section 15164, County staff prepared an Addendum to the EIR to analyze the impact and effectiveness of the revision to Mitigation Measure 6-1;

WHEREAS, pursuant to Napa County Code (NCC) Section 18.108.070, the Director of Planning, Building and Environmental Services issued a tentative decision on September 21, 2021, approving the revision to Mitigation Measure 6-1 with further edits and changes suggested by County staff. The tentative decision provided for a comment period of at least 10 days before the final decision, which was anticipated to be issued on October 1, 2021;

WHEREAS, in response to the Director's tentative decision, the County received approximately 60 comments from the public, including a letter submitted by the Appellant, CBD, on October 1, 2021. The Director reviewed each comment and, on October 6, 2021, issued a final decision approving the revision to Mitigation Measure 6-1 without any further edits;

WHEREAS, on November 5, 2021, the Appellant filed a timely Appeal Packet (the Appeal) challenging the Director's approval of the revision to Mitigation Measure 6-1 and the adoption of the Addendum to the EIR;

WHEREAS, in accordance with NCC Section 2.88.080(A), a hearing on the Appeal was scheduled before the Board for December 14, 2021, a date agreed to by the Appellant and at least fifteen but no more than ninety days from the date of submittal of the Appeal;

WHEREAS, on November 23, 2021, in accordance with NCC Section 2.88.085, Board Chair Pedroza conducted a prehearing conference to establish procedures and a schedule for the conduct of the Appeal, at which the Appellant and the Applicant were present and participated;

WHEREAS, on December 14, 2021, at a duly noticed public hearing on the Appeal, the Board heard and considered all evidence and testimony regarding the Appeal; the Board closed the public hearing and adopted a motion of intent to deny the Appeal in its entirety and uphold the Director's approval of the revised Mitigation Measure 6-1, with modifications as recommended by staff and as directed by the Board and agreed to by the Applicant. After the hearing and before the rendition of final action, however, the County became aware of allegations of a potential conflict of interest of one supervisor who voted in the majority for the tentative action. On March 1, 2022, out of an abundance of caution and at staff's recommendation, the Board unanimously decided (with one supervisor recused) to re-set the Appeal hearing to April 19, 2022, so that supervisor could be recused from participating in the hearing and to hold a new prehearing conference with the current chair of the board;

WHEREAS, on March 8, 2022, the Applicant submitted a revised mitigation proposal, which responded to the concerns raised in the Appeal and proposed to establish 248 acres of conservation, as previously approved in Mitigation Measure 6-1. The proposal provided detailed mapping of the Property to show approximately 312 acres of land (later reduced to 292.6 acres) that would meet the Court of Appeal's standard for conservation for GHG mitigation purposes, from which the Applicant would be required to identify 248 acres;

WHEREAS, on March 17, 2022, in accordance with NCC Section 2.88.085, Board Chair Gregory conducted a new prehearing conference to establish procedures and a schedule for the conduct of the Appeal, at which the Appellant and the Applicant were present and participated;

WHEREAS, on March 29, 2022, pursuant to the agreement of the parties established at the prehearing conference, the Appellant submitted a substantive response to the Applicant's revised proposal, identifying five issues the Appellant argued must be addressed by the Board. Staff considered these arguments new grounds of appeal in response to the revised proposal;

WHEREAS, on April 19, 2022, at a duly noticed public hearing on the Appeal, the Board heard and considered all evidence and testimony from staff, the parties, and the public regarding the Appeal; the Board closed the public hearing and deliberated on the Appeal. After deliberations, the Board unanimously decided (with one supervisor recused) to continue the matter and refer it to the Director for an Advisory Report considering the concerns raised by the

Appellant and the public regarding the revised proposed mitigation and to return the Board at a future meeting for final action on the Appeal;

WHEREAS, on May 17, 2022, at a duly noticed public hearing on the continued Appeal, the Director and staff presented their Advisory Report recommending the adoption of revised Mitigation Measure 6-1 and two new conditions of approval, which responded to, and incorporated provisions designed to address, the concerns raised by the Appellant and the public;

WHEREAS, after due consideration of testimony and public comment, the Board unanimously adopted a motion of intent to deny the Appeal and to adopt the revised Mitigation Measure 6-1 and new conditions of approval, as recommended by staff, with additional modifications made at the hearing;

WHEREAS, the Board further directed County Counsel's office to prepare a resolution containing Findings of Fact and Decision on Appeal in support of its proposed decision and to present those findings to the Board for consideration at its meeting on July 12, 2022; and

WHEREAS, this proposed resolution containing the Findings of Fact and Decision on Appeal having been presented to the Board for possible adoption at a regular meeting of the Board on July 12, 2022, and interested persons having been given an opportunity to address the Board regarding the proposed resolution.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors finds, determines, concludes and decides as follows:

Section 1. Recitals.

The Board hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Conduct of Appeal.

A. Napa County Code Section 2.88.090 (B) provides that if the appeal pertains to a decision for which a record on appeal exists, the Board, in hearing the appeal, shall base its consideration of the appeal on the record on appeal and any extrinsic evidence submitted by the parties and allowed by the chair for good cause shown. Here, the Director's decision was based on a record containing written materials, statements, testimony, information, and evidence before the Director in arriving at the decision. Therefore, a record on appeal exists for the decision.

B. The County requires the parties to attend a pre-hearing conference with the Chair of the Board to discuss estimates on presentation lengths, scope of evidence, and testimony to be presented, together with witness lists. Any witness not appearing on a witness list at the pre-hearing conference is treated as an ordinary member of the public and allotted the usual three minutes of speaking time.

C. A pre-hearing conference was held on March 17, 2022, with the Chair and representatives of the Appellant, the Applicant, and a Deputy County Counsel. At the conference, Appellant and Applicant agreed to provide a list of their respective witnesses along with time estimates in advance of the hearing. The Chair informed the Appellant and the

Applicant that each side was allocated a maximum of 20 minutes for their presentation, allocated at their discretion. For the continued hearing on May 17, 2022, each side was given an additional 10 minutes for their presentations relating to the Director's Advisory Report.

D. Following the pre-hearing conference, the parties submitted requests to augment the record. The Applicant submitted a revision to their revised proposal, with accompanying maps and figures, as well as some transcripts from the December 14, 2021, hearing. The Appellant submitted a substantive response to the Applicant's revised proposal.

E. The Chair determined that good cause existed for the inclusion of this additional evidence in the record on appeal. The parties did not request reconsideration of the Chair's decision before the whole Board.

Section 3. Findings of Fact and Conclusions of Law on Appeal.

The Board hereby makes the following findings of fact and conclusions of law in regard to each of the grounds for appeal as stated by Appellants in the Appeal¹:

A. Applicant's Revised Proposal

On March 8, 2022, the Applicant submitted a revised proposal to return to the previously approved mitigation, the conservation of 248 acres of woodland habitat, with additional information to substantiate the effectiveness of the mitigation and to address the concerns identified by the Court of Appeal. Specifically, the Applicant identified 292.6² acres of woodland habitat that was suitable for conservation based on the Court's criteria, as well as additional limitations the Applicant imposed to ensure the habitat was appropriate for mitigation. The 292.6 acres meet the following criteria:

- They are all mapped as woodland habitat.
- They are all located on slopes less than 30%.
- They are not located within the Millikin 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 protection of other resources on the property, as set forth in the approved Biological Resources Management Plan.

¹ This Resolution summarizes the grounds of appeal. For the complete text of the Appeal, please see the Appellant's response to the Applicant's revised proposal, which is dated March 29, 2022, and is attached to the April 19, 2022, staff report. References to attachments are to those attachments to the Staff Report for the appeal hearing on April 19, 2022, and the Staff Report for the continued appeal hearing on May 17, 2022.

² The March 8, 2022, proposal identified approximately 312 acres of available woodland habitat, but the Applicant revised this total to remove woodland within the Milliken Reservoir watershed. County regulations impose additional restrictions on vegetation removal within the municipal watershed that reduces the viability of this land for conservation. The Appellant's March 29, 2022, response was based on the March 8, 2022, proposal, though the only substantive difference is the total available acreage for conservation.

The Board finds that the 292.6 acres identified in the maps provided by the Applicant meet these criteria.

In addition, the Applicant proposed revising the Biological Resources Management Plan (“BRMP”) to include the GHG mitigation, thus incorporating the provisions relating to management of permanent preservation. While the Applicant’s proposal does not state the specific metes and bounds of the conservation easement, detailed mapping has been provided that allowed staff to analyze the proposal. Section 6.1 of the BRMP requires that the specific areas to be covered by a conservation easement be determined by a qualified botanist or biologist and approved by the County before recording. In addition, the conservation easement document, representing the negotiated agreement between the Applicant and the certified land trust, approved by the County, would establish the appropriate financial security that would be required to maintain the easement area.

Based on the information submitted by the Applicant, and in light of the decision of the Court of Appeal regarding the previously approved Mitigation Measure 6-1, the Board finds that, with the additional modifications and conditions of approval identified in Section 4, below, substantial evidence supports the conclusion that the proposed revision to Mitigation Measure 6-1, as modified and as set forth in Section 4, below, would result in a less-than-significant impact on GHG emissions.

B. First Ground of Appeal.

Appellant’s Position: The Board should require more specificity regarding the location and configuration of the 248 acres to be placed in a conservation easement within the 312 acres of identified available woodland. Understanding that some flexibility in identifying appropriate easement areas is needed, the Applicant should provide more clarity regarding the possible configuration of the easements.

Findings and Decision: The Board finds and determines as follows:

CEQA does not require that the County specifically identify the metes and bounds of a conservation easement at the adoption of an environmental document. As a practical matter, the specific property to be conserved must be identified in coordination with the entity or organization that will hold the easement in perpetuity. Additionally, as discussed below, the boundaries of the easement will be identified in consultation with a biologist or botanist to ensure that the easement meets the standards set forth in the mitigation measures. Instead, as highlighted in the Court of Appeal decision in this matter, CEQA requires that the mitigation set forth standards to ensure that the conservation easement does, in fact, mitigate the impact that it is intended to address.

The Applicant’s revised proposal does just that. The proposal includes detailed mapping of 292.6 acres of woodland habitat on the Property that meets specific standards to ensure that the conservation easement preserves woodland that would otherwise be threatened with development. From the 292.6 acres, the Applicant, the easement holder, and a qualified botanist or biologist, will identify at least 248 acres to include in a conservation easement, subject to approval by County staff.

As discussed in Section 3.A, staff has confirmed that the 292.6 acres of woodland habitat identified by the Applicant in the revised proposal meets the conditions identified by the Court of Appeal to ensure that the mitigation will preserve developable woodland. While there is no requirement that there be present plans for development on these 292.6 acres, and indeed, the Applicant has presented no such plans, maps prepared by County staff show that, due to the constraints on the Property, the 292.6 acres identified by the Applicant represent ~~the likeliest areas for~~ areas that, under County policy, may be available for development on the Property.

At the approval stage, the Board's role is to ensure that the mitigation measure is likely to be successful by establishing the standards to guide the necessary parties in recording the ultimate easement. The Applicant's proposal, by identifying the eligible woodland that meets the standards established by the Court of Appeal, allows the Board to make that determination while still allowing the necessary parties the flexibility to identify an appropriate easement area.

Additionally, in response to the Director's Advisory Report, the Board made additional determinations that further define the process for determining the specific boundaries of the conservation easement areas. First, in response to claims by the Appellant about potential impacts of human activity on the edges of the conserved woodland habitat, the Board required a 30-foot buffer from any approved clearing limits that bordered proposed conservation easement areas. This buffer must be included in the conservation easement but will not count toward the GHG sequestration calculations required for Mitigation Measure 6-1 (i.e., the buffer does not count towards the 248 acres required under Mitigation Measure 6-1; rather, the buffer is designed to ensure that "edge effects" do not diminish the value of the 248 acres as GHG mitigation). This results in a total conservation easement area of 267.7 acres. Second, the Board adopted and imposed Condition of Approval 20, which establishes the qualifications for a botanist or biologist who will assist in determining the specific boundaries of the easement. This will ensure that the areas identified by the Applicant and the accredited land trust will achieve the conservation goals required by the mitigation measure.

With these changes, the Board concluded that the Applicant's proposal was sufficiently specific to ensure that the GHG emissions of the Project would be effectively mitigated through the preservation of 267.7 acres of woodland habitat on the Property.

Conclusions: For the foregoing reasons, the Board denies the first ground of appeal and approves the revision to Mitigation Measure 6-1 and conditions of approval, as modified by the Board at the Appeal hearing and as set forth in Section 4, below.

C. Second Ground of Appeal.

Appellant's Position: The Board should prioritize conserving large areas of intact and contiguous habitats as much as possible to demonstrate they aim to optimize carbon sequestration and storage potential.

Findings and Decision: The Board finds and determines as follows:

The Applicant's proposal identified discrete portions of the Property that met the standards required by the Court of Appeal. As a result, the eligible woodland habitat appears to include many isolated areas across the Property. However, this must be understood in the context of the entire Property and in relation to the other constraints on the Property as a result of other mitigation measures, as well as Napa County Code and General Plan Policies. The EIR, adopted and certified in December 2016, captured this context well. The EIR stated that large portions of

the Property are protected from development by existing laws and regulations. Over 1,000 acres of the Property consist of slopes exceeding 30 percent and approximately 148 acres consist of wetlands or riparian corridors and their associated setbacks. Additional acreage will be preserved under other mitigation measures, which requires that 525 acres be conserved to mitigate for potential impacts to biological resources.³

In reviewing the detailed mapping provided by the Applicant in ~~their~~its revised proposal, along with the substantial GIS mapping available on the record, staff has determined that the eligible woodland habitat is not, in fact, isolated or discrete areas of woodland, but is part of a largely contiguous area of undevelopable land, either due to steep slopes or proximity to wetlands or riparian waterways.

The Appellant's argument for contiguous habitat appears to be based on their claim that "edge effects" of human activity will degrade forest habitats and reduce carbon sequestration in the conserved areas. In this context, it is clear from the mapping that the proposed conservation easement, when considered in connection with the other constraints on the Property, will result in the preservation of contiguous habitat on the Property. It is also clear that most forest "edges" resulting from the conservation easement are not edges at all. Instead, most boundaries of the potential woodland habitat conservation areas are either naturally occurring transitions between woodland and grasslands or shrublands, or simply lines on a map showing where the slope increases above 30 percent. Very few, if any, of the "edges" are the result of vegetation removal to accommodate approved vineyard blocks.

Regardless, Appellant's argument is not persuasive, nor does it appear to be supported by relevant studies. The Appellant's response was reviewed by Ascent Environmental (Ascent). (Ascent Memorandum, 4/8/22, Attachment 6 to the April 19, 2022, Staff Report.) Based on ~~Ascent's review and~~ independent research, ~~they~~Ascent concluded that because of the complex nature of edge effects and variations in the carbon cycle related to several factors, the conclusions made by the Appellant cannot reasonably be applied to ecosystems in Napa County. In fact, most of the sources cited by the Appellant acknowledge that their conclusions should not displace local models: "Moreover, development and implementation of effective mitigation strategies to reduce carbon emissions will require the use of local biomass models since they are accurate." (Ascent Memorandum, p. 2, citing Wakesa, et al., 2016.) Napa County has a Mediterranean climate, rather than a sub-tropical or tropical climate, which were the biomes studies in the papers relied upon by the Appellant. According to Ascent, recent research suggests that forest edges in temperate forests exhibit increased forest growth and biomass with no change in total mortality relative to the forest interior. (Ascent Memorandum, p. 2, citing Morreale et al. 2021.)

During the hearing on April 19, 2022, the Appellant noted that the studies referenced were conducted in New England and Europe and therefore do not qualify as local models for Napa's woodlands, as the Applicant purports. The Appellant also clarified that in one of the studies cited in the Ascent memo (Reinmann et al. 2017), the researchers found that, despite any

³ Some of this acreage overlaps with the riparian corridors and setbacks and the areas over 30 percent slopes. In other words, some of this acreage is protected by biological mitigation measures and is within riparian corridors and setbacks or on areas with over 30 percent slopes. Such areas are, in effect, protected by more than one mitigation measure or condition of approval.

documented carbon gains in some temperate broadleaf forest edges, heat stress from climate change on forest edges could lead to 33-42% less growth, and therefore less sequestered carbon, on the forest edges compared to interior forest by the end of the 21st century. When this matter was brought up again by the Applicant at the May 17, 2022 hearing, the Appellant reiterated that the study cited by the Applicant stated that climate change reduces the ability of forests to sequester carbon, particularly on forest edges; therefore, it is important to consider the whole of what that study says. The information is also referenced in Morreale et al. 2021, which warns about the impacts of heat stress on temperate forest edges in a warming climate, stating “The increased carbon storage along the edges of fragmented remnants does not come close to offsetting the loss of terrestrial carbon stocks and future sequestration capacity associated with forest loss. Furthermore, there is evidence that the temperate edge responses are hindered by extreme heat, suggesting that rising global temperatures may exacerbate heat stress at temperate forest edges and cause them to respond more similarly to tropical forest edges.” [RMM1]

Suggested revised version:

During the hearing on April 19, 2022, the Appellant stated that the studies referenced by Ascent were conducted in New England and Europe and argued that these studies should not be used as models for Napa’s woodlands. The Appellant also stated that one of the studies cited in the Ascent memo (Reinmann et al. 2017) found that heat stress from climate change on forest edges could lead to 33-42% less growth, and therefore less sequestered carbon, on the forest edges compared to interior forest by the end of the 21st century. See also Morreale et al. 2021, which states: “[T]here is evidence that the temperate edge responses are hindered by extreme heat, suggesting that rising global temperatures may exacerbate heat stress at temperate forest edges and cause them to respond more similarly to tropical forest edges.” The Board finds, however, that the studies cited by Ascent involve habitats that are more representative of conditions in Napa County than the studies cited by the Appellant. The Board therefore finds Ascent’s analysis more credible than that of Appellant. The Board also notes that the approved conservation easement includes the 30-foot buffer noted above, which is specifically designed to ensure that the edge effects cited by Appellant, if any, do not occur.

The County used the California Emission Estimator Model (CalEEMod) to calculate the Project’s GHG emissions and the extent of conservation required to mitigate that potential impact. This local model is the industry standard for GHG emissions calculations, which factors in much more locally applicable conditions than the papers cited by the Appellant. The Court of Appeal upheld the County’s reliance on this methodology as well as the conclusion that the preservation of 248 acres of woodland habitat would constitute appropriate mitigation if substantial evidence supported the conclusion that the habitat would be subject to development. The implication of the Appellant’s argument regarding edge effects is that isolated easement areas would increase these “edge effects” and somehow reduce the effective sequestration of the conserved habitat. In addition to the failures of this argument, discussed above, the Appellant’s methodology does not rely on the industry standard modelling in the CalEEMod.

Nevertheless, the Board asked the Director to consider revisions to the Applicant’s proposal to address the concerns raised by the Appellant and the public regarding the issue of contiguity and edge effects. As discussed in Section 3.B, above, the Board required a 30-foot buffer from any approved clearing limits that bordered proposed conservation easement areas. This buffer must be included in the conservation easement but will not count toward the GHG

sequestration calculations required for Mitigation Measure 6-1. This results in a total conservation easement area of 267.7 acres.

Regarding contiguity, the Board was satisfied that the extensive areas of land that would not be subject to development based on state and local law, as well as the conservation required to mitigate other potential impacts of the Project, were sufficiently contiguous to protect the overall health of the conserved areas.

Conclusions: For the foregoing reasons, the Board denies the second ground of appeal and approves the revision to Mitigation Measure 6-1 and conditions of approval, as modified by the Board at the Appeal hearing and as set forth in Section 4, below.

D. Third Ground of Appeal.

Appellant's Position: The Board should require Applicants to demonstrate how conservation easements will be buffered from roads and vineyard development to minimize edge effects that will degrade the woodlands and reduce their carbon sequestration and storage potential.

Findings and Decision: The Board finds and determines as follows:

As discussed in Sections 3.B and 3.C, above, the concept that fragmentation (i.e. edge effects) **diminishes the effectiveness of conserving woodland habitat as GHG mitigation** is unsupported in temperate forest environments. Temperate forest edges have, in fact, shown a positive relationship between biomass and proximity to forest edge relative to the interior of the forest, citing a 95 percent increase in aboveground carbon stock within 5 meters of a forest edge. (Ascent Memorandum, p. 2, citing Meeussen et al. 2021.) Additionally, most of the “edges” of the proposed conservation areas are not edges at all, but merely transitions from different natural habitats or between steeper slopes.

Also, as discussed in Sections 3.B and 3.C, above, the Board required a 30-foot buffer from any approved clearing limits that bordered proposed conservation easement areas. This buffer must be included in the conservation easement but will not count toward the GHG sequestration calculations required for Mitigation Measure 6-1. This results in a total conservation easement area of 267.7 acres.

Conclusions: For the foregoing reasons, the Board denies the third ground of appeal and approves the revision to Mitigation Measure 6-1 and conditions of approval, as modified by the Board at the Appeal hearing and as set forth in Section 4, below.

E. Fourth Ground of Appeal.

Appellant's Position: The Board should require Applicants to implement easements in consultation with local and regional biologists, government agencies, and other stakeholders.

Findings and Decision: The Board finds and determines as follows:

The revised proposal requires the Applicant to include the conservation easement in the Biological Resource Management Plan, or the BRMP. Section 6.1 of the BRMP requires the Applicant to work directly with a qualified botanist or biologist to determine the areas to be covered by conservation easements. In addition, County staff must approve the easement prior to any project activities, which approval may include review by various state agencies, such as the Department of Fish and Wildlife.

The Appellant argued that the County should require the Applicant to hire CDFW- or USFWS-approved biologists or botanists ~~from a state or federal agency~~ to determine the boundaries of the easement. There is no such requirement under the law, and, indeed, there is no authority for the County to commandeer state or federal employees to enforce a project condition. The BRMP's requirement that the boundaries be determined in consultation with a qualified biologist ensures that the easement will protect the appropriate conservation values.

Nevertheless, the Board finds that the adoption of Condition of Approval 20 will ensure that the biologist will have the specific qualifications needed to ensure that the conservation easement will protect woodland habitat that meets the requirements of the revised Mitigation Measure 6-1. The condition of approval cites 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)," which is provided to all applicants for an erosion control plan. Additionally, the condition provides that the consultant shall be retained by the County, at the Applicant's expense. The Board finds this additional requirement provides sufficient assurance that the specific borders of the conservation easement will conform to the requirements of the revised Mitigation Measure.

Conclusions: For the foregoing reasons, the Board denies the fourth ground of appeal and approves the revision to Mitigation Measure 6-1 and conditions of approval, as modified by the Board at the Appeal hearing and as set forth in Section 4, below.

F. Fifth Ground of Appeal.

Appellant's Position: The Board should require Applicant to demonstrate that adequate resources will be set aside to protect, monitor, and adaptively manage the conservation easements in perpetuity.

Findings and Decision: The Board finds and determines as follows:

Conservation easements generally require financial commitments from the applicant to support the management of the easement area. That financial arrangement is between the Applicant and the certified land trust or other agency that acquires the easement. As discussed in Section 3.A, above, County staff must approve the form of the easement and will, therefore, be able to ensure that adequate financial security is in place. Since the primary purpose of the easement is conservation of natural land, management of the preserved land will be minimal.

Nevertheless, the Board finds that the adoption of Condition of Approval 21 provides additional assurance that the accredited land trust will have sufficient financial resources to protect and defend the conservation easement in perpetuity. The added condition of approval requires that the Applicant and the accredited land trust use the Property Analysis Record ("PAR") software, or an equivalent system, to calculate the amount of the endowment. The PAR software provides a systematic, objective, and transparent method of calculating the resources needed in light of the conservation values to be protected in the easement. The amount of the endowment must be established by the Applicant and easement holder, and approved by the County, prior to recordation of the easement, and, consequently, will be in place prior to any earthwork allowed under the Project.

Conclusions: For the foregoing reasons, the Board denies the fifth ground of appeal and approves the revision to Mitigation Measure 6-1 and conditions of approval, as modified by the Board at the Appeal hearing and as set forth in Section 4, below.

Section 4. Revised Mitigation Measure 6-1 and New Conditions of Approval.

Based on the Applicant's revised proposal, as modified by the Director, and as further modified based on recommendations of staff and at the direction of the Board, Mitigation Measure 6-1 is revised as set forth in Exhibit 1, and new Conditions of Approval 20 and 21 are adopted and imposed on the Project as follows:

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.

Section 5. CEQA Determination.

The Final Environmental Impact Report was certified on August 1, 2016 (State Clearinghouse No. 2012-02046); the FEIR analyzed the effectiveness of preservation of 248 acres of woodland habitat to offset the Project's operational and construction-related GHG emissions. The present action adds additional evidence to substantiate the conclusions contained in the certified FEIR. The Board finds substantial evidence exists on the record to conclude that, as mitigated, the Project will not have a significant impact on the environment in relation to the Project's GHG emissions.

Section 6. Substantial Evidence.

Substantial evidence supporting each and every finding made herein is contained in the record of proceedings. All of the files and records that comprise the administrative record for the Project are incorporated herein by reference.

Section 7. Summary of Decision.

Based on the foregoing facts, findings, and determinations, the Board of Supervisors hereby:

- A. Denies the Appeal in its entirety;
- B. Adopts the revised Mitigation Measure 6-1 as set forth in Section 4 above and incorporated herein by reference;
- C. Finds that Compliance with the revised MM 6-1, which has been required or incorporated into the Project, will reduce impacts from GHG emissions through preservation of woodland habitat on the Property;
- D. Adopts and imposes Conditions of Approval 20 and 21 on the Project; and,
- E. Finds, pursuant to Public Resources Code Section 21081(a) and CEQA Guidelines Section 15091(a), that changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen this impact to a less-than-significant level.

Section 8. Effective Date.

This resolution shall take effect in accordance with the provisions of Napa County Code Section 2.88.090.

Section 9. Judicial Challenge.

Unless a shorter period applies, any judicial challenge to this decision is governed by California Code of Civil Procedure Section 1094.6.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED
by the Napa County Board of Supervisors, State of California, at a regular meeting of said Board held on the 12th day of July, 2022, by the following vote:

AYES: SUPERVISORS

NOES: SUPERVISORS

ABSENT: SUPERVISORS

NAPA COUNTY, a political subdivision of the
State of California

By: _____
RYAN GREGORY, Chair of the
Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: <u>Jason Dooley</u> Deputy County Counsel Date: _____	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By: _____
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