

Attachment 2
April 29, 2022, Applicant's Proposal



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LLP

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April 29, 2022

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

Re: Walt Ranch appeal – response to Board direction

Dear Mr. Dooley:

At its hearing on April 19, 2022, the Board of Supervisors directed County staff to return with additional information concerning three issues raised by appellant Center for Biological Diversity (“CBD”). The Board directed staff to address the following issues: (1) ensuring that, to the extent feasible, the woodland habitat to be preserved as greenhouse gas (“GHG”) mitigation should be contiguous to other protected areas, (2) providing criteria for the qualifications of the consultant verifying the suitability of the 248 acres of woodland habitat to be preserved as mitigation for the project’s GHG emissions, and (3) ensuring that adequate resources are provided so that the land trust holding the easement will be able to monitor, enforce and defend the easement.

Following the hearing, we discussed the Board’s feedback, and County staff asked us to follow up with information that responds to the Board’s direction. On behalf of Hall Brambletree Associates LP, this letter provides the information you have asked us to provide.

1. Prioritizing contiguity of woodland habitat

At its hearing, County staff presented exhibits showing the 292.6 acres of woodland habitat that is available for mitigation of greenhouse gases, from which 248 acres must be permanently protected. These +/- 292.6 acres meet the requirements identified by the Court of Appeal as suitable woodland habitat for GHG mitigation. In fact, the criteria we have used to identify these 292.6 acres is more stringent than the criteria identified by the Court. Specifically:

- (1) The woodland habitat is not within approved vineyard clearing limits,
- (2) The woodland habitat is outside the Milliken Reservoir watershed,
- (3) The woodland habitat is not otherwise protected under other, adopted mitigation (e.g., for biological resources),

- (4) The woodland habitat is not within stream setbacks required by County Code, and
- (5) The woodland habitat does not include areas with slopes in excess of 30%.

The Court of Appeal did not require “contiguity” of the 248 acres to other protected lands as a further criterion that must be met. In addition, as the Board heard from its consultant, Ascent Environmental, at its last hearing, available research shows that woodland habitat will serve as effective GHG mitigation without regard to whether the habitat is contiguous with other protected land. Put another way, woodland habitat sequesters carbon, and (in temperate climates like that of Napa County) so-called “edge effects” do not diminish the amount of carbon that is sequestered.

CBD nevertheless questions whether “edge effects” may diminish the effectiveness of protecting woodland habitat as GHG mitigation. We do not believe the evidence before the Board supports CBD’s position. In particular, the County’s own staff and consultants have demonstrated that CBD’s concern is misplaced.

We also recognize, however, that at the April 19 hearing, the Board directed staff to consider whether, in designating 248 acres to be protected, the County could address so-called edge effects and prioritize contiguity with other protected habitat. We recognize the possibility that such prioritization may have co-benefits that go beyond GHG mitigation.

In light of the Board’s direction, we have explored whether there are ways in which we can augment the 248-acre woodland habitat easement in order to minimize so-called “edge effects,” to prioritize the contiguity of the 248 acres to other, protected land, and to provide a buffer between the 248-acre woodland habitat easement and those areas that are to be cleared.

Out of the +/- 292.6 acres of woodland habitat, we have identified those areas that are adjacent to the project’s clearing limits. We propose voluntarily to provide a 30-foot buffer between the 248 acres of protected woodland habitat and the project’s clearing limits. The 30-foot buffer would not “count” towards the 248 acres, even if the area within this buffer otherwise qualifies as woodland habitat that is suitable as GHG mitigation. In effect, we would add a sixth criterion to the five criteria listed above: the 248 acres of woodland habitat cannot be within 30 feet of a clearing limit.

The area within this 30-foot buffer would be added to the woodland habitat easement in order to ensure that the project never encroaches on the 248 acres to be permanently protected. The 30-foot buffer would result in an additional +/- 19.7 acres that would be permanently protected.

The attached figures show where this 30-foot buffer would be located. The areas are shaded in dark blue. All of this land would be protected. Yet, none of this land would “count” towards the 248-acre requirement for GHG mitigation. The net effect is that the GHG mitigation

easement would encompass 267.7 acres, rather than 248 acres. Out of this total, 248 acres would qualify as woodland habitat that serves as GHG mitigation, and another 19.7 acres would be added in order to provide a buffer for that habitat. A co-benefit would be to prioritize contiguity of protected lands.

We have prepared supplemental exhibits that illustrate this proposal. First, in Exhibit 1, we show there are 272.9 acres of acceptable woodland that has been preferentially chosen because this acreage is no closer than 30 feet from approved vineyard clearing limits. Out of this total, 248 acres would be protected. Exhibit 1 also shows the 30-foot buffer along adjacent areas to be cleared; this land – another 19.7 acres – would also be preserved, such that the “edge effects” that have been identified as a concern would not occur.

The precise boundaries of the 248-acre woodland habitat easement and 30-foot buffer (another 19.7 acres) would be determined by the land trust holding the easement, in consultation with the County. As noted below, we propose a condition of approval providing that allows the County to retain, at the applicant’s expense, a qualified consultant to oversee the implementation of this proposal.

Exhibit 2 places this proposal in context. This exhibit shows the augmented woodland habitat easement, in conjunction with other land that is protected under the approved Biological Resource Management Plan (“BRMP”) or County policy. Exhibit 2 demonstrates the contiguity of these areas to other protected habitats, whether they are protected for biological reasons via other EIR mitigation or due to County ordinances limiting future development on slopes or within setbacks. Exhibit 2 shows, in short, that wide, contiguous swaths of the property will be protected.

2. Qualifications of consultant

At its hearing, the Board discussed whether the GHG mitigation should be implemented in consultation with the California Department of Fish and Wildlife (“CDFW”). As part of the CEQA process, the County has already consulted with CDFW in connection with surveys and mitigation for biological resources. The adequacy of the surveys and biological mitigation were one of issues litigated by CBD at trial and on appeal. The County’s analysis of biological impacts, and the mitigation for those impacts, were upheld. They are therefore no longer at issue. Instead, the sole remaining issue is preserving 248 acres of woodland habitat as GHG mitigation.

We wish to respond to the Board’s request that those implementing the mitigation have sufficient expertise to review the easement conserving 248 acres woodland habitat to ensure that it fulfills its intended purpose. We therefore propose incorporating the following condition of approval into the project. The condition of approval is designed to provide clear direction to the consultant, to ensure that the consultant has sufficient expertise, and to guarantee that the consultant will serve at the direction of the County, not at the direction of the applicant. Here is the condition of approval that we propose:

The County shall retain, at the Applicant'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 Applicant shall not select the consultant or oversee its work.

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:

- *248 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% 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.

3. Resources Available to Monitor, Enforce and Defend Easement

The adopted BRMP establishes the following criteria for the entity holding the conservation easement:

All acreage designated for preservation shall be identified as such through the recordation of a conservation easement approved by the Director, held by an accredited land trust organization.

(Adopted BRMP, § 6.1.)

An "accredited land trust organization" is a land trust that has been formally accredited by the Land Trust Alliance ("LTA"). To be accredited, the land trust must demonstrate, to the satisfaction of the LTA's Accreditation Commission, that the land trust adheres to the LTA's

“Land Trust Standards and Practices.” These Standards and Practices include the requirement that, in accepting a conservation easement, the land trust has sufficient resources to ensure that the easement is monitored and enforced in perpetuity.

The Center for Natural Lands Management (“CNLM”) is an accredited land trust that has developed a methodology to calculate the amount of the endowment that must be provided to serve these purposes. The methodology, referred to as a “Property Analysis Record” or “PAR,” has become widely used in the land trust community, and is regarded as the industry standard for purposes of calculating the resources that will be necessary for a particular easement. The PAR serves as a means of determining the costs for protecting and managing those resources to be preserved by the easement. It is designed to account for the fact that every landscape is unique, and the conservation goals vary from one easement to another. PAR analysis ensures, however, that the calculation of the endowment is transparent, objective, systematic and consistent. CNLM describes the PAR process as follows:

Called the “PAR” (for Property Analysis Record), the software prompts provision of detailed information on the acquisition transaction, conservation values and stewardship tasks, and unit costs of items and services involved in providing stewardship. The stewardship services and costs are necessarily influenced by the intended land manager and their business model. The PAR software then calculates the average annual stewardship costs. Using financial parameters provided by the user, that average annual cost is also parlayed into a perpetual stewardship amount (endowment). The PAR report or product provides a detailed and transparent justification for the stewardship endowment, allowing discussion and revision or negotiation, as appropriate, among the interested parties. The report serves as a perpetual record of the factors affecting stewardship cost determination.

The ability to perform all the actions required to acquire and manage conservation land and manage other programs by having adequate human and financial resources and organizational systems in place.

The PAR software, although not complicated in its computations, was novel in its approach to perpetual stewardship costs. Prior to CNLM’s development of this tool, the methodology used within the conservation community for such determination was subjective and superficial. The software was designed with the objective of providing a more objective and comprehensive approach to determining perpetual stewardship costs. Its structure reflects:

- Deconstructing ‘stewardship’ into many tasks and items, each individually assigned an appropriate cost.
- Provision of ‘initial costs’ as distinct from ‘perpetual costs’—the distinction not only being one of some differences in stewardship tasks

and costs but the fact that an endowment, once established, could not immediately supply stewardship funding; some initial funding was required.

- Allowance for uncertainty, represented as ‘contingency’ expenses.
- Calculating an endowment from an average annual stewardship cost using an *appropriate* and inflation-adjusted average long-term return on investments.
- A detailed description of the conservation property in addition to the financial information—the financial information requiring this context for verification and discussion.

CNLM uses the PAR software and its due diligence process, which has improved steadily over time and with experience, for its preserve acquisitions. CNLM has also made this software available for purchase by others. Licenses have been purchased by city, county, state, and federal government entities; conservation banks and other for-profit entities; and land trusts, among others.

“PAR” has, over time, become the commonly accepted approach for professional estimation of perpetual stewardship costs. Although many who use the term may have long forgotten its origin, ‘PAR’ has become synonymous with a detailed, comprehensive, defensible approach to endowment calculation and a ‘PAR’ or ‘PAR-like analysis’ is often a requirement for such determinations within a mitigation context.

(CNLM, <https://www.cnlm.org/par/>, accessed April 29, 2022.)

In this case, we recognize that, as part of the development of the conservation easement required by the BRMP, the land trust will require the applicant to provide an endowment. The land trust will determine the appropriate methods used to determine the amount of the endowment. We cannot dictate to the land trust that it use the PAR software, for example. Nevertheless, we do think the PAR methodology is appropriate. At a minimum, it sets the standard for how the amount of the endowment should be calculated. We therefore propose that the Board adopt the following condition of approval. This proposed condition of approval builds upon the requirements of the approved BRMP:

With respect to the 248 acres of woodland habitat protected under Mitigation Measure 6-1, the Applicant shall provide an endowment to the 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, 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

Jason Dooley
April 29, 2022
Page 7

*County Counsel as part of its review of the conservation easement required by
BRMP § 6.1.*

We believe that the proposed conditions of approval outlined above address the Board's concerns. Please let us know if you have any questions about this proposal. We request that County staff consider these proposed conditions when it returns to the Board. We again request that the Board approve our proposed revisions to Mitigation Measure 6-1.

Very truly yours,



Whitman F. Manley

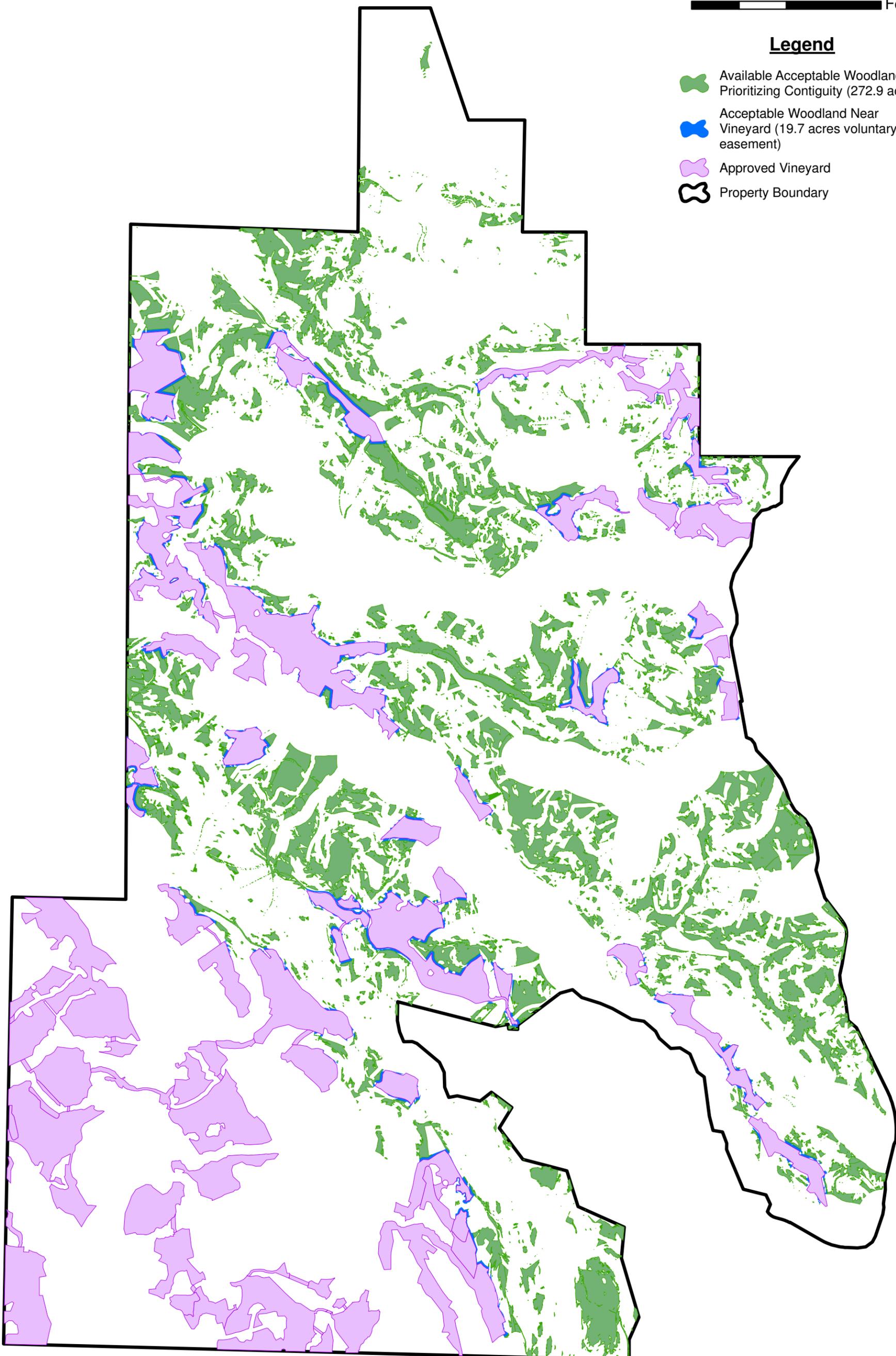
Attached: Exhibits 1 & 2



0 550 1,100 2,200 Feet

Legend

-  Available Acceptable Woodland Prioritizing Contiguity (272.9 acres)
-  Acceptable Woodland Near Vineyard (19.7 acres voluntary easement)
-  Approved Vineyard
-  Property Boundary



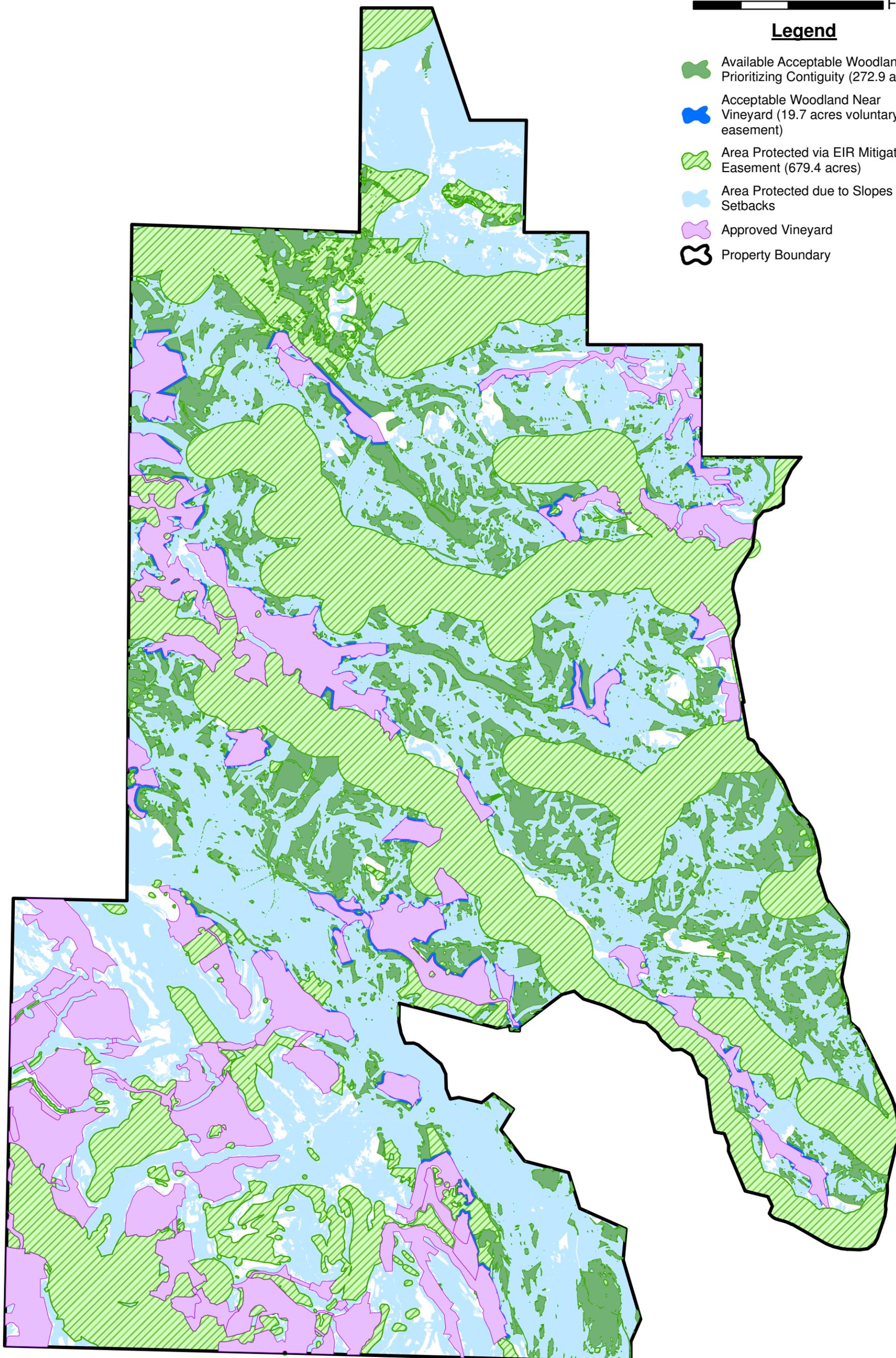
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0 550 1,100 2,200 Feet

Legend

-  Available Acceptable Woodland Prioritizing Contiguity (272.9 acres)
-  Acceptable Woodland Near Vineyard (19.7 acres voluntary easement)
-  Area Protected via EIR Mitigation Easement (679.4 acres)
-  Area Protected due to Slopes and Setbacks
-  Approved Vineyard
-  Property Boundary



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