



Napa County

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Legislation Text

File #: 21-1269, **Version:** 1

TO: Board of Supervisors
FROM: David Morrison, Director of Planning, Building and Environmental Services
REPORT BY: Brian Bordona, Assistant Director
SUBJECT: Walt Ranch Vineyard ECP - GHG Mitigation Appeal

RECOMMENDATION

PUBLIC HEARING 2:00 P.M. - 2 Hours (Walt Ranch Appeal)

Consideration and possible action regarding an appeal filed by Center for Biological Diversity (Appellant) 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 (Applicant) to allow earthmoving associated with the development of approximately 209 net acres of vineyard (\pm 316 gross acres) (the Project) as further described in the Board Agenda Letter for this matter. The Project would be 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 in Napa County located within the Milliken Reservoir Watershed and Capell Creek-Upper Reach Drainage. (Assessor Parcel Numbers: 032-120-028, 032-480-007, -008, -011 through -024, -027, -028, 032-490-004, -005, -006, -008 through -020.)

EXECUTIVE SUMMARY

The matter before the Board involves the appeal of a revision to a mitigation measure adopted to offset the impacts on the environment of the greenhouse gas (GHG) emissions from the construction and operation of the Project. The Environmental Impact Report (EIR) was adopted and certified in December 2016, and was not invalidated or decertified by the subsequent petitions for writ of mandate filed by the Appellant, among others. Instead, the writ of mandate required the County to revise and substantiate the mitigation of GHG impacts caused by the Project. The Director approved the revised Mitigation Measure 6-1, which requires the Applicant

to (1) place no less than 124 acres of oak woodland on the Project site into a perpetual conservation easement, and (2) plant no fewer than 16,790 oak trees within lands protected by conservation easements identified in this and other mitigation measures applicable to the Project. The Project would be located in the AW (Agricultural Watershed) Zoning District and has a General Plan land use designation of AWOS (Agriculture, Watershed and Open Space).

PROCEDURAL REQUIREMENTS

1. Chair introduces item. Appellant has requested an opportunity to be heard on the Chair's prior "good cause" determination by asking a majority of the Board to overrule the Chair's determination. Appellant and Applicant are invited to be heard on Appellant's request.
2. Chair invites disclosures from Board members.
3. Chair invites the Staff Report presentation.
4. Chair opens the public hearing and invites testimony from Appellant and their witnesses as previously disclosed on their witness list and in the order noted on the witness list attached as **Attachment 4**.
5. Chair invites any other interested members of the public to testify regarding the appeal.
6. Chair invites testimony from the Applicant and their witnesses as previously disclosed on their witness list attached as **Attachment 4**.
7. Chair then invites Appellant to have final rebuttal, if any.
8. Chair closes the public hearing.
9. A motion of intent is made and seconded to deny, uphold, and/or remand the appeal.
10. Chair refers the matter to County Counsel's office for preparation of a Resolution of Findings of Fact and Decision on Appeal. Staff recommends that the Board direct County Counsel's office to return to the Board on February 8, 2022, with the proposed Resolution for the Board's consideration and adoption.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Choose an item.
Is it currently budgeted?	Choose an item.
Where is it budgeted?	Click or tap here to enter text.
Is it Mandatory or Discretionary?	Choose an item.
Discretionary Justification:	Click or tap here to enter text.
Is the general fund affected?	Choose an item.
Future fiscal impact:	Click or tap here to enter text.
Consequences if not approved:	Click or tap here to enter text.
County Strategic Plan pillar addressed:	Choose an item.
Additional Information	Click or tap here to enter text.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The Final Environmental Impact Report was certified on August 1, 2016 (State Clearinghouse No. 2012-02046); an Addendum was prepared to analyze the impact and effectiveness of the revised Mitigation Measure 6-1.

BACKGROUND AND DISCUSSION

On August 1, 2016, the Director approved the Hall Brambletree Associates, LP - 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 (± 316 gross acres). The Director also approved the Environmental Impact Report (“EIR”) (SCH #2012102046), finding that, as mitigated, the environmentally superior alternative project would not result in any significant impacts to the environment.

The decision followed an unprecedented 134 days of public comment on the Draft EIR, including two public hearings before the Director. Thereafter, the Director’s decision was appealed by four parties on hundreds of identified grounds. In December of 2016, the Board held three separate hearings on the consolidated appeals, including hours of public comment on the Project. After due consideration, the Board upheld the Director’s approval, with some modification to mitigation measures and conditions of approval. The EIR was certified on December 22, 2016, and the project approved.

On January 19, 2017, three Petitions for Writ of Mandate were filed challenging the approval in Napa Superior Court, on numerous grounds. On April 5, 2018, the Superior Court denied the Petitions and upheld the County’s decision to certify the EIR and approve the Project. The petitioners appealed the Superior Court’s decision and on September 30, 2019, the Court of Appeal upheld the Superior Court’s decision on all grounds except one. The Court of Appeal held that there was insufficient evidence that the preservation of 248 acres of woodlands would offset the GHG emissions resulting from the project because the record did not identify the specific woodlands to be preserved. For this reason, there was insufficient evidence to show that such woodlands were otherwise subject to conversion to other uses. The Court of Appeal therefore directed the County to reconsider the adequacy of Mitigation Measure 6-1.

On May 6, 2020, the Superior Court entered judgment and issued a writ consistent with the Court of Appeal’s decision. The judgment and writ directed 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 provided that no Project activity that may result in GHG emissions may proceed unless and until such findings are reconsidered and supported by substantial evidence on the record. Nevertheless, the judgment did not set aside the approval of the Project, nor did the judgment decertify the EIR. Therefore, the only issue that was left to resolve is the adoption of adequate mitigation for GHG emissions; all other issues related to the Project and the EIR are conclusively resolved.

Based on the Court of Appeals opinion, even the analysis of the impact of the project with respect to GHG emissions is conclusively resolved. The EIR estimated that installing the vineyard would result in GHG emissions totaling 105,753 metric tons of carbon dioxide equivalent (“MTCO_{2e}”). The EIR also concluded that these emissions would not result in a significant impact if they were offset by reductions in GHG emissions by 26 percent. This translates to a reduction in GHG emissions of 27,496 MTCO_{2e}. The Court also did not question the County’s conclusion in the EIR that preserving 248 acres of woodlands would result in a reduction of the GHG impact by 27,528 MTCO_{2e}, provided the appropriate woodland could be identified. This conclusion was based on estimates generated by the California Emissions Estimator Model (“CalEEMod”), which was developed by the California Air Pollution Officers Association in collaboration with the California air districts, including the Bay Area Air Quality Management District (“BAAQMD”). The methodology was deemed appropriate.

On July 14, 2020, pursuant to the judgment, the Napa County Board of Supervisors adopted Resolution No. 2020-98 (Attachment 14), which vacated and set aside the finding in Attachment A to Resolution No. 2016-184

regarding Impact 6-1 and directed staff to file a return to the peremptory writ of mandate informing the Court that the Board had adopted this resolution.

The proposed project before the Board consists of an amendment to Mitigation Measure 6-1, which, as previously approved, required the applicant to place into permanent protection no less than 248 acres of oak woodland habitat to offset 27,528 MTCO₂e of the project's GHG emissions. The proposed project would amend Mitigation Measure 6-1 to combine a smaller conservation easement area with a substantial tree-planting program. The proposed revision to Mitigation Measure 6-1 would require permanent protection of no less than 124 acres of woodland habitat, which must be located on slopes less than 30 percent and outside any other preservation areas required by the EIR, and the planting of no less than 16,790 native oak trees, as further described in project documents. An Addendum to the EIR in accordance with the CEQA Guidelines, Section 15164, has been prepared, which analyzes the amendment to Mitigation Measure 6-1 and provides further details. (Attachment 11.)

Code Compliance:

There are no active code violations at the project site.

Public Process:

Erosion Control Plans are subject to review and approval by the Director of the Department of Planning, Building and Environmental Services (the "Director"), pursuant to Napa County Code section 18.108.070. While no specific process is provided for approval of a revision to a mitigation measure for an approved project with a certified EIR, the County sought to provide an opportunity for public review and input. To that end, the Director issued a tentative decision on September 21, 2021, providing for a comment period of at least 10 days before the decision became final. The tentative decision stated that the final decision would be made on October 1, 2021.

In response to the tentative decision, the County received approximately 60 comments from the public, including a letter submitted by the Appellant, CBD, on October 1, 2021 (Attachment 1, Exhibit 2). The Director reviewed each comment and, on October 6, 2021, issued a final decision approving the revision to Mitigation Measure 6-1 (Attachment 9).

Findings:

The writ of mandate issued on May 6, 2020, required the County to vacate and set aside its findings regarding the impact of the Project on GHG emissions. The Board, by resolution passed on July 14, 2020, set aside the

following finding, which was previously adopted in Resolution 2016-184:

Compliance with MM 6-1, 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.

The Director reviewed the proposal from the Applicants (Attachment 13), the report from Ascent Environmental (Attachment 13), the Addendum to the FEIR (Attachment 11), and other documents and information in the record and found that substantial evidence supported the conclusion that “the revised Mitigation Measure 6-1 will reduce the impact of the Project on Greenhouse Gas emissions to a less than significant level, in accordance with the Superior Court judgment.” (See Attachment 9.)

Appeal:

On November 5, 2021, Appellant Center for Biological Diversity filed a timely Appeal Packet (the Appeal) challenging the approval of the amendment to Mitigation Measure 6-1 in the Walt Ranch Vineyards Agricultural Erosion Control Plan and EIR documents. (Attachment 1.)

Pursuant to the County’s appeals ordinance (Napa County Code Chapter 2.88) a public hearing on an appeal must be scheduled not less than 25 days nor more than 90 calendar days from submittal of an appeal. The County scheduled the hearing for December 14, 2021, and the parties confirmed their availability for that date.

Pre-Hearing Conference:

To clarify the County’s procedural requirements and expectations regarding land use appeals, 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.

A pre-hearing conference was held on November 23, 2021, 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 the subject matter of testimony and time estimates in advance of the hearing. The Chair informed the Appellant and the Applicant that each side is allocated a maximum of 20

minutes for their presentation, allocated at their discretion. A summary of the witness information that was provided by Appellant and the Applicant is provided in Attachment 4.

Additionally, following the pre-hearing conference, the parties submitted requests to augment the record. The Appellant requested that a PowerPoint presentation, four reference articles and reports, and environmental documents related to a neighboring vineyard project be included in the record on appeal. Appellant stated that such records were either partially included in the record already, or were essential to the understanding of points made on the record. The environmental documents could not have been presented to the decisionmaker because they were not released until after the decision was made.

The Applicant also requested inclusion of seven maps generated from GIS data already contained in the record and relied upon by the County in approving the EIR. The maps include proposed conservation easements both from the proposed revision to Mitigation Measure 6-1 and from other mitigation requirements in the EIR. The Applicant also proposed revisions to the approved Mitigation Measure 6-1 to address concerns and issues raised in the appeal.

The Chair determined that good cause exists for the inclusion of this additional evidence in the record on appeal. (Attachment 7.) The parties did not request reconsideration of the Chair's decision before the whole Board.

Appeal Hearing Public Comments:

Public notice of this appeal hearing was mailed and provided to all parties who received notice of the Director's decision on November 23, 2021, and emailed on November 29, 2021. The notice ran in the Napa Valley Register on November 29, 2021.

All correspondence received by the Board as of December 7, 2021, is available at the Current Projects website for this matter: <https://pbcs.cloud/index.php/s/otRYP3JzmMBF3gq>

GROUNDS OF APPEAL

Attachment 2 outlines the bases of the appeal as contained in Appellant CBD's Appeal Packet, dated November 5, 2021, and Staff's response to the grounds of appeal.

For convenience, Staff has bracketed and numbered each issue within Appellant's appeal, and provided a general summary of the grounds of appeal followed by Staff's responses. However, Staff recommends that the Board review the actual appeal, which is at Attachment 1.

BOARD CONSIDERATIONS AND STAFF RECOMMENDATION

The following options are provided for the Board's consideration regarding possible action on the appeals:

- Deny the appeal in its entirety and uphold the Director's approval of the revised Mitigation Measure 6-1, with or without modification.

- Uphold one or more grounds of the appeal, reverse the Director’s decision.
- Remand the matter to the Director with direction for further consideration.

In Staff’s opinion, the revisions to Mitigation Measure 6-1, including the modifications recommended in the staff report, are supported by substantial evidence and, notwithstanding the arguments in the appeal, are sufficient to reduce the greenhouse gas emissions from the Walt Ranch project to a less-than-significant level. Therefore, Staff recommends that the Board deny the appeal and uphold the Director’s approval of the revised Mitigation Measure 6-1, as modified and reflected in Attachment 8.