Attachment 12
Grounds of Appeal and Staff Responses

GROUNDS OF APPEAL:

The following outlines the basis of the Appeal as contained in Appellant's Appeal Packet dated November 5, 2021 (See **Attachment 1**). For convenience, Staff has bracketed the Appeal Packet to show the separate grounds and provided a summary below, but recommends the Board review the actual Appeal Packet for details.

Appeal Ground No. 1: Appellant contends that the County's revised Mitigation Measure 6-1 for GHG emissions should prioritize the preservation of existing oak woodlands.

Staff Response: At the outset, it must be clarified that the previously adopted mitigation for GHG emissions did not require the preservation of oak woodland, but rather required the permanent protection of woodland habitat, regardless of the species. While most of the woodland habitat on site consists of oak woodlands or of woodland alliances containing oaks, not all of the woodlands on the site are oak woodlands. The EIR includes figures showing the location of woodlands, oak or otherwise, located on the Property, as well as tables listing the type and total acreage of biotic communities located on the site (See Draft EIR, Figure 4.2-1[Vegetation Map] and Table 4.2-2.)

Appellant correctly points out that the Court of Appeal confirmed that the preservation of woodland habitat, if properly supported by substantial evidence that the trees would not reasonably have remained absent such preservation efforts, is appropriate mitigation for GHG emissions resulting from the project. The Appellant contends that "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." (Appeal Packet, Attachment 1, p. 3.) Appellant claims that County policies "demonstrate[] a preference for preserving existing habitat" rather than relying on a tree-planting program.[1] (*Id.*)

Staff is not aware of an existing County policy that establishes a preference for preservation of existing habitat for the mitigation of GHG emissions. The County's General Plan does not include a policy preference for preserving woodland habitat. Napa County Code section 18.108.020(D) allows for the replacement or preservation, or a combination of both, to address the loss of vegetation canopy. While this does not apply to the mitigation of GHG emissions under CEQA, this is the only County policy explicitly addressing replacement or preservation. Even here, the Napa County Code does not prioritize one method over the other, but rather establishes priorities for the location of the replacement or preservation efforts.

[1] Appellant's current position contrasts with the claims it advanced in the lawsuit challenging the County's original decision to approve the project. There, Appellant challenged the County's reliance on conservation easements to address the projects GHG emissions. Appellant argued that conservation easements were insufficient, stating: "Unlike the planting of new trees, the mere preservation of existing trees does not provide any additional or new reduction in GHG emissions." (Appellant's Opening Brief on Appeal, p. 66; see also Appellant's Reply Brief on Appeal, p. 60 [stating that "reducing a Project's GHG emissions by planting new trees or through other measures is readily possible."].) Appellant has thus acknowledged in this case that planting new trees provides suitable mitigation for the project's GHG emissions.

Nor is there a policy preference in state law. CEQA Guidelines include preservation as an option for addressing GHG emissions, but does not establish a policy hierarchy or preference. Notably, Appellant does not cite to such a policy in County or State law.

It also appears that the Appellant has misunderstood the additive nature of the proposed revision to Mitigation Measure 6-1. The original Mitigation Measure 6-1 did not require that the 248 acres of woodland habitat be separate and above the acreage required to be preserved to mitigate other resource categories, such as biological resources. The EIR required a total of 679 acres of preservation, of which 525 acres must be woodland habitat. Notably, the Applicant's obligation to preserve 525 acres of woodland habitat to mitigate impacts on biological resources remains a requirement in the Mitigation Monitoring and Reporting Plan ("MMRP").

The proposed requirement that the Applicant permanently preserve 124 acres of woodland habitat is in addition to the acres to be preserved under other mitigation measures. This is to ensure that the oak woodland set aside for preservation to mitigate the GHG emissions from the project was truly developable and not otherwise restricted. Thus, the total amount of woodland habitat to be preserved, if this mitigation measure is approved, would be 649 acres. The County is not giving any credit for the GHG benefits of the preservation of the acres of woodland habitat required under other mitigation measures, despite its clear benefit to the environment.

Based on the above, the Director concluded that the proposed preservation of 124 acres of woodland habitat on land that was otherwise developable, along with the tree-planting program discussed in more detail below, was reasonable and appropriate. For this reason, and after careful consideration that resulted in modifications to the Applicant's proposal, the Director approved the revised Mitigation Measure 6-1.

Appeal Ground No. 2: Appellant claims that the revised Mitigation Measure 6-1 is unclear regarding the locations of the different land uses planned for the project in relation to the lands to be set aside and preserved for GHG mitigation. The Appellant contends that 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.

Staff Response: The proposal, along with the graphics and information existing in the record, contains sufficient information to ensure that the 124 acres to be protected is on woodland habitat that, but for the conservation easement, has the potential to be converted to other uses.

The applicant's May 5, 2021, proposal includes supporting technical documentation from PPI Engineering and a report from Ascent Environmental. Figures 1 and 2 from PPI Engineering show the location of the woodland to be permanently protected through a conservation easement. (Attachment 13.)

Figure 1 shows the location of 110 of these acres. The acreage is shaded dark green and is shown within the dark purple line designating the "easement area." The woodland habitat within this easement area is estimated at 124 acres. Out of this total, not less than 110 acres will be placed in an easement. The difference – 14 acres – is to account for on-site roads or other improvements within this area that will preclude permanently protecting the area mapped as woodland habitat.

Figure 2 shows the location of the remaining 14 acres to be preserved. On this figure, the location of the additional 14 acres is shown with cross-hatching. The cross-hatching encompasses an estimated 35.1 additional acres of woodland habitat. Out of this total, an additional 14 acres will be permanently protected by means of a conservation easement. The purpose of these additional 14 acres is to ensure that the total amount of woodland habitat that is preserved totals not less than 124 acres. [2]

All the land shown on Figures 1 and 2 has been mapped as woodland habitat. The data used to perform this mapping is the same data that was used in preparing the EIR. Final EIR Figure 4.2-1 shows, in detail, the location of different vegetation types on the property. This data includes several habitat types that consist of woodlands.

All of the woodland habitat shown within the "easement areas" on Figures 1 and 2 is land that, under County policy, has potential to be converted to other uses. Specifically:

- The slope of the land does not exceed 30 percent.

- The land is not located within required setbacks from riparian corridors, as described in the ECPA and the EIR.

- The land is not located in the Milliken Creek watershed.

- There is no overlap between the land shown on Figures 1 and 2 and the land to be converted (316 acres) as part of the project.

- The land will not be placed in conservation under other mitigation measures. This can be shown by comparing Figures 1 and 2 to the land designated for conservation under the approved Biological Resource Management Plan ("BRMP"), which provides information on the land to be conserved to address the site's biological resources and the County's conservation policies. The land identified for preservation in Figures 1 and 2 of the applicant's proposal does not overlap with land identified for preservation in the BRMP.

The Applicant provided additional mapping, using the same GIS data used in preparing the EIR, to show the interaction of several mitigation measures requiring conservation. The maps reveal a vast landscape of protected land, most of which consists of woodland habitat. The areas proposed for conservation to offset GHG emissions is identified in the document labelled Map 4, which clearly shows the areas that meet the criteria set forth above.

[2] It should be noted that Mitigation Measure 6-1, as approved by the Director contains a typographical error. The measure refers to the preservation of 35 acres outside of the area shown on Figure 2. This acreage is incorrect. The cross-hatching on Figure 2 shows an area encompassing approximately 35.1 acres. The area to be placed in conservation consists of 14 acres within this 35.1-acre area. In this fashion, a total of 124 acres of woodland habitat will be placed in a conservation easement. This error can be remedied in a revised Mitigation Measure 6-1.

For all these reasons, County staff concludes that the 124 acres designated for conservation is additive, is land that would not otherwise be protected by either County policy or by other mitigation measures, and is land that could otherwise be converted to other uses.

Appeal Ground No. 3: Appellant states that insufficient information exists concerning the areas that have been identified as suitable areas for planting trees. Appellant contends that the Applicant's references to the fires that impacted the property in 2017 and 2020 are "a distraction" and are not relevant to the current proposal. Appellant also states that Ascent's report assumes, incorrectly, that all trees within the footprint of the Hennessy fire were consumed by that fire.

Staff Response: The project was approved, and the EIR certified, well before the Atlas Fire in 2017 and the Hennessey Fire in 2020, both of which burned much of the Walt Ranch property. The EIR's estimates of the project's GHG emissions were based on surveys of the property as it existed before the fires, resulting in calculations of GHG emissions at their fullest impact. The target to reduce emissions by 27,528 $MTCO_2e$ is also based on these pre-fire calculations, representing the 26 percent reduction threshold. In one sense, the impact of the fires is not relevant: The County is not revising the estimates of the project's GHG emissions downward to account for the impacts of the fires.

There are several reasons for this. First, the estimates of both the total GHG emissions from the project and the amount required to be offset to reduce the impact to a less-than-significant level were confirmed by the Court and any effort to disturb those estimates would subject the County's methodology to further challenge. More importantly, though, this approach affords greater protection to the environment. By using the estimates in the EIR of the impact of the Project, which is substantially higher than the post-fire impact, the County is conservatively estimating the impact and requiring substantially more mitigation than would be necessary if the estimates were revised to incorporate the conditions of the property after the fires.

That said, the impact of the fires is relevant to the consideration of the proposed revision to Mitigation Measure 6-1 in other respects. Specifically, the condition of the property after two wildfires provides the backdrop for the tree-planting program. The Ascent Report (April 2021, Attachment 13) and the Ascent memorandum prepared in response to the Appeal (November 2021, Attachment 3) identified those areas on the property that consisted of woodland habitat and that were damaged by the fires. As shown in these reports, the fires damaged or destroyed much of the previously-existing woodland habitat on the Property. The areas mapped as woodlands, and damaged by the fires, provide suitable locations upon which the tree planting program may focus.

Appellant's contention that the planting areas are not sufficiently identified is not accurate. The areas identified for planting trees are shown in Figure 2 of the Ascent Report (April 2021, Attachment 13). Ascent describes the methodology used to identify these areas. Briefly, the areas identified as eligible for the tree planting program meet the following criteria:

- The areas are not within the 316 acres to be converted to vineyards.

- The areas are not in locations that the BRMP has designated for preservation of biological resources other than oak woodlands. Thus, the tree planting effort will not interfere with other efforts to preserve biological resources on the site.

- The areas are within the footprint of the 2020 Hennessey wildland fire. Because the Hennessey wildland fire occurred more recently than the 2017 Atlas wildland fire, less regeneration of vegetation has occurred within this footprint. As a result, a tree planting program will result in greater benefits in this area, for carbon sequestration, enhanced biological value, and soil stabilization.

- The areas eligible for replanting have been mapped as oak woodlands. The mapping of oak woodlands was performed over several years prior to the County's December 2016 approval of the project. The mapping thus predates the Atlas and Hennessey wildland fires. The mapping indicates that replanting efforts will succeed in these areas because the same land has supported oak woodlands in the past. Ascent focused on oak woodlands because data available on the sequestration benefits associated with such woodlands is more reliable than it is for other habitat types. In addition, although there are other woodland habitats on the property, oak woodlands predominate, and thus provide ample locations where an oak tree planting program would be appropriate.

As Figure 2 shows, using these criteria, the land suitable for a tree planting program is extensive. Figure 2 is based on site-specific information derived from physical surveys of the site. Staff believes that this information is sufficient to show that the tree planting program will achieve the required sequestration of GHG emissions.

Appellant states that Ascent assumed that all trees were lost within the footprint of the Hennessey wildland fire. According to Appellant, oak trees have adapted to areas that experience periodic wildland fires, so the assumption that all trees were lost is unreasonable.

Ascent did not assume that all trees were lost within the footprint of the Hennessey wildland fire. However, in response to this claim, staff asked an arborist with Ascent to perform a physical inspection of the Walt Ranch property to assess the effect of the Hennessey fire, and to confirm the suitability of the property for a tree planting program. As the arborist explains, the Atlas and Hennessey fires inflicted significant damage on the property, particularly in those areas that burned in both 2017 and 2020. Many of the trees have died, and the damage is significantly severe that many trees will not regenerate. These areas are particularly suitable for replanting. The areas are much larger than necessary to accommodate the tree planting program, following guidance regarding tree planting densities. (See Ascent Memorandum, November 2021, Attachment 3, p. 3.)

To the extent that the Appellant relies on the Initial Study for the Atlas View II Vineyard ECPA (the "Atlas View Project"), which was released for public comment on November 22, 2021, the information is only of minimal value in this analysis. A survey conducted by Northwest Biosurvey on July 21, 2021, concluded that the survival rate of oaks on the property approached 70 percent after the 2020 Hennessey Fire, with "pockets of 100 percent mortality." (IS/MND Exhibit B-4, available here: Files - PBES Cloud.) This is substantially similar to the conclusions expressed by Ascent after their visit to the Walt Ranch property in November 2021. Ascent's

arborist concluded that approximately 50 percent of woodland species survived the 2020 Hennessey Fire. Considering the variability of the intensity of the fire and the difference in physical conditions even within such proximity, these conclusions are not significantly different. Further, the purpose of the analysis here is to determine suitable areas for replanting, which does not require any level of calculation of the loss of species due to the fire. Rather, the exercise is to identify areas suitable for replanting, even if such replanting is not intended to replace an entire forest. The Atlas View Project analysis was performed to calculate the environmental impact of the project on various impact categories. This analysis requires a more extensive and detailed reflection of the baseline conditions of the site.

The arborist's findings and recommendations are set forth in the Ascent Memorandum at Attachment 3. As the memorandum explains, approximately 84 acres of suitable woodland habitat will be necessary to accommodate the tree planting program, based on best practices for planting seedlings. Based on current conditions following the fires, at least 900 acres of woodland habitat were impacted by the fires with approximately 50 percent of that area experiencing tree mortality or substantial damage that will reduce regeneration of the woodland. Therefore, approximately 450 acres are suitable for replanting, located within the areas highlighted in the Ascent Report (April 2021, Attachment 13.). Thus, the number of suitable acres far exceeds the number of acres that are needed for planting.

It should also be noted that the trees must be planted within areas that are permanently protected by conservation easements. This includes all of the acreage set aside for preservation and GHG mitigation, as well as the acreage set aside by all of the other mitigation measures applicable to the project. This further serves to identify the specific locations in which tree planting may be conducted.

Appeal Ground No. 4: Appellant claims that the calculation of 16,790 trees for the planting program is incorrect because it does not take the 80% survival (i.e., 20% death) rate into account. Appellant argues that over 4,000 additional trees would need to be planted to achieve the claimed benefit.

Staff Response: This statement is incorrect. Ascent's estimate of the sequestration benefits of the tree planting program reflected the fact that the program requires an 80% survival rate, not a 100% survival rate. The average amount of carbon sequestered per tree per year (54.7 kg CO_2) was based on i-Tree modeling, the U.S. Department of Agriculture Forest Service calculator. Thus, Ascent used modeling that met industry standards for calculating carbon sequestration in tree planting programs and accounted for the projected survival rate. The model requires inputting the assumed survival rate and the 80 percent survival rate was used. The 54.7 kg CO_2 figure incorporates the 80% survival rate. For further information, please see the Ascent Memorandum at Attachment 3.

Appeal Ground No. 5: Appellant claims that the calculations underlying the tree-planting program overstates the carbon benefits of planting trees by using the estimated carbon sequestration associated with trees 31 to 99 years old, rather than 1-30 years old. Appellant argues that the calculation is misleading because the seedlings and saplings store much less carbon compared to mature trees.

Staff Response: Ascent's estimate of the sequestration benefits of the tree planting program are addressed in the Ascent Memorandum at Attachment 3. In short, to account for the model's assumption that the project lifetime is 99 years, Ascent amortized the carbon benefits from tree planting by 99 years and multiplied that by the project lifetime of 30 years. Therefore, the calculation only considers the carbon benefit/sequestration of the trees for the project lifetime, despite the perpetual nature of the conservation easements that will protect the trees well beyond 30 years. The 30-year project lifetime is the benchmark used to measure air quality impacts, but does not necessarily reflect the perpetual nature of the tree planting program. The benefits of tree-planting are long term, and while this will not immediately replace the carbon sequestration lost from the removal of trees, it will result in more mitigation that required to achieve a less-than-significant impact over the lives of the trees. For further information, please see the Ascent Memorandum at Attachment 3.

Appeal Ground No. 6: Appellant claims that the 80% survival standard is not supported by substantial evidence. Appellant claims that the County has not shown that such a high survival rate is achievable and that the only evidence relating to the actual survival rate of tree-planting efforts shows only a 17% survival rate.

Staff Response: Ascent's Memorandum addresses why the 80% survival rate was selected and explains how the survival rate will be achieved. Please see the Ascent Memorandum at Attachment 3.

Mitigation Measure 6-1 requires that the Applicant monitor the planted trees. If a tree does not survive for the requisite period, then the Applicant must replace it with another seedling, which in turn must be monitored to ensure survival for seven years.

The 80% survival rate is identical to the performance standard set forth in the approved BRMP. (See BRMP, § 5.5 [Monitoring, Reporting and Success Criteria], available here.) The BRMP was approved as part of the original ECP. The BRMP is not subject to legal challenge, it remains approved, and the time in which to challenge the BRMP expired in early 2017.

Lastly, the 17 percent survival rate identified by the Appellant relates to planting acorns, rather than seedlings. The survival rate of acorns does not equate to the survival rate of seedlings, which have already demonstrated a higher level of viability.

Based on the above, the 80 percent survival rate is appropriate.

Appeal Ground No. 7: Appellant claims that the five-year monitoring period for survival of oak saplings is inadequate and unsupported by evidence. Appellant contends that the monitoring should be at least 7 years, as required for oak woodland preservation under Public Resources Code section 21083.4, but should be closer to 15 to 20 years of adaptive management to ensure long-term success and survival.

Staff Response: There is no specific requirement for the amount of time required to monitor a tree-planting program for the purposes of offsetting GHG emissions. The Director's approval was based on the recommendation of the GHG experts at Ascent Environmental. Public Resources Code Section 21083.4, referred to by the Appellants, applies to mitigation for impacts

on oak woodlands. Projects involving agricultural production are exempt from the statute. (Pub. Resources Code, § 21083.4, subd. (d)(3) [section does not apply to projects involving agricultural production on agricultural land].) For this reason, the seven-year monitoring period established by this statute does not legally apply to the project.

However, the statute does provide guidance regarding what the Legislature regards as the appropriate length of time to monitor an oak tree replanting program, albeit in another context. As Appellant states, the statute provides that such programs should be monitored for a period of seven years. Based on this guidance, Staff recommends revising Mitigation Measure 6-1 to provide for a seven-year monitoring period. The Applicant submitted a revised Mitigation Measure 6-1, which includes the seven-year monitoring period. Staff recommends adopting this revision.

In addition to revising Mitigation Measure 6-1 to extend the monitoring period to seven years, the Applicant proposes including the requirement that the BRMP be revised to incorporate the requirements of this measure. This change will ensure that both the conservation easement and the tree planting program are integrated into the monitoring, reporting and enforcement provisions that are already established by the BRMP for other conservation requirements. Integrating the requirements of Mitigation Measure 6-1 into the BRMP will streamline and strengthen the County's ability to ensure that these actions are carried out. Staff recommends including this revision in the adopted Mitigation Measure 6-1.

These revisions are included in the proposed Mitigation Measure 6-1 at Attachment 8

Appeal Ground No. 8: Appellant claims that the approved mitigation is vague as to how the County will monitor the planting plan and lacks key details concerning enforcement if performance standards are not met. Appellant contends that the measure must provide a specific timeline for tree plantings, designate milestone markers that outline goals for tree survival, and provide a clear definition of how tree survival is determined.

Staff Response: The tree planting program has adequate enforcement measures, but staff reiterates its recommendation that the tree planting program be included in the BRMP, as described in Attachment 8. The applicant is already subject to extensive monitoring and enforcement requirements under the BRMP. The BRMP requires, among other things, restoration and replanting of identified sensitive biological resources with details regarding planting techniques, irrigation schedules, and figures identifying planting locations. The BRMP also identifies success criteria for such efforts. The oak tree replanting program proposed here is no different. A specific target is identified for the number of seedlings to be planted, the length of time to monitor the species, a target to determine whether replanting has been successful (80%), and a specific period of time during which the monitoring must continue (seven years from planting the seedling). If the program does not achieve the 80% target, additional seedlings will have to be planted, and they, too, will have to be monitored for the specified period.

After the seven-year monitoring period is over, the trees will continue to be protected by means of a conservation easement that will preclude the applicant from undertaking any steps that result in disturbing the trees. Such land will not be eligible for conversion to other uses that require removing the trees that have been planted. A seven-year period is considered sufficient to

demonstrate that the seedlings have been established such that they do not require further maintenance. (Pub. Resources Code, § 21083.4, subd. (b)(2)(B).)

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The following grounds for appeal are taken from the Appellant's October 1, 2021, letter to the Director, submitted in response to the Tentative Decision issued on September 21, 2021. (Attachment 12.) Appellant includes this letter as an attachment to its November 5, 2021, Appeal Packet and incorporated the arguments into the appeal. For completeness, Staff addresses the following grounds of appeal from that letter.

Appeal Ground No. 9: Appellant states that the tree planting program is inadequate considering existing conditions on the Walt Ranch property following the Atlas and Hennessey fires that occurred in 2017 and 2020, respectively. Appellant states that the County must update its analysis to reflect current conditions on the property. Appellant notes that fires generally do not consume every tree in an area, that oaks are adapted to fire, that even trees that burn still sequester some carbon, and that oak trees often regenerate after a fire.

Staff Response: See Staff Response to Appeal Ground No. 3, above.

The County's approach of mitigating the pre-fire impact of the project's GHG emissions is a conservative approach, requiring more mitigation than would be necessary if the post-fire conditions were incorporated into the analysis.

This approach is consistent with CEQA. Generally, an EIR's analysis must focus on the existing conditions at the time the analysis is performed. (CEQA Guidelines, section 15125, subd. (a).) In this case, however, the County has already certified an EIR for the project; the EIR was upheld and remains certified. For this reason, in considering revisions to Mitigation Measure 6-1, the County must perform supplemental environmental review under Public Resources Code section 21166. CEQA provides that the environmental setting consists of those physical conditions as described in the certified EIR, rather than physical conditions as they exist today. (*Friends of the San Mateo College Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937.) Those conditions predate the 2017 and 2020 wildland fires. Adhering to the estimate of GHG emissions as set forth in the certified EIR therefore appropriately reflects the fact that the County is engaged in supplemental review for a project that has already undergone CEQA review.

Lastly, Appellant states that the tree planting program is premised on "the assumption that no trees or other vegetation survived the recent fires." (Attachment 1, Exhibit 2, p. 5.) This statement is incorrect. The tree planting program does not depend on the assumption that no trees remain. Rather, the program recognizes the fact that many trees were damaged or killed, such that replanting trees will result in carbon sequestration that would not otherwise occur. Such a program would also help stabilize areas scarred by recent fires.

Appeal Ground No. 10: Appellant questions Ascent's assumptions regarding tree densities and tree loss. Appellant also questions the efficacy of tree planting generally as a strategy for addressing GHG emissions.

Staff Response: See Ascent's Memorandum, which provides further information regarding Ascent's assumptions about tree densities and tree loss. (November 2021, Attachment 3.) With respect to the efficacy of tree planting programs to address GHG emissions, see Staff Response to Appeal Ground Nos. 3-8, above.

Appeal Ground No. 11: Appellant states that Ascent's April 2021 report contains inconsistencies regarding the estimate of oak woodlands in areas eligible for planting.

Staff Response: Ascent's Report shows the areas burned in the 2017 Atlas fire and the 2020 Hennessey fire. (Ascent Report, April 2021, Attachment 13, Figure 1.) Table 2 summarizes the acreage burned in the 2020 Hennessey fire, broken down by habitat type that prevailed prior to that fire. As Table 2 shows, a total of 954 acres of oak woodland on the property burned in the Hennessey fire.

Ascent's report also identifies areas eligible for replanting. As Table 2 shows, 901 acres (out of the 954 acres of oak woodlands that burned) are eligible for replanting. The amount that burned is different from the amount that is eligible for replanting because the areas eligible for replanting do not include areas that will already be preserved as a result of conservation of other biological resources, areas that are to be planted with vineyards, and areas that do not contain vegetative cover and therefore likely would not support oaks. (See Ascent Report, Attachment 13, Table 2, footnote 2.) As shown on Figure 2, the vast majority of the area identified as eligible for replanting has historically supported oak woodlands. The report therefore shows that extensive acreage is available to plant oak seedlings.

The "inconsistencies" cited by Appellant are based on a calculation error that Ascent has corrected. (See Ascent Memorandum, Attachment 3.) Focusing on the Hennessey fire, the Ascent report states that 85% of the Walt Ranch property that burned was mapped as oak woodlands based on site-specific surveys performed prior to the fires. This information is correct. According to Table 2 of this report, 1,122.47 acres burned during this fire. Out of this total, 954.3 acres were mapped oak woodland. That translates to 85% of the area that burned.

Appellant also cites to information concerning "burn areas eligible for planting," the third column in this table. According to this table, 1,023.16 acres are eligible for planting, and out of this total 900.72 acres are mapped oak woodland. This information is correct. The column showing the "Percent of Total," however, is incorrect. The correct percentage for oak woodlands is not 68%, but is instead 88%. Ascent's Memorandum corrects this error in a corrected Table 2. (Attachment 3.)

With this correction, which is simply a mathematical error that *understated* the percentage of the property eligible for replanting, the alleged inconsistencies are clarified.

Appeal Ground No. 12: Appellant objects to the applicant's proposal to plant twice as many trees – 33,580 rather than 16,790 – in the event no administrative appeal is filed. Appellant states that this proposal violates First Amendment principles and is undemocratic.

Staff Response: The Applicant's proposal and the County's revised Mitigation Measure did not preclude Appellant or others from filing an administrative appeal, as evidenced by this very appeal. The cases cited by Appellants do not involve CEQA, nor do they involve an offer by a project applicant to provide additional mitigation in excess of that which is required to mitigate project impacts.

The issue before the County is whether the current proposal to plant 16,790 trees is sufficient to address the project's obligation to address GHG emissions. Based on Ascent's analysis, the tree planting program alone is sufficient to provide the required mitigation; in this respect, the requirement to also record a conservation easement on 124 acres results in mitigation that exceeds the applicant's obligations. The Applicant has stated that it recognizes, and accepts, over-mitigating the project's GHG emissions in this respect. The revised Mitigation Measure 6-1 removes references to the additional 16,790 trees that the Applicant offered to plant. (Attachment 6.)

Appeal Ground No. 13: Appellant recommends lengthening the monitoring period to seven or more years and increasing the number of trees to be planted.

Staff Response: With respect to the monitoring period, please see Staff Response to Appeal Ground No. 7. Staff recommends, and Applicant accepts, revising the monitoring period to seven years. This change is reflected in the revised version of Mitigation Measure 6-1 at Attachment 8. Regarding the number of trees planted and tree planting ratios, see Staff Response to Appeal Ground No. 4, as well as the Ascent Report (April 2021, Attachment 13,) and Ascent's Memorandum (November 2021, Attachment 3).

Appeal Ground No. 14: Appellant states that the proposal to place a conservation easement on 124 acres of woodland habitat, rather than on 248 acres as originally required, is inappropriate. Appellant states that the applicant's obligation to preserve woodland habitat should not be reduced.

Staff Response: See Staff Response to Appeal Ground No. 1, above.

Appeal Ground No. 15: Appellant states that the applicant's May 5, 2021, proposal does not provide sufficient information regarding the acreage to be placed in a conservation easement to protect 124 acres of woodland habitat.

Staff Response: See Staff Response to Appeal Ground No. 2, above.

Appeal Ground No. 16: Appellant states that easement areas should be contiguous, and should meet the 248-acre requirement set forth in the original version of Mitigation Measure 6-1.

Staff Response: The conservation requirement set forth in Mitigation Measure 6-1, as originally approved, overlapped with the separate requirement under Mitigation Measure 4.2-16 to protect

524.8 acres of woodland habitat. That is, as approved, this mitigation did not preclude "stacking" the easements. The current proposal is entirely additive – that is, the 124 acres of woodland habitat to be conserved under Mitigation Measure 6-1 cannot overlap with the 525 acres of woodland habitat to be conserved under Mitigation Measure 4.2-16, or any other acreage preserved under other mitigation. The total acreage of woodland habitat conserved with the proposed mitigation will exceed the amount of woodland habitat conserved under the project as originally approved. The mitigation "ratio" of woodland conservation to converted land, is now 649 acres : 316 acres, or just over 2:1, not the 0.39:1 ratio cited in the comment.

Note that not all of the 316 acres to be converted is woodland habitat. Out of the 316 acres to be converted, approximately 186 acres are woodland habitat. (Final EIR, p. 4.2-125.) Thus, if the focus is on impacts to woodland habitat and corresponding mitigation, the ratio is:

649 acres placed in conservation
186 acres converted

which translates to a ratio of 3.5:1.

Appeal Ground No. 17: Appellant states that Ascent used inconsistent methodologies in estimating the project's GHG emissions and in estimating the amount of carbon sequestered by planting oak trees as required by proposed Mitigation Measure 6-1.

Staff Response: The methodology used to estimate the project's GHG emissions is described in the Final EIR. Appellant challenged the Final EIR's approach in the previous litigation. Both the trial court and the Court of Appeal upheld the Final EIR's analysis and methodology. Ascent has not revised the Final EIR's methodology, and the estimate of the project's GHG emissions remains the same. Please see the Staff Response to Appeal Ground No. 3.

Ascent's analysis focuses on the carbon sequestration benefits of a tree planting program. Ascent used accepted protocols for determining these benefits. See the Ascent Memorandum at Attachment 3.

Conclusion

Based on the above, Staff recommends that the Board deny the appeal and approve the revised Mitigation Measure 6-1, modified to include the 7-year monitoring plan, to correct typographical errors, and to incorporate the tree-planting plan into the project's BRMP. (Attachment 8.) Staff believes substantial evidence exists on the record to support the conclusion that the revised Mitigation Measure will offset GHG emissions by at least 26 percent, which is the established threshold in the EIR. Therefore, the proposed Mitigation Measure 6-1 will reduce the impact of the project's GHG emissions to a less-than-significant level.