**BEFORE THE BOARD OF SUPERVISORS**

**OF NAPA COUNTY**

In the Matter of:

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| An Appeal by the Center for Biological to a decision made by the Napa County Director of Planning, Building and Environmental Services Department on August 1, 2016 to approve the Walt Ranch Vineyards Agricultural Erosion Control Plan No. P11-00205-ECPA filed by Hall Brambletree Associates, LP and to certify the related Environmental Impact Report on the property 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 6.2 miles east of the Town of Yountville; Assessor’s Parcel Numbers 032-120-028, 032-480-007, -008, -011, -012, -013, -014, -015, -016, -017, -018, -019, -020, -021, -022, -023, -024, -027, -028, 032-490-004, -005, -006, -008, -009, -010, -011, -012, -013, -014, -015, -016, -017, -018, -019, and -020. | **RESOLUTION NO. 2016-182**  **FINDINGS OF FACT AND DECISION ON APPEAL** |

**WHEREAS,** on or about November 7, 2007, Hall Brambletree Associates, LP (the Applicant) submitted an application for Agricultural Erosion Control Plan (ECPA) P07-00800 to the Napa County Planning, Building and Environmental Services (PBES) Department requesting approval to develop 397 net acres of vineyard within 538 gross acres (the Original Project);

**WHEREAS,** the environmental review process required by the California Environmental Quality Act (CEQA) for the Original Project was initiated by circulation of a Notice of Preparation (NOP) of an Environmental Impact Report (Governor’s Office of Planning and Research, SCH #2008052075);

**WHEREAS,** the Applicant thereafter withdrew ECPA application P07-00800 for the Original Project;

**WHEREAS,** on March 1, 2012, Applicant submitted an application for ECPA P11-00205, which reduced the scope of the Original Project to approximately 356 acres of vineyard within 507 gross acres of land disturbance (the Proposed Project). The Applicant proposed the reductions in size in order to avoid wetlands, waters of the United States, and active landslides, with appropriate buffers. On March 13, 2012, Applicant submitted a revised ECPA for the Proposed Project;

**WHEREAS,** the Proposed Project is located within the Milliken Reservoir Watershed and Capell Creek-Upper Reach Drainage. The project is in an Agricultural Watershed zoning district and has an Agriculture, Watershed and Open Space General Plan designation. The project is located on Assessor’s Parcel Numbers 032-120-028, 032-480-007, -008, -011, -012, -013, -014, -015, -016, -017, -018, -019, -020, -021, -022, -023, -024, -027, -028, 032-490-004, -005, -006, -008, -009, -010, -011, -012, -013, -014, -015, -016, -017, -018, -019, and -020;

**WHEREAS,** Analytical Environmental Services (AES) was retained to assist the County with preparation of the EIR to evaluate the potential environmental impacts associated with the proposed project. On October 22, 2012, the County issued a second NOP and Initial Study due to substantial changes to the project proposed by the Applicant, requesting comments prior to November 21, 2012;

**WHEREAS,** during the NOP period and scoping session the County received nine comment letters, and all comments were considered in the preparation of the Draft Environmental Impact Report (EIR);

**WHEREAS,** the County, as lead agency, caused to be prepared a Draft EIR for the Proposed Project entitled “Walt Ranch Erosion Control Plan Application No. P11-00205-ECPA,” between mid-2013 and 2014;

**WHEREAS,** in accordance with CEQA, the County issued a Notice of Availability for the Draft EIR, which allowed for public comment and agency review between July 11, 2014 and August 25, 2014. The County extended the public review period to November 21, 2014;

**WHEREAS,** the PBES Director held a public hearing to solicit comments on the Draft EIR on November 12, 2014;

**WHEREAS,** between the start of the public comment period on July 11, 2014 and the end of the comment period on November 21, 2014, the County received over 3,700 pages of public and agency written comments on the Draft EIR;

**WHEREAS,** in accordance with CEQA, all comments received on the Draft EIR during the comment period were responded to and included in a Final EIR. The Final EIR was finalized in March 2016 and included the Draft EIR and comments and responses to comments on the Draft EIR and minor text changes to the Draft EIR;

**WHEREAS,** in accordance with CEQA, the Final EIR was mailed to all commenting state and local agencies, organizations and individuals at least ten days prior to the Planning Commission Director’s action on the Project;

**WHEREAS,** Napa County issued a notice of a public hearing on the Walt Ranch Vineyards Agricultural Erosion Control Plan;

**WHEREAS,** in accordance with Government Code section 65402, County staff prepared a written report for the PBES Director’s consideration regarding implementing the Walt Ranch Project and its consistency with the Napa County General Plan;

**WHEREAS,** on April 4, 2016, the PBES Director conducted a public hearing and received testimony and comments from interested parties on the Final EIR and the Proposed Project;

**WHEREAS,** on June 13, 2016, the PBES Director issued a Notice of Tentative Decision, tentatively approving the Reduced Intensity Alternative in the EIR, which generally consists of the avoidance of approximately 100 gross acres of developed area which have been targeted to further protect special status species and associated habitats; preserves individual trees that are identified as specimen or notable trees; enhances sensitive biotic communities; and enhances wildlife movement on the project site, as described in the Final EIR. In connection with the tentative decision, the PBES Director directed staff and the Applicant to prepare a revised erosion control plan consistent with the Reduced Intensity Alternative, and associated mitigation measures for consideration and approval;

**WHEREAS,** County staff submitted the Updated MMRP, responses to FEIR comments, the Walt Ranch Biological Resources Management Plan, and revised Conditions of Approval to the PBES Director in accordance with the Notice of Tentative Decision, and the Applicant submitted a Revised ECPA;

**WHEREAS,** on August 1, 2016, the PBES Director approved the Revised ECPA, which generally conforms to the Reduced Intensity Alternative described in the Final EIR, with additional modifications to reflect the requirements of the Updated MMRP consisting of approximately 209 net acres of vineyard (+/- 316 gross acres). The PBES Director filed a Notice of Determination with the State Clearinghouse;

**WHEREAS,** pursuant to CEQA Guidelines section 15132, the FEIR consists of the following documents and records: the Draft EIR for the Walt Ranch Erosion Control Plan Application No. P11-00205-ECPA; the 2016 FEIR; and appendices thereto;

**WHEREAS,** on August 23, 2016, Center for Biological Diversity (hereafter Appellant CBD or CBD) submitted a timely Appeal packet;

**WHEREAS,** timely appeals to the PBES Director’s decision were also submitted by Circle Oaks County Water District and Circle Oaks Homes Association (Circle Oaks), Living Rivers Council (LRC), and Napa Sierra Club (Sierra Club);

**WHEREAS,** because most of the grounds raised in the four appeals overlap each other, the Chairman of the Board consolidated the appeals, with no objection to consolidation from Appellants, Applicant or Staff;

**WHEREAS,** in accordance with Napa County Code section 2.88.080(A), and to accommodate all parties’ schedules, the Clerk scheduled a hearing on all four appeals before the Napa County Board of Supervisors (the Board) to commence on November 18, 2016, a date at least 15 but no more than 90 days from the date of submittal of the appeals;

**WHEREAS,** the Board scheduled the hearing to proceed as follows: on November 18, 2016, Staff and the EIR consultant to present, Appellants to present, and open and complete public comment; on November 22, 2016, Applicant to present, rebuttal from each Appellant, and Board questions of Staff; on December 6, 2016, Board deliberations and tentative action; on December 20, 2016, Board adoption of resolution of findings consistent with the Board’s prior, tentative action;

**WHEREAS,** on October 12, 2016, Board Chairperson Pedroza conducted a prehearing conference to establish procedures and a schedule for the conduct of the appeal, at which all Appellants and the Applicant were present and participated;

**WHEREAS,** on November 18, 2016, the Board heard and considered presentations from Appellants LRC, Circle Oaks, CBD, and Sierra Club; comments from the public; and the County Staff report including a presentation from County Supervising Planner Brian Bordona, a presentation from Consulting Project Manager Annalee Sanborn, and presentations from experts on behalf of County staff. The Board continued the hearing to November 22, 2016;

**WHEREAS,** on November 22, 2016, at the continued public hearing, the Board heard and considered presentations from the Applicant; and rebuttal presentations from Appellants Sierra Club, CBD, Circle Oaks, and LRC. The Board continued the hearing to December 6, 2016;

**WHEREAS,** on December 6, 2016, the Board heard and considered presentations and associated documents from County Staff. After considering all comments and written materials, the Board closed the public hearing, deliberated, and adopted a tentative motion to: (1) deny Appellant LRC’s appeal seeking or requesting that approval of the Project and certification of the EIR be vacated; (2) deny Appellant Circle Oaks’ appeal seeking or requesting that approval of the Project be vacated; (3) deny Appellant CBD’s appeal seeking or requesting that the approval of the EIR, its findings, and the statement of overriding considerations be vacated; and (4) deny Appellant Sierra Club’s appeal seeking or requesting that the Planning Director’s decision to certify and approve the EIR and the Project be vacated;

**WHEREAS,** the Board further directed Staff to return on December 20, 2016, with documents consistent with the Board’s expressed intent; 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 December 20, 2016;

**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. Findings of Fact and Conclusions of Law on Appeal.**

The Board hereby makes the following findings of fact and conclusions of law concerning each of the grounds for appeal as stated by Appellant in its Appeal.

**1. First Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the County provided an incomplete, unstable project description. Appellant states that vineyard acreage was reduced from 356 acres in the Draft EIR to 294 acres in the Final EIR, and finally 209 acres in the final approval, and it is unclear where these land use changes will occur. Appellant asserts that the County also states it will revise its deer fencing requirements, but provides no additional description of what will change. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 655.)

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

An EIR is an informational document that is meant “to provide public agencies and the public in general with detailed information about the effect a proposed project is likely to have on the environment; to list ways the significant effects of such a project might be minimized; and to indicate alternatives to such a project” [Public Resources Code (PRC) section 21061]. An adequate project description is important in that it ensures that CEQA’s goals of providing information about a project’s environmental impacts to government agencies and the public to allow consideration of mitigation measures and alternatives will not be rendered useless. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192–193, 197–198, 203.) In this way, a project description that is “accurate, stable and finite . . . is the *sine qua non* of an informative and legally sufficient EIR.” (*Id.* at p. 193.)

The CEQA Guidelines provide that “[t]he description of the project [in the EIR] shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact. (a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map. (b) A statement of the objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project. (c) A general description of the project’s technical, economic, and environmental characteristics, considering the principal engineering proposals, if any, and supporting public service facilities. (d) A statement briefly describing the intended uses of the EIR. (1) This statement shall include, to the extent that the information is known to the lead agency: (A) A list of the agencies that are expected to use the EIR in their decision-making, and (B) A list of permits and other approvals required to implement the project. (C) A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements. (2) If a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed, preferably in the order in which they will occur. On request, the Office of Planning and Research will provide assistance in identifying state permits for a project.” (CEQA Guidelines,section 15124.)

The project analyzed in the Walt Ranch EIR was sufficiently detailed to adequately convey the extent and components of the project as well as provide for adequate review and assessment of potential impacts of the project. All of the items required by CEQA Guidelines, section 15125 are contained in the Draft EIR. In addition, the EIR evaluated three alternatives to the project: the No Project Alternative, the Reduced Intensity Alternative, and the Multiple Resources Protection Alternative. In addition to the project description contained in the EIR, the Erosion Control Plan (ECPA) that provides the technical engineering-level detail for the design of the project’s infrastructure, was included in its entirety as an attachment to the EIR.

The reduction in acreage cited by the Appellant was the result of both mitigation measures and voluntary project modifications made by the Applicant reducing the size of the originally-proposed vineyard blocks. The size of the project was reduced to address impacts identified in the Draft EIR and comments received during the public review process. In short, the CEQA process worked as intended. The original proposed project was evaluated for environmental impacts and feasible mitigation measures to reduce those impacts, and as a result portions of the proposed vineyard blocks were removed to avoid certain impacts identified in the EIR. The reduction in vineyards resulting from the EIR mitigation measures and Applicant proposals are described in Mitigation Measure 4.2-1 (native grasslands), Mitigation Measure 4.2-2 (sensitive biotic communities), Mitigation Measure 4.2-4 (wetland and waters buffers), Mitigation Measure 4.2-5 (black walnut habitat), Mitigation Measure 4.2-7 (holly-leaved ceanothus), Mitigation Measure 4.2-8 (narrow-anthered brodiaea), Mitigation Measure 4.2-9 (other sensitive plant species), Mitigation Measure 4.2-10 (western pond turtle), Mitigation Measure 4.2-16 (specimen trees), and voluntary reductions for increased water quality buffers (Final EIR Response to Comment O9-44).

Regarding deer fencing requirements, Mitigation Measure 4.2-6 as reflected in the MMRP requires that, prior to the approval of the ECPA, the deer fencing plan shall be modified to reflect the specific biological impact avoidance measures such that the final approved vineyard blocks are fenced individually or in small clusters with “corridors of no less than 100 feet in width.” The revised deer fencing plan was provided with the approved ECPA and maintains deer fencing in compliance with Mitigation Measure 4.2-6. Refer to response to Appeal Ground No. CBD19 for additional discussion of deer fencing.

**Citations**: Mitigation Measures 4.2-1, 4.2-2, 4.2-4, 4.2-5, 4.2-6, 4.2-7, 4.2-8, 4.2-9, 4.2-10, 4.2-16; Final EIR, Response to Comment O9-44.

**Conclusions**: For the foregoing reasons, the Board denies the first ground of appeal and upholds the PBES Director’s decision to approve the Walt Ranch Vineyard Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised), certify the related EIR, and approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval.

**2. Second Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the Biological Resources section of the EIR provides an inadequate discussion of the environmental setting, or “baseline” impacts, and mitigation for many species.

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

The County, as lead agency, has discretion to decide how to measure the existing baseline conditions without the project, subject to review for support by substantial evidence. (*Communities for a Better Environment v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 336.) The County reasonably determined the appropriate biological resource baseline conditions based on substantial evidence. Numerous biological studies were completed in order to accurately measure and describe the biological resources on the Walt Ranch property. As listed in Table 4.2-1 of the EIR, these studies include 25 separate site-specific reports, and numerous site visits associated with each report, for the investigation of: botanical resources and special-status plants; waters of the U.S. and wetlands; biological resources and habitat assessments; special-status bryophytes; tree surveys; special-status wildlife, including amphibians, reptiles, and beetles; native grasslands; and mitigation replanting locations.

**Citations**: EIR, Table 4.2-1; County Staff Presentations, Board of Supervisors November 18 and December 6, 2016, Meetings.

**Conclusions**: For the foregoing reasons, the Board denies the second ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**3. Third Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the County’s discussion of the environmental setting, impacts analysis, and proposed mitigation is inadequate to protect California red-legged frog (CRLF), foothill yellow-legged frog (FYLF), and western pond turtle (WPT) populations. (CEQA Guidelines, sections 15125, 15126, 15126.4.) Appellant asserts that the EIR does not contain a discussion of impacts from “take” of ESA-listed species. (16 U.S.C., section 1538(a)(1); CEQA Guidelines, sections 15126, 15382; see 40 C.F.R., section 1508.27.)

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

Refer to response to LRC’s fourth ground of appeal (see Resolution No. 2016-180) regarding the validity of the discussion presented for each of these three species.

**Citations**: Refer to citations for response to LRC’s fourth ground of appeal (see Resolution No. 2016-180).

**Conclusions**: For the foregoing reasons, the Board denies the third ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**4. Fourth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the County erroneously lumps impacts and mitigation analysis of several aquatic species together, although these are distinct species with differing life cycles and conservation needs (e.g., differing use of upland habitat). (CEQA Guidelines, sections 15121, 15126, 15126.4.)

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

A separate species’ life history, general biological discussion, geographic distribution, and potential for occurrence within the Walt Ranch property was provided in Section 4.2.4-3 for CRLF, FYLF, and WPT. Locations of observed FYLF and WPT, as well as specific types of WPT habitat, were provided in the EIR in Figure 4.2-3. A graphic depiction of CRLF occurrence was not provided as none were directly observed on the property, but the following potential CRLF habitat was described on page 4.2-60 of the EIR: “Capell Creek and some of its tributaries, a reservoir in the northwestern corner of the project site, two ponds (one near the main project site access road and the other east of Atlas Peak Road), two emergent wetlands, and a seasonal wetland.”

The EIR identified two separate impacts for these species, which were organized by potential impacts to reptiles (WPT) and amphibians (CRLF and FYLF). However, CEQA permits the consideration of two similar species within the same impact section. The use of differing upland habitat by all three species is extensively discussed in the EIR, as well as the preservation of those areas and other protection measures for those species. Please refer to response to LRC’s fourth ground of appeal (see Resolution No. 2016-180) regarding the environmental baseline presented for these species.

**Citations**: EIR, Section 4.2.4-3; EIR, Figure 4.2-3; EIR, p. 4.2-60; refer to citations for response to LRC’s fourth ground of appeal (see Resolution No. 2016-180).

**Conclusions**: For the foregoing reasons, the Board denies the fourth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**5. Fifth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the EIR fails to set an accurate baseline for CRLF, including failing to recognize its presumed presence within both the Milliken and Capell Creek watersheds and misstating its environmental needs. (CEQA Guidelines, sections 15121, 15125.)

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

Refer to response to LRC’s fourth ground of appeal (see Resolution No. 2016-180) regarding the environmental baseline presented for CRLF and response to LRC’s twelfth ground of appeal regarding the CRLF surveys. Contrary to Appellant’s claims, CRLF presence has never been assumed on the Milliken Creek watershed portion of the property. As clearly stated on pages 4.2-37, 4.2-60, 4.2-80, and 4.2-120 of the Final EIR, CRLF presence was assumed on the Capell Creek portion of the property because it is within the potential dispersal range of adult CRLF, provides habitat for CRLF, and is located within 0.5 mile of CRLF critical habitat. The Milliken Creek portion of the watershed did not share these same characteristics for CRLF habitat so the EIR did not assume the presence of CRLF and the CRLF surveys were limited to that area.

**Citations**: Final EIR, pp. 4.2-37, 4.2-60, 4.2-80, 4.2-120; refer to citations for responses to LRC’s fourth and twelfth ground of appeal (see Resolution No. 2016-180); County Staff Presentations, Board of Supervisors November 18 and December 6, 2016, Meetings.

**Conclusions**: For the foregoing reasons, the Board denies the fifth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**6. Sixth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the County erroneously concludes that 20- to 55-foot setbacks will be sufficient to mitigate impacts to CRLF, and that this mitigation measure was not specifically designed to protect CRLF, and will not reduce impacts to CRLF to less than significant. (CEQA Guidelines, section 15126.4.)

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

The Appellant misstates the required setbacks for the project. Further, the setbacks do not provide the only (let alone, the primary) mitigation for potential impacts to CRLF. An extensive discussion of stream setbacks as they relate to amphibian and reptile species was presented in the EIR and in the Responses to Final EIR Comments memo (Section 2.10). The setbacks required by Mitigation Measure 4.2-4 protect a minimum setback of 55 feet on all CRLF aquatic stream habitat, which means that a minimum of 55 feet of CRLF upland foraging habitat is protected on either side of the streams. This results in protected upland corridors surrounding CRLF stream habitat of at least 110 feet. Many other streams have larger setbacks up to 150 feet, resulting in up to 300 foot setbacks from aquatic drainages that would provide protection for potential CRLF upland habitat. It should be noted that not all aquatic drainages provide CRLF habitat, as they require a particular set of low-gradient freshwater bodies with dense shoreline vegetation, but the setbacks are provided regardless of whether or not the drainage may support CRLF.

Final EIR Response to Comment A7-15 states that drainages that do not meet the Napa County definition of a stream are ephemeral drainages that only hold water for short periods of time. These ephemeral drainages do not support aquatic habitat or aquatic organisms, and only hold water immediately after precipitation events. As the ephemeral drainages on the property do not support aquatic organisms, these drainages by definition cannot be considered habitat for CRLF or FYLF. As a result, all potential amphibian habitat is protected, at a minimum, by a 55-foot setback (but in most cases, a much larger setback). The minimum 55-foot setbacks, combined with the restriction of work to the dry season, will significantly reduce potential impacts to amphibians. However, Mitigation Measure 4.2-11 was expanded with additional protective measures to even further reduce potential impacts. These expanded measures include environmental awareness training for construction workers, limiting pile burning to no closer than 300 feet from suitable habitat, and installing frog exclusionary fencing around all construction activities within or bordering CRLF habitat. These measures are consistent with, and in some cases surpass, the recommendations within the USFWS Take Avoidance Scenarios for Timber Harvest Plans (THP), Take Avoidance Scenario IV; although this guidance is not directly applicable to the Walt Ranch Project since it does not involve removal of timberland and therefore does not include a THP, there are many consistent elements that bear relevance. The USFWS Take Avoidance Scenario IV includes the following measures: avoiding suitable habitat by a 30-foot buffer; not using herbicides for stump removal within 300 feet of suitable habitat; not burning piles within 300 feet of suitable habitat; not building new logging roads within 300 feet of suitable habitat; and limiting water drafting from suitable habitat to screened hoses. To the extent that these measures are applicable to the Walt Ranch Project (e.g. habitat avoidance and pile burning), they were added to Mitigation Measure 4.2-11. The stream setbacks mentioned by the Appellant, in addition to being smaller than what is proposed with the project, are not the only method of avoidance and mitigation for this species.

**Citations**: Responses to Final EIR Comments Memorandum, Section 2.10, dated July 2016 and published with the Walt Ranch Approval Package on August 1, 2016; Mitigation Measures 4.2-4, 4.2-11; Final EIR, Response to Comment A7-15; USFWS Take Avoidance Scenarios for Timber Harvest Plans (THP), Take Avoidance Scenario IV; USFWS, 2008, Information Needs and Guidelines for Timber Harvest Plans (THPs) for US Fish and Wildlife Service Technical Assistance Analysis California Red-legged Frogs (CRF), published March 25, 2008, available online at <http://calfire.ca.gov/resource\_mgt/downloads/USFWS\_Revised\_CRLF\_InfoNeeds&TakeAvoidance Scenarios\_032508.pdf>; County Staff Presentations, Board of Supervisors November 18 and December 6, 2016, Meetings.

**Conclusions**: For the foregoing reasons, the Board denies the sixth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**7. Seventh Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the EIR does not adequately discuss the need to obtain either an Endangered Species Act incidental take permit (ITP) or to conduct Section 7 consultation for the take of CRLF individuals. (16 U.S.C. sections 1536(a)(2), 1539(a).)

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

This was adequately addressed in Section 2.10 of the Responses to Final EIR Comments memorandum. As explained further therein, since the Walt Ranch Project was designed to avoid impacts to waters of the U.S. and take of CRLF, no ITP is required at this time. Additionally, Mitigation Measure 4.2-4 requires the Applicant to obtain a U.S. Army Corps of Engineers nationwide permit (Section 404 permit) prior to the discharge of any dredged or fill material within jurisdictional wetlands and other waters of the U.S. This permit will require consultation with the USFWS regarding all potentially occurring special-status species, including CRLF. The USFWS may require additional measures for the protection of the species during that consultation. However, the Walt Ranch Project has “avoid[ed] or *substantially lessen[ed]*” the project’s significant impacts to CRLF to less than significant. (Pub. Resources Code, section 21002.).

**Citations**: Responses to Final EIR Comments Memorandum, Section 2.10; Mitigation Measure 4.2-4.

**Conclusions**: For the foregoing reasons, the Board denies the seventh ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**8. Eighth Ground of Appeal.**

**Appellant’s Position**: Appellant contends that the County failed to set a sufficient baseline for the FYLF and WPT. Appellant states that the EIR fails to account for these species’ environmental needs (e.g., extensive use of upland habitat) and life histories, and incorrectly labelling these species “strictly aquatic.” (CEQA Guidelines, section 15125.) Appellant contends that mitigation and impacts for the WPT and FYLF were designed around this faulty baseline and because of this, the EIR does not accurately describe the impacts to these species and the proposed mitigation will not reduce impacts to less than significant. (CEQA Guidelines, sections 15126, 15126.4.)

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

The EIR discusses the environmental setting and species’ life histories within Section 4.2.4-3 for CRLF, FYLF, and WPT. After general life histories were provided for each species, site-specific discussion was provided to say whether (or where) the species may occur on the Walt Ranch property. Locations of observed FYLF and WPT, as well as specific types of WPT habitat, were provided in the EIR in Figure 4.2-3. This is consistent with CEQA Guidelines, section 15125, subd. (a) regarding the discussion of the environmental setting, which states that:

“An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives.”

The EIR describes FYLF as requiring “shallow, flowing water and appears to prefer small- to moderate-sized streams that have at least some cobble-sized substrate… Unlike the CRLF, the foothill yellow-legged frog is rarely found far from permanent water. It spends most of its time in or near streams year-round. Tadpoles require water for at least three or four months before developing into terrestrial frogs” (page 4.2-60 of the EIR). The EIR states that FYLF occurs within a small subset of CRLF habitat because it is highly dependent on aquatic resources. Protective measures for FYLF in Mitigation Measure 4.2-11 include bullfrog management techniques, limitations on pile burning, and frog exclusionary fencing along construction boundaries.

The EIR describes the WPT as requiring “permanent or nearly permanent water body or stream with suitable refuges, basking sites, and nesting sites. Refuge sites can be submerged logs or rocks or mats of floating vegetation. Basking sites can be partially submerged rocks or logs, as well as shallow-sloping banks with little or no cover. This species constructs nests in sandy banks if present, or in soil up to 100 meters away from aquatic habitat that is at least ten centimeters deep” (page 4.2-61 of the EIR). The EIR states that WPT were observed within the project site near areas of permanent water or streams, and the nesting and overwintering (upland) habitat were delineated in Figure 4.2-3 of the EIR. Site-specific surveys and analyses were conducted to identify the potential WPT nesting and upland habitat that was shown on Figure 4.2-3. Onsite field surveys were conducted on February 11 and March 2, 2009 to appropriately assess onsite drainages, and data such as approximate drainage width, depth, cover, and upland habitat, slope, and soil, was recorded at representative locations along the drainages. Then this data, in conjunction with the wetland delineation prepared by WRA, was used to determine which drainages required nesting and overwintering buffers to protect WPT upland habitat.

The EIR does not claim that WPT is “strictly aquatic” and provides detailed mapping of over 530 acres of upland habitat that occurs on the Walt Ranch property. This is composed of approximately 20.7 acres of prime nesting habitat and approximately 509.8 acres of upland habitat. A combination of avoidance and preservation of existing habitat (both upland and aquatic), preconstruction surveys, agrichemical limitations, and exclusionary fencing was proposed in Mitigation Measure 4.2-10 to protect this species.

**Citations**: EIR, Section 4.2.4-3; EIR, Figure 4.2-3; EIR pp. 4.2-60; Mitigation Measures 4.1-10, 4.2-11; EIR pp. 4.2-61; Western Pond Turtle Habitat on Walt Ranch prepared by AES, April 2009; WRA, Inc. 2007, Draft Delineation of Potential Jurisdictional Wetlands and “Other Waters of the U.S.” Under Section 404 of the Clean Water Act, Walt Ranch, Napa County, California; County Staff Presentations, Board of Supervisors November 18 and December 6, 2016, Meetings.

**Conclusions**: For the foregoing reasons, the Board denies the eighth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**9. Ninth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the EIR provides an inaccurate baseline for valley elderberry longhorn beetle presence within Walt Ranch. (CEQA Guidelines, section 15125.) Appellant states that because of this, the County failed to provide an accurate discussion of impacts or to require adequate mitigation. (CEQA Guidelines, sections 15126, 15126.4.) Appellant asserts that the EIR is silent on the need to either obtain an incidental take permit or to conduct Section 7 consultation for this species. (16 U.S.C., sections l 536(a)(2), 1539(a).)

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

Valley elderberry longhorn beetle (VELB) was addressed in Final EIR Response to Comment O21-018 and O21-022 and within the Draft EIR in Section 4.2.4-5 and Impact 4.2-12. Focused entomological surveys conducted by Arnold (2012) did not result in detection of VELB within the project area. Arnold concluded that the California longhorn elderberry beetle (CELB), and not VELB, occurs within the project site. Arnold observed 11 CELB adults and no VELB adults during surveys conducted during the period when VELB and CELB adults were active. Because VELB does not occur on the property, there is no impact to this species and no ITP or Section 7 consultation is required for this species.

**Citations**: Final EIR, Responses to Comments O21-018 and O21-022; Draft EIR, Section 4.2.4-5; Draft EIR, Impact 4.2-12; Arnold, R.A., 2012, report on the threatened valley elderberry longhorn beetle on the Walt Ranch in Napa County, Entomological Consulting Services, Ltd.; County Staff Presentations, Board of Supervisors November 18 and December 6, 2016, Meetings.

**Conclusions**: For the foregoing reasons, the Board denies the ninth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**10. Tenth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the County does not accurately describe white-tailed kite and peregrine falcon presence within and near the project (CEQA Guidelines, section 15125), and that the EIR fails to provide for adequate avoidance, as required by the Fully Protected Species laws (California Fish & Game Code, section 3511).

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

Peregrine falcons and white tailed kites were addressed throughout the EIR and the Response to Final EIR Comments memo. As discussed in Section 2.13 of the Response to Final EIR Comments memo, peregrine falcons can occur in many open habitat types, but breeding sites must occur in proximity to water with nearby vertical structures such as niches in cliffs, steep banks, and ledges. They may occur in coastal areas (nesting in cliffs), urban settings (nesting on tall buildings or bridges), or in the Sierra Nevada (nesting on granitic outcroppings). In northern California, breeding occurs from May to September. Peregrine falcon was addressed in the Biological Resources Assessment (BRA; Appendix M of the Draft EIR) and was determined to be unlikely to occur on the project site due to lack of suitable habitat, specifically a lack of vertical cliffs or vertical outcrops. Therefore, this species was not discussed in detail in the EIR. For special status species with no potential to occur onsite, the EIR appropriately concluded that the Walt Ranch Project would not significantly impact the species. A complete list of special status species that occurs within Napa County or the quads of the project site is found in Appendix I of the Draft EIR. Although peregrine falcon does not occur on the property, it would be protected via the migratory and special status bird mitigation measure requiring pre-construction nesting bird surveys (Mitigation Measure 4.2-13).

The white-tailed kite was observed by biologists on the property, as stated on page 4.2-34 of the EIR. White-tailed kite requires a combination of suitable foraging habitat and adjacent suitable nesting habitat, which is lacking from the proposed vineyard blocks. This habitat is available elsewhere on the property, as stated on page 4.2-64. Mitigation Measure 4.2-13 provides mitigation to prevent direct take of white-tailed kite nests and all nesting bird species protected under the Migratory Bird Treaty Act and California Fish and Game Code 3503. Mitigation Measure 4.2-13 requires pre-construction surveys for nesting birds by a qualified biologist and the establishment of adequate buffer zones around active nest sites. As discussed in Impact 4.2-13, over 1,793 acres (78 percent) of the property will remain in open space and under the approved final ECPA over 1,984 acres (86 percent) will remain in open space. These open space areas would remain viable foraging habitat for migratory birds and raptors, and as such the project-level impacts were determined to be less than significant.

California Fish and Game Code section 3511(a)(1) states that “a fully protected bird may not be taken or possessed at any time.” Given the protective measures required by Mitigation Measure 4.2-13 and the habitat avoidance incorporated into the project design, no fully protected bird species will be impacted by the project.

**Citations**: Responses to Final EIR Comments Memorandum, dated July 2016 and published with the Walt Ranch Approval Package on August 1, 2016; Biological Resources Assessment, included as Appendix M to the Draft EIR; Appendix I to the Draft EIR; Mitigation Measure 4.2-13; EIR, pp. 4.2-34, 4.2-64; EIR, Impact 4.2-13; County Staff Presentation, Board of Supervisors November 18, 2016, Meeting.

**Conclusions**: For the foregoing reasons, the Board denies the tenth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**11. Eleventh Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the County does not provide an adequate baseline and impacts discussion regarding mountain lions, which have a high possibility of being present on site. (CEQA Guidelines, sections 15125, 15126; Fish & Game Code, section 4800.) Furthermore, Appellant asserts that the EIR does not mitigate impacts to mountain lions to less than significant. (CEQA Guidelines, section 15126.4.)

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

Mountain lion presence, at least periodically, is assumed within the project site and vicinity. As addressed in Final EIR Response to Comment O21-058, “mountain lion use of the property for dispersal was considered in the wildlife corridor discussion (Section 4.2.2-10 of the Draft EIR). Although mountain lions are a “specially protected species,” CDFW states that:

Mountain lions are not threatened nor endangered in California. In fact, the lion population is relatively high in California and their numbers appear to be stable. Mountain lions are legally classified as “specially protected species.” This has nothing to do with their relative abundance and does not imply that they are rare (CDFW, 2007).

Pursuant to California Fish and Game Code section 4800(b)(1), it is “unlawful to take, injure, possess, transport, import, or sell a mountain lion or a product of a mountain lion, except as specifically provided in this chapter or in Chapter 2 (commencing with Section 2116) of Division 3.” Final EIR Responses to Comment O21-059 provides a discussion of several potential impacts to mountain lions that were specifically mentioned by the Appellant in comments to the Draft EIR, including: accidental poisoning due to rodenticide (which would not be used on the proposed vineyard), habitat impacts (negligible impacts due to the large home range of mountain lions), and potential road strikes (no increase in risk during vineyard construction or operation due to speed limits required by mitigation). The only potential impact to mountain lions is due to a restriction in movement, which has been addressed via Impact and Mitigation Measure 4.2-6. The wildlife corridors maintained via project design and protected via Mitigation Measure 4.2-6 ensure that mountain lions will not be harmed on the Walt Ranch property. Mountain lions do not meet the definition of an endangered, rare, or threatened species under CEQA Guidelines, section 15380, and therefore the EIR appropriately considered impacts to biological resources in accordance with CEQA and the CEQA Guidelines. Through the maintenance and protection of wildlife corridors (Mitigation Measure 4.2-6), the Walt Ranch Project will not harm mountain lions.

**Citations**: Final EIR, Responses to Comments O21-058, O21-059; Draft EIR, Section 4.2.2-10; Mitigation Measure 4.2-6; County Staff Presentation, Board of Supervisors November 18, 2016, Meeting.

**Conclusions**: For the foregoing reasons, the Board denies the eleventh ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**12. Twelfth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that County fails to adequately avoid and mitigate impacts to on-site oak trees, in violation of Napa Policy CON-24 and California Public Resources Code, section 21083.4, subd. (b). (CEQA Guidelines, section 15126.4.)

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

As discussed further in the response to LRC’s sixth ground of appeal (see Resolution No. 2016-180), the EIR analyzed the potential for the project to impact oak woodlands in Impact 4.2-2 (oak woodlands as a habitat type) and Impact 4.2-16 (specimen trees and notable oak stands).

The Conversion of Oak Woodlands requirement mandated by Pub. Resources Code, section 21083.4 provides specific exemptions for agricultural projects. Pub. Resources Code, section 21083.4, sudb. (d)(3), provides an exemption to the above Conversion of Oak Woodlands requirement for agricultural projects, saying that “[c]onversion of oak woodlands on agricultural land that includes land that is used to produce or process plant and animal products for commercial purposes” is exempt from these requirements.

The project includes avoidance and preservation of oak woodlands at a 2:1 ratio in compliance with County General Plan Policy CON-24. Although the Pub. Resources Code, section 21083.4 is not applicable to the project, the EIR mitigation measures ensure compliance with Napa County General Plan Policy CON-24 and impacts to oak woodlands are avoided or substantially lessened in accordance with CEQA.

**Citations**: EIR, Impact 4.2-2 and Impact 4.2-16; Napa County General Plan Policy CON-24; County Staff Presentation, Board of Supervisors November 18, 2016, Meeting.

**Conclusions**: For the foregoing reasons, the Board denies the twelfth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**13. Thirteenth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the EIR sets an improper baseline for Contra Costa goldfields. (CEQA Guidelines, section 15125.) Appellant claims that this impermissibly skews the impacts analysis and mitigation for this species. (CEQA Guidelines, sections 15126, 15126.4.) Appellant asserts that the County fails to acknowledge the significant impacts arising from the destruction of this endangered species’ critical habitat, or the resulting edge effects caused by vineyard development cutting into this critical habitat.

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

This was addressed in Final EIR Response to Comment O21-065 and Section 2.13 of the Responses to Final EIR Comments memo. The EIR did address potential impacts to the federally endangered Contra Costa goldfields. As stated in Table 4.2-3, page 4.2-47, and Appendix M, numerous botanical surveys were conducted within the evident and identifiable bloom period for Contra Costa goldfields and this species was not observed onsite. Although page 4.2-48 acknowledges that there is critical habitat for Contra Costa goldfields within the Milliken Reservoir watershed portion of the property, there will still be no impacts to this species as it does not occur onsite. Although a portion of the Walt Ranch Project is within critical habitat for Contra Costa goldfields, the nearest occurrence is approximately three miles southeast of the project site. Therefore, there are no impacts to Contra Costa goldfields. The Contra Costa goldfield is a small plant with yellow flowers that has extremely specific habitat requirements; it must occur in mesic areas (moist or wet areas) of cismontane woodland, alkaline playas, valley and foothill grassland, or vernal pools. Many of the wetlands on the property have been avoided via project design or through Mitigation Measure 4.2-4. As such, even though no Contra Costa goldfields exist on the property, its mesic habitat would be preserved.

A species’ critical habitat is designated by the USFWS at the time of listing, and they are often large areas. The USFWS specifically states that not all areas within the mapped boundaries are considered critical habitat. “In some cases, precisely mapping critical habitat boundaries is impractical or impossible, because the required descriptions for these precise boundaries would be unwieldy” (USFWS, 2015). While USFWS designated Contra Costa goldfields critical habitat on a small portion of the Walt Ranch property, there are no actual habitat areas (alkaline vernal pools) that would support this plant species. The USFWS states that a “critical habitat designation does not necessarily restrict further development. It is a reminder to Federal agencies of their responsibility to protect the important characteristics of these areas.”

The area of critical habitat in question is a 1.62 square-mile area (of which only 0.08 square mile overlaps with the Walt Ranch property) that encompasses parts of Milliken Reservoir, Atlas Peak Road, and several developed structures, and is mapped as containing chamise chaparral, oak woodlands, and grasslands. Although there may be small alkaline wetlands within this 1.62 square-mile area, it is apparent that the entire area is not and cannot be wetland habitat for the Contra Costa goldfield. Furthermore, there is only one wetland that has been mapped within the 0.08 square mile (51 acre) portion of critical habitat that overlaps with the Walt Ranch property. The nearest vineyard block (Block 2A2) has been set back from this wetland by appropriate buffers, and there would be no impact to this wetland feature.

As acknowledged by the USFWS, these large-scale mapping units are designed to focus attention on the potential for habitat to exist, and are not decreeing that there is suitable habitat in the entire area. Given that no Contra Costa goldfields were identified on the project site and no habitat for them exists, there is no impact to this species.

**Citations**: Final EIR, Response to Comment O21-065; Responses to Final EIR Comments Memo, Section 2.13; EIR, Table 4.2-3; EIR, pp. 4.2-47, 4.2-48; Draft EIR, Appendix M; Mitigation Measure 4.2-4; USFWS (2015) Critical Habitat: What is It?, available online at: https://www.fws.gov/endangered/esa-library/pdf/critical\_habitat.pdf, published June 2015 and accessed June 3, 2016; County Staff Presentation, Board of Supervisors November 18, 2016, Meeting.

**Conclusions**: For the foregoing reasons, the Board denies the thirteenth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**14. Fourteenth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that County admits the project will impact goldfields’ designated critical habitat, but erroneously concludes this impact is less than significant and does not require mitigation. (CEQA Guidelines, sections 15126, 15126.4.) Appellant states that contrary to the County’s conclusion, impacts to dozens of acres of critical habitat are significant and require avoidance or mitigation. (See, e.g., 40 C.F.R. section 1508.27.) Appellant asserts that the EIR fails to acknowledge the need to either obtain an incidental take permit or to conduct Section 7 consultation for this species. (16 U.S.C. sections 1 536(a)(2), 1539(a).)

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

This was addressed in Final EIR Response to Comment O21-065 and Section 2.13 of the Responses to Final EIR Comments, as well as in the above response to Appellant’s thirteenth ground of appeal. While the presence of critical habitat is relevant in evaluating a project’s potential environmental impacts under CEQA, neither such federal designation nor the cited Code of Federal Regulation section impose any legal mandate or requirement regarding impact conclusions on a state or local agency. Therefore, the Appellant’s citation to the Code of Federal Regulation has no legal import beyond providing evidence of a possible impact to be investigated in the EIR. Such analysis and investigation was conducted as discussed in the response to CBD’s thirteenth ground of appeal. It is clear from site specific studies that neither Contra Costa goldfields nor appropriate habitat exist on the project site.

**Citations**: Final EIR, Response to Comment O21-065; Responses to Final EIR Comments, Section 2.13; County Staff Presentation, Board of Supervisors November 18, 2016, Meeting.

**Conclusions**: For the foregoing reasons, the Board denies the fourteenth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**15. Fifteenth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the EIR provides inadequate mitigation for impacts to a particularly important community of narrow-anthered California brodiaea. (CEQA Guidelines, section 15126.4.)

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

Impacts to narrow-anthered California brodiaea were addressed in Impact 4.2-8, Final EIR Response to Comment O21-068, and within the Biological Resources Management Plan (BRMP) prepared for the Walt Ranch Project. The narrow-anthered California brodiaea (*Brodiaea leptandra*) is listed by the California Native Plant Society as a rare plant rank 1B.2, meaning that it is afforded protection under CEQA but is not listed as threatened or endangered by the State or federal government. The narrow-anthered California brodiaea habitat on the Walt Ranch property is located in the Milliken Reservoir watershed portion of the project site, which has the best conditions to cultivate high-quality wine grapes. CEQA recognizes that it is impossible to completely eliminate some environmental impacts, and therefore CEQA focuses on the need to “avoid or *substantially lessen*” a project’s significant impacts (Pub. Resources Code, section 21002.). In this instance, Mitigation Measure 4.2-8 has required the avoidance of 17.8 acres of narrow-anthered brodiaea, the preservation of 33.2 acres in perpetuity (or preservation of approximately 80 percent of the population occurring on the property), and mitigation replanting of 8.63 acres of brodiaea that would be directly impacted. Mr. Jake Ruygt of the California Native Plant Society called this level of habitat preservation “commendable” (refer to Comment O7-7).

Specific mitigation replanting areas were identified in the BRMP; using the BRMP to mitigate significant impacts to biological resources to less-than-significant levels is in compliance with CEQA Guidelines, section 15126.4. This has been determined to meet CEQA’s requirements of avoiding or substantially lessening the Proposed Project’s impacts.

**Citations**: EIR, Impact 4.2-8; Final EIR Response to Comment O21-068; Biological Resources Management Plan; Mitigation Measure 4.2-8; County Staff Presentation, Board of Supervisors November 18, 2016, Meeting.

**Conclusions**: For the foregoing reasons, the Board denies the fifteenth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**16. Sixteenth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the County impermissibly allows the destruction of hundreds of acres of native grasslands by severely limiting what qualifies as a native grassland, in violation of Napa Policy CON-17. Appellant states that the County does not adopt all feasible avoidance and mitigation, such as prohibiting on-site herbicide use. (CEQA Guidelines, section 15126.4.)

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

The definition for what qualifies as a “native grassland” comes from the highly qualified biologists at the CDFW, not from Napa County. In a communication cited in a peer-reviewed article (Keeley, 1992), Keeler-Wolf stated that CDFW considers grasslands with greater than ten percent cover of native grasses to be “significant” and worthy of conservation. Some local governments within California have incorporated this numeric limit into regulatory frameworks (e.g., Santa Barbara County Environment Thresholds and Guidelines Manual, General Plan, January 1995). Therefore, the EIR considers native grasslands containing 10 percent native grass species or higher to be a sensitive biotic community pursuant to Napa County General Plan Policy CON-17.

As stated in the Napa County BDR, “species composition of the annual grassland is highly diverse and includes many other native and nonnative forbs.” Although some native species may be present within the annual grassland at a low density, this does not qualify it as a native grassland pursuant to CDFW recommendation.

The Napa County BDR discusses native grasslands separately from the California Annual Grassland Alliance, stating that:

Native grasslands dominated by a mixture of annual and perennial grasses, such as small fescue (*Vulpia microstachys*), purple needlegrass (*Nasella pulchra*), and nodding needlegrass (*Nasella cernua*), likely occurred in the County in most areas currently occupied by annual grassland (Heady 1988, Wester 1981). Although once extensive in the greater Bay Area and Central Valley, invasion by exotic annual grasses and improper livestock grazing has led to the decline of this land cover type.

General Plan Policy CON-17 requires the County to “preserve and protect *native* grasslands” (emphasis added). No special protection is afforded to California annual grasslands, which are dominated by invasive or exotic species. Therefore, Mitigation Measure 4.2-1 appropriately required avoidance, restoration, and replacement of native grasslands in accordance with General Plan Policy CON-17. With the exception of the 9.8 acres of native grasslands (defined by CDFW as 10 percent or greater coverage of native forbs as discussed in the Draft EIR), the 166.8 acres of California Annual Grassland Alliance on the property are dominated by invasive annual grasses and are not native grasslands requiring protection under General Plan Policy CON-17. As discussed above, approximately 9.8 acres of sensitive native grasslands have been mapped on the property. Of this native grassland area, the original Proposed Project would have impacted 4.45 acres (45.4 percent). The Draft EIR determined this level of impact to be significant and determined that additional avoidance was feasible, and therefore required avoidance of an additional 3.3 acres. This results in the preservation of approximately 8.65 acres (88.3 percent) of native grasslands mapped on the property. Therefore, after avoidance, the Walt Ranch Project will impact only 1.15 acres of native grasslands. These impacted areas are required to be mitigated at a 2:1 ratio including both preservation of existing native grasslands and enhancement of existing grasslands.

Finally, chemical applications will follow the rules and regulations of California and U.S. laws outlined by California Department of Pesticide Regulation and U.S. Environmental Protection Agency (EPA), in addition to mitigation measures included in the EIR, as discussed in Final EIR Response to Comment O21-015. Therefore, pesticide and herbicide drift will not significantly impact native grasslands.

**Citations**: Peer-Reviewed Article (Keeley, 1992); Santa Barbara County Environment Thresholds and Guidelines Manual, General Plan, January 1995; Napa County General Plan Policy CON-17; Mitigation Measure 4.2-1; Final EIR, Response to Comment O21-015; California and U.S. laws outlined by California Department of Pesticide Regulation and U.S. Environmental Protection Agency (EPA); County Staff Presentation, Board of Supervisors November 18, 2016, Meeting.

**Conclusions**: For the foregoing reasons, the Board denies the sixteenth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**17. Seventeenth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the EIR does not provide information on the presence of several other species known to occur within or near the project site, including the conservancy fairy shrimp, California freshwater shrimp, California tiger salamander, winter-run chinook salmon, Sebastopol meadowfoam, northern spotted owl, western snowy plover, California brown pelican, peregrine falcon, and California least term. (CEQA Guidelines, section 15125.) Appellant states that the EIR also does not provide an adequate impacts discussion or mitigation for these species. (CEQA Guidelines, sections 15126, 15126.4.)

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

There is no evidence that the species mentioned in this appeal ground are known to occur “within or near the project site,” as documented in the EIR (Final EIR Response to Comment O21-031) and the Responses to Final EIR Comments memo.

The speciesmentioned in this appeal were addressed in the BRA and were determined to be either not present, unlikely to occur, or would not be affected by the Walt Ranch Project. The potential for conservancy fairy shrimp, California freshwater shrimp, and California tiger salamander to occur on the project site was assessed in Appendix B of the BRA, which found that there was no potential for these species to occur on the project site due to a lack of any suitable habitat. Winter-run Chinook salmon will not occur on the property due to downstream barriers on Milliken Creek (Milliken Reservoir Dam) and Capell Creek (Lake Berryessa), as well as a lack of any suitable habitat within the streams and tributaries on the project site. This was mentioned on page 4.2-27 of the Draft EIR. Sebastopol meadowfoam does not occur on the project site; this species blooms from May to July, and numerous botanical surveys of the project site during the evident and identifiable bloom period failed to locate it onsite. Northern spotted owl was determined to be unlikely to occur due to a lack of suitable habitat.

Although shown on the USFWS list as having the potential to occur or be affected by projects within Napa County, western snowy plover, California brown pelican, and California least tern do not occur within the project site, nor is suitable habitat present within the project site to support these species. These species are all coastal bird species, and Walt Ranch is located well outside of the geographic distribution for each of these species. Therefore, these species were not discussed in detail in the EIR because they will not be impacted by the Walt Ranch Project.

**Citations**: Final EIR, Response to Comment O21-031; Responses to Final EIR Comments Memorandum, dated July 2016 and published with the Walt Ranch Approval Package on August 1, 2016; Biological Resources Assessment, Appendix B; Draft EIR, p. 4.2-27; County Staff Presentation, Board of Supervisors November 18, 2016, Meeting.

**Conclusions**: For the foregoing reasons, the Board denies the seventeenth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**18. Eighteenth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the County’s limited discussion of other species is inadequate, such as its discussion of Keck’s checker-mallow and the Central Valley spring and fall-run chinook. (CEQA Guidelines, sections 15125, 15126, 15126.4.)

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

Keck’s checker mallow (referred to as Keck’s checkerbloom in the Draft EIR) was not observed within the project site during biological and botanical surveys conducted within the appropriate bloom period for this species. Qualified biologists and botanists have conducted surveys for listed species, including Keck’s checker-mallow, over a period of 15 years on the Walt Ranch property as listed in Table 4.2-1 of the EIR. None of these surveys have identified this plant species within the proposed clearing limits. There is no evidence before the County that this species occurs on the project site or would be impacted by the Walt Ranch Project. Consistent with the USFWS recommendations and CEQA Guidelines, section 15126, no mitigation is required for a species that will not be impacted.

The County analyzed potential impacts to special status aquatic species, including steelhead and Chinook salmon, in Impact 4.2-15 (refer to response to Appellant’s seventeenth ground of appeal. These anadromous species cannot access the project site, but the waters on the project site are hydrologically connected to downstream habitat. Therefore, Mitigation Measure 4.2-15 ensures that measures protective of water quality are implemented during project construction and operation.

**Citations**: EIR, Table 4.2-1; Impact 4.2-15; Mitigation Measure 4.2-15; County Staff Presentation, Board of Supervisors November 18, 2016, Meeting.

**Conclusions**: For the foregoing reasons, the Board denies the eighteenth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**19. Nineteenth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that County will permit construction of exclusionary fencing surrounding vineyards, which will decrease wildlife movement and decrease the project’s effectiveness as a wildlife corridor, in violation of General Plan policies CON-5 and CON-18. Appellant states that the EIR does not adequately discuss the impacts arising from this fencing, and provides inadequate mitigation to counterbalance these impacts. (CEQA Guidelines, sections 15126, 15126.4.)

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

Impact 4.2-6 of the Draft EIR states that:

The project design has placed the deer fencing as close to the vineyard blocks as possible. In addition, the project design ensures that there are spaces for animal passage between fenced clusters, reducing the impacts to wildlife movement corridors.

However, the County still determined that there would still be a significant impact to wildlife movement corridors. In compliance with CEQA Guidelines, section 15126.4, subd. (a) which states that “the discussion of mitigation measure shall distinguish between the measures which are proposed by project proponents… and other measures proposed by the lead, responsible, or trustee agency,” the EIR appropriately analyzed both the Applicant’s proposed deer fencing and provided additional mitigation. Specifically, Mitigation Measure 4.2-6 ensures that wildlife corridors of no less than 100 feet are maintained between the fencing around proposed vineyard blocks. This 100-foot movement corridor is based on best available science, as discussed in Section 4.2.2-10 of the Draft EIR. Scientific studies indicate that vegetated riparian corridors of widths greater than 30 meters (98 feet) are most likely to be used by wildlife (Hilty and Merenlender, 2002). Therefore, Napa County Code Section 18.108.025 requires stream setbacks that have a dual purpose of protecting water quality and protecting riparian habitat, as well as facilitating wildlife movement. Additionally, corridors between fenced vineyard blocks are a minimum of 100 feet wide and shall be maintained as existing habitat. Therefore these corridors would continue to function as movement and dispersal corridors.

The proposed deer fencing in this area has been revised during final re-design of the vineyard blocks in accordance with these mitigation measures, which will alleviate the concerns mentioned in this comment. General Plan Policy CON-18(e) requires that new development projects minimize impacts to wildlife corridors to the maximum extent feasible. After implementation of this mitigation, impacts would be reduced to less-than-significant levels in accordance with CEQA Guidelines.

Through a combination of undeveloped habitat along riparian corridors, wetland buffer zones, and preserved habitat between fenced vineyard blocks, the potential impacts from west to east (or east to west) and north to south (or south to north) impediments to wildlife passage would not be significant, as the corridors and open space would serve to facilitate wildlife movement through the project site. With mitigation, there is no conflict with the Napa County General Plan policies concerning wildlife corridors and there is a less-than-significant impact to wildlife movement in accordance with CEQA GuidelinesAppendix G Environmental Checklist.

**Citations**: Draft EIR, Impact 4.2-6; Mitigation Measure 4.2-6; Draft EIR, Section 4.2.2-10; Napa County General Plan Policy CON-18(e).

**Conclusions**: For the foregoing reasons, the Board denies the nineteenth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**20. Twentieth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that County does not discuss impacts to wildlife from the construction and rebuilding of over 20 miles of roads within Walt Ranch, and it does not provide adequate avoidance and mitigation for these impacts. (CEQA Guidelines, sections 15126, 15126.4.)

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

Section 3.4.1-6 of the EIR provides an extensive discussion of the use of existing roads, decommissioning of old roads, and upgrading of certain roads where needed. Although there is an extensive network of 21 miles of existing roads on the ranch, only 9.6 miles of Level I road (receiving rock aggregate and specific erosion control features) and 7.8 miles of Level II road (receiving erosion control features) are required for project-related access. The remaining length of road will be eliminated (decommissioned) or incorporated into proposed vineyard blocks, in accordance with specifications provided by the Napa County Resource Conservation District (RCD) and provided within Appendix C of the EIR. This description of roads was clearly presented within the project description (Section 3 of the EIR), a specific Road Sedimentation and Erosion Potential Evaluation (Appendix C), and the ECPA (Appendix B). As such, the use of roads was clearly presented within the project description and analyzed with the entirety of the vineyard development for each environmental impact area within Section 4 of the EIR. This was particularly true for where road lengths would have impacted special-status plant or animal habitat, which was assessed in each impact within Section 4.2 of the EIR and avoidance was required as necessary. Road work was therefore evaluated as part of the project construction activities and such work requires compliance with all applicable pre-construction, construction, and avoidance/mitigation requirements discussed in the EIR.

As discussed in the response to Appellant’s first ground of appeal, the project analyzed in the Walt Ranch EIR was sufficiently detailed to adequately convey the extent and components of the project as well as provide for adequate review and assessment of potential impacts of the project. All of the items required by CEQA Guidelines, section 15125 are contained in the EIR. Also see the response to Appellant’s twenty-fifth ground of appeal below.

**Citations**: EIR, Section 3.4.1-6; EIR, Road Sedimentation and Erosion Potential Evaluation (Appendix C); EIR, Erosion Control Plan (Appendix B).

**Conclusions**: For the foregoing reasons, the Board denies the twentieth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**21. Twenty-first Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the EIR fails to accurately discuss the traffic baseline and impacts. (CEQA Guidelines, sections 15125, 15126.) Appellant states that it fails to provide adequate mitigation for impacts during project construction and operation. (CEQA Guidelines, section 15126.4.)

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

The traffic environmental baseline was updated and clarified in the Final EIR. Existing traffic levels on SR-121 were based on 2012 Caltrans traffic counts, and have since been updated to reflect the most recent 2014 traffic data. Existing traffic levels on Circle Oaks Drive were updated based on Napa County published traffic counts.

In accordance with CEQA Guidelines, section 15143, traffic impacts were discussed with emphasis in proportion to their severity and probability of occurrence. Given that traffic impacts are reduced to less-than-significant levels with mitigation, the EIR presented an appropriate level of scientific detail in accordance with CEQA Guidelines. The use of existing traffic counts provided by Caltrans and Napa County are appropriate to provide decision makers with information to enable them to make an intelligent decision that takes into account all environmental consequences, per CEQA Guidelines, section 15151.

The significance criteria presented in Section 4.7.3-1 of the EIR state that an impact to traffic would be significant if it would cause an increase in traffic, which is substantial in relation to the existing traffic load and capacity of the street system. The analysis in the EIR conservatively assumes that half of construction and operation related trips would occur during the AM peak hour and half would occur during PM peak hour. This approach is conservative because it assumes that all traffic generated by the Project will occur during either the AM peak hour or the PM peak hour. In fact, traffic is likely to be distributed throughout the day, and is unlikely to be concentrated solely during the AM and PM peak hours. This approach ensures that the Walt Ranch Project’s traffic impacts will not be inadvertently understated (although this approach also means the project’s traffic impacts may be overstated). In addition, traffic going to and from the project site will be counter-cyclical to the traffic in the Circle Oaks neighborhood. Therefore, although the total number of trips will increase, these trips are not anticipated to result in a disruption to the traffic flow or patterns of the area. Regardless of where the traffic is measured from within Circle Oaks, the counter-cyclical nature and the implementation of Mitigation Measures 4.7-1 and 4.7-2 will ensure there is not a significant increase in congestion or trips traveling in the same direction.

Furthermore, Condition of Approval No. 2 imposed upon the project additional traffic restrictions requiring that all construction equipment be routed away from Circle Oaks Drive and through the northernmost access driveway directly off of State Route 121. In addition, no construction equipment or vehicles weighing greater than 64,000 pounds shall use Circle Oaks Drive. This additional Condition of Approval significantly minimizes any potential traffic disruption to the Circle Oaks community or damage to infrastructure.

**Citations**: EIR, Section 4.7.3-1; Mitigation Measures 4.7-1, 4.7-2, and4.7-4; County Staff Presentation, Board of Supervisors November 18, and December 6, 2016, Meeting Meetings; Memorandum from David Morrison and Brian Bordona to Chair Pedroza and Board Members, December 5, 2016.

**Conclusions**: For the foregoing reasons, the Board denies the twenty-first ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**22. Twenty-second Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that County provided a faulty discussion of baseline and impacts to water quality and water supply in its EIR, and it did not require adequate mitigation for impacts.

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

The County, as lead agency, has discretion to decide how to measure the existing baseline conditions without the project, subject to review for support by substantial evidence. (*Communities for a Better Environment v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 336.) The County reasonably determined the appropriate hydrologic baseline conditions based on substantial evidence. Specific hydrologic and biologic investigations were conducted of on-site conditions for both surface water and groundwater conditions. Refer to responses CBD’s twenty-third ground of appeal (surface water) and LRC’s ninth ground of appeal (groundwater) (see Resolution Nos. 2016-182 and 2016-180).

**Citations**: Refer to citations for response to CBD’s twenty-third ground of appeal and LRC’s ninth ground of appeal (see Resolution Nos. 2016-182 and 2016-180).

**Conclusions**: For the foregoing reasons, the Board denies the twenty-second ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**23. Twenty-third Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the EIR provides an inconsistent and inadequate baseline and impacts analysis regarding water quality, and that it provides flawed, conflicting information regarding runoff and sedimentation. Appellant asserts that this fails the informational purpose of CEQA. (CEQA Guidelines, sections 15121, 15125, 15126.)

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

Baseline water quality is discussed in Section 4.6.1-2 (page 4.6-8 through 4.6-11) of the EIR, which provides a detailed description of the following water quality constituents relevant to the Walt Ranch property and downstream watersheds:

* **Sediment Loading.** The Napa River watershed is listed for sediment loading and a Total Maximum Daily Load (TMDL) has been developed by the San Francisco Bay Regional Water Quality Control Board (RWQCB). The Capell Creek watershed is not listed for sediment loading;
* **Temperature.** The Napa River watershed is listed for temperature constraints because it provides habitat for cold-water listed fishes. The Capell Creek watershed is not listed for temperature;
* **Nutrients.** The Napa River watershed is listed for nutrient pollution such as phosphorus and nitrogen. However, given improving water quality in the non-tidal portions of the Napa River, the San Francisco Bay RWQCB adopted Resolution No. R2-2014-0006 on February 12, 2014, to delist the non-tidal Napa River for nutrients. The Capell Creek watershed is not listed for nutrients;
* **Pathogens.** The Napa River watershed is listed for pathogens and a TMDL has been developed by the RWQCB. Onsite waters have a low potential for increased levels of pathogens due to the halting of livestock grazing on the property. The Capell Creek watershed is not listed for pathogens; and
* **Metals/Metalloids.** The Putah Creek and Lake Berryessa watersheds are listed for metals/metalloids, specifically mercury and boron. The Milliken Creek/Napa River watershed are not listed for metals.

Numerous mitigation measures throughout the EIR are designed to be protective of water quality in order to ensure the Walt Ranch Project does not result in increases in sediment, temperature, or nutrient loading (Milliken Creek watershed) or metals/metalloid loading (Capell Creek watershed). As clarified in the Final EIR, the following mitigation measures will be protective of water quality:

* Mitigation Measure 4.2-4: Maintain appropriate stream and wetland buffers
* Mitigation Measure 4.4-1: No net increase in sedimentation
* Mitigation Measure 4.5-1: Create and follow a Hazardous Materials Business Plan (HMBP)
* Mitigation Measure 4.5-2: Follow all Standard Operating Procedures (SOPs) for vineyard equipment
* Mitigation Measure 4.5-3: Restrictions on chemical mixing and mix water
* Mitigation Measure 4.5-4: Restrictions on application of agrichemicals
* Mitigation Measure 4.5-5: Restrictions on use and storage of oils
* Mitigation Measure 4.6-2: Upgrade rocked water crossings prior to use

Furthermore, in addition to these protective measures for water quality that mitigate potential impacts to less than significant levels, the Applicant has been working with the City of Napa, independently of the EIR process, to voluntarily develop a surface water monitoring plan to address the City’s concerns regarding potential water quality impacts. A Condition of Approval requiring the implementation of the Water Quality Monitoring Plan was added to the Updated MMRP.

**Citations**: EIR, Section 4.6.1-2; Mitigation Measures 4.2-4, 4.4-1, 4.5-1, 4.5-2, 4.5-3, 4.5-4, 4.5-5, 4.6-2; County Staff Presentations, Board of Supervisors November 18 and December 6, 2016, Meetings.

**Conclusions**: For the foregoing reasons, the Board denies the twenty-third ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**24. Twenty-fourth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that County set an improper significance threshold and fails to demonstrate compliance with local Clean Water Act, Section 303(d), total maximum daily load standards, and, by proxy General Plan Policy CON-47. (33 U.S.C. § 131 3(d).) Thus, Appellant asserts, the County failed to adopt all necessary mitigation measures to avoid further impairing local surface waters. (CEQA Guidelines, § 15126.4.)

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

Refer to response to LRC’s first ground of appeal (see Resolution No. 2016-180).

**Citations**: General Plan Policy CON-47; refer to citations for response to LRC’s first ground of appeal (see Resolution No. 2016-180).

**Conclusions**: For the foregoing reasons, the Board denies the twenty-fourth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**25. Twenty-fifth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that County failed to adequately address potential impacts to water quality and wildlife from each of the nearly 60 proposed stream crossings. Appellant states that the County provides no evidence that adding rocks to streams will significantly decrease sedimentation at 21 of the 58 proposed stream crossings, and it fails to adequately discuss impacts to other stream crossings where it proposes no mitigation. (CEQA Guidelines, section 15126.4.)

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

As discussed in Final EIR Response to Comment O21-100, all road crossings will be treated as described in the Walt Ranch Road Sedimentation and Erosion Potential Evaluation prepared by the Napa County RCD, found in Appendix C of the Draft EIR. All roads are required to be upgraded per the ECPA and Road Plan (Appendix C) prior to use. Upgrading stream crossings to rocked water crossings is a common best management practice (BMP) to minimize erosion and reduce sediment loads in rural landscapes. Improving ford crossings by adding coarse rock is recommended by the U.S. Forest Service and Bureau of Land Management, among others. As part of a peer-reviewed study, B.C. Morris et al studied water quality upstream and downstream of three types of stream crossings using rainfall simulations and measuring total suspended sediment (TSS). As the ford crossing improved from no BMPs or improvements to a rocked water crossing, there was a decrease in mean TSS concentration. This study effectively proved that the common BMP of improving ford crossings to rocked water crossings has a measurable decline in erosion and sedimentation. As such, Napa County appropriately followed the recommendations of the Napa County RCD, which are consistent with best available science.

The potential direct impacts to waters of the U.S. and wildlife habitat that could result from the stream crossing improvements were analyzed in the EIR and mitigated to less-than-significant levels via the implementation of Mitigation Measure 4.2-4 (waters of the U.S.), Mitigation Measure 4.2-10 (WPT), and Mitigation Measure 4.2-11 (CRLF and FYLF). Pursuant to Mitigation Measure 4.2-4, the Applicant will obtain a U.S. Army Corps of Engineers (USACE) Clean Water Act Section 404 permit, a RWQCB Clean Water Act Section 401 Water Quality Certification, and a CDFW Streambed Alteration Agreement prior to any discharge of any dredge or fill materials (including rocks for stream crossing upgrades). Mitigation Measure 4.2-10 requires preconstruction surveys for WPT and turtle exclusionary fencing for any groundbreaking activities (including stream crossing upgrades) near WPT habitat, and Mitigation Measure 4.2-11 requires frog exclusionary fencing to be constructed around all grading and construction activities (including stream crossing upgrades) near CRLF and FYLF habitat. As such, all potential impacts due to the upgrade of the low-water crossings were appropriately “avoid[ed] or *substantially lessen[ed]*” in accordance with Pub. Resources Code, section 21002.

**Citations**: Final EIR Response to Comment O21-100; Walt Ranch Road Sedimentation and Erosion Potential Evaluation prepared by the Napa County RCD, Appendix C of the Draft EIR; Chapter 5 – Low Water Crossing Types, from: *Low-Water* *Crossings: Geomorphic, Biological, and Engineering Design Considerations*, U.S. Forest Service, October 2006, available online at <http://www.fs.fed.us/eng/pubs/pdf/LowWaterCrossings/LoWholeDoc.pdf>; Keller, G. and J. Sherar. *Low-Volume Roads Engineering*,Chapter 9 – Fords and Low-Water Crossings, Bureau of Land Management, available online at <http://www.blm.gov/bmp/low%20volume%20engineering/K\_Ch9\_Fords\_&\_Low-Water\_Crossings.pdf>; TSS concentration, Morris, B.C., M.C. Bolding, and W.M. Aust, *Effectiveness of Forestry BMPs for Stream Crossing Sediment Reduction Using Rainfall Simulation*,available online at <http://www.srs.fs.usda.gov/pubs/gtr/gtr\_srs203/gtr\_srs203-014.pdf>; Mitigation Measures 4.2-4, 4.2-10, 4.2-11; County Staff Presentations, Board of Supervisors November 18 and December 6, 2016, Meetings.

**Conclusions**: For the foregoing reasons, the Board denies the twenty-fifth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**26. Twenty-sixth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that County failed to assess potential impacts to salmon traveling through waterways impacted by stream crossings. (CEQA Guidelines, section 15126.)

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

As discussed in response to LRC’s third ground of appeal (see Resolution No. 2016-180), the project site is not accessible to anadromous salmon due to two impassable barriers to salmonids that occur downstream on Capell Creek and Milliken Creek. In addition, as stated in Appendix M, “Milliken and Capell creeks are both too small and ephemeral to be considered suitable habitat.” The project site is located at the headwaters to these two creeks, and is too rocky, steep, and ephemeral to support anadromous fisheries even if they were able to access the property as discussed in Impact 4.2-15. Because salmonids are known to occur downstream of the project site within the Napa River watershed, the Draft EIR considered the connectivity of onstream waters to salmonid habitat and required mitigation measures to reduce sediment load that could affect spawning gravels, as discussed in Impact and Mitigation Measure 4.2-15. The implementation of the project would not affect these species. Consistent with the USFWS recommendations and CEQA Guidelines, section 15126, no mitigation is required for a species that will not be impacted. See also Staff Response to CBD’s seventeenth and eighteenth grounds of appeal, above.

**Citations**: Refer to citations for response to LRC’s third ground of appeal (see Resolution No. 2016-180); EIR, Impact 4.2-15; Mitigation Measure 4.2-15, County Staff Presentation, Board of Supervisors November 18, 2016 Meeting.

**Conclusions**: For the foregoing reasons, the Board denies the twenty-sixth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**27. Twenty-seventh Ground of Appeal**

**Appellant’s Position**: Appellant CBD asserts that the EIR failed to provide sufficient detail regarding its hazardous materials business plan, including providing information on enforceable mitigation measures to ensure project-related hazardous materials would not enter into local waterways. (CEQA Guidelines, section 15126.4.)

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

As discussed in General Response 15 of the Final EIR:

Although the project design has attempted to minimize use and accidental discharge of hazardous materials, there is the inherent risk of hazardous materials incidents in all vineyard development and operation practices found throughout Napa County, including the Proposed Project (refer to Impacts 4.5-1 through 4.5-5 of the Draft EIR). These impacts will be mitigated through the implementation of Mitigation Measures 4.5-1 through 4.5-5, which require the development and execution of a Hazardous Materials Business Plan (HMBP), standard operating procedures (SOPs) for filling and servicing construction equipment and vehicles, SOPs regarding the use and application of pesticides, and proper storage, use, and transportation of waste oil storage containers. Consistent with the Napa County PBES requirements, the HMBP will include at a minimum the following information: 1) an inventory of the type and quantity of hazardous materials stored onsite; 2) a site map indicating locations of material storage; 3) spill prevention methods; 4) spill response plan; 5) employee training; and 6) emergency contacts.

These aspects are incorporated into the project’s MMRP, a legally binding and enforceable plan. The MMRP requires implementation of the Integrated Pest Management (IPM) Plan in Mitigation Measure 4.5-4 and Mitigation Measure 4.2-10, and requires preparation and execution of the HMBP in Mitigation Measure 4.5-1. Similar to other vineyard projects, the County will enforce the HMBP and IPM Plan in which compliance is compelled by the MMRP. These measures will ensure that project-related hazardous materials would not enter into local waterways. Therefore, there are legally binding and enforceable measures to ensure the Applicant will comply with the mitigation measures in the EIR, including the rules for safe pesticide and fertilizer application.

**Citations**: Final EIR, General Response 15; Draft EIR, Impacts 4.5-1 through 4.5-5; Mitigation Measures 4.5-1 through 4.5-5, 4.2-10.

**Conclusions**: For the foregoing reasons, the Board denies the twenty-seventh ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**28. Twenty-eighth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that Appellant argues that the EIR failed to provide adequate support for its conclusion that decreased runoff would equate to decreased nutrient loading compared to pre-project conditions. Appellant states that even assuming the project would decrease runoff, the project would likely add to the nutrient loads of local surface waters compared to pre-project conditions because it will add agricultural nutrients and other chemicals to any runoff originating from the project. (CEQA Guidelines, section 15126.) Appellant asserts that the County did not request sufficient mitigation to reduce these impacts to less than significant. (CEQA Guidelines, section 15126.4.)

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

The EIR analyzes potential impacts to water quality in several locations; refer to Impact 4.6-2, Impact 4.5-1, Impact 4.5-3, and Impact 4.5-4. Each of these was found to be a significant impact in accordance with CEQA Guidelines, section 15126.2, and mitigation measures were required for each impact to “avoid or *substantially lessen*” the project’s significant impacts (Pub. Resources Code, section 21002).

The EIR discusses potential impacts due to nutrient runoff under the heading “Chemical Loading” within Impact 4.6-2, and provides the following discussion:

Use of fertilizers can result in runoff laden with excessive plant nutrients, which can lead to eutrophication and algal growth in receiving waters; pesticide use can result in runoff contributing to toxic conditions in receiving waters. Napa County Department of Planning, Building & Environmental Services (PBES) promotes BMPs to reduce hazardous material contamination of surface and groundwater. The Proposed Project would be operated in a manner that is consistent with Napa County PBES requirements. Operation of the vineyard under the Proposed Project would utilize Integrated Pest Management (IPM) techniques (see Section 4.5.1-2 and Mitigation Measure 4.5-4). Fertilizers proposed for use at the project site include: nitrogen, phosphorus, potassium, micro-nutrients, and compost. The Napa River is being de-listed for nutrient pollution in accordance with San Francisco Bay RWQCB Resolution No. R2-2014-0006. Pesticides proposed for potential use at the project site include a variety of herbicides and fungicides (discussed in Section 4.5 Hazardous Materials). Establishment and maintenance of setbacks from onsite drainage features in conjunction with implementation of Mitigation Measures 4.5-1, 4.5-2, 4.5-3, and 4.5-4 in Section 4.5 Hazardous Materials would minimize the potential for fertilizers, pesticides, and agrichemicals to enter receiving waters on the project site. This is considered a less-than-significant impact.

The Draft EIR Section 4.6.3-1 discusses the effectiveness of stream setbacks in mitigating water quality impacts citing to supporting evidence including Natural Resource Conservation Service (NRCS), UC Davis and the U.S. EPA, as follows:

The Natural Resources Conservation Service (USDA, 2000) and the University of California, Division of Agricultural and Natural Resources (2006) recommend 50-foot wide vegetated buffers for stream and wetland protection because under most conditions it is a generally adequate buffer width to provide enough vegetation to entrap sediments and soils, and filter chemicals adequately by facilitating degradation within buffer soils and vegetation. Additionally, the U.S. Environmental Protection Agency has indicated that buffer strips of three to 50 feet wide were effective in removing nitrogen, and grassland buffer strips of approximately 50 feet effectively removed approximately 50 percent of nitrogen in runoff (USEPA, 2005).

Contrary to the Appellant’s assertion, the EIR provides a robust discussion of water quality impacts in accordance with CEQA Guidelines, section 15126.2, and provides numerous mitigation measures to address potential water quality impacts.

It is also important to note that, although the Napa River was previously listed for nutrient pollution, given improving water quality in the non-tidal portions of the Napa River, the San Francisco Bay RWQCB adopted Resolution No. R2-2014-0006 on February 12, 2014 to delist the non-tidal Napa River for nutrients. It is currently being processed by the USEPA.

In addition to these protective measures for water quality discussed above that mitigate any impacts to a level of less than significant, the Applicant has been working with the City of Napa to voluntarily develop a surface water monitoring plan to address the City’s concerns regarding potential water quality impacts. A Condition of Approval requiring the implementation of the Water Quality Monitoring Plan was added to the Updated MMRP and as COA No. 10. The Water Quality Monitoring Plan requires sampling for several water quality constituents (including nutrients) on the Walt Ranch property. Also see response to Circle Oaks’ fifth ground of appeal (see Resolution No. 2016-181).

**Citations**: U.S. Department of Agriculture (USDA), 2000. Conservation Buffers to Reduce Pesticide Losses. March, 2000; University of California – Division of Agricultural and Natural Resources, 2006. Vegetative Filter Strips for Nonpoint Source Pollution Control in Agriculture; USEPA, 2005. Riparian Buffer Width, Vegetative Cover, and Nitrogen Removal Effectiveness; refer to citations for response to Circle Oaks’ fifth ground of appeal (see Resolution No. 2016-181); EIR Impacts 4.6-2, 4.5-1, 4.5-3, 4.5-4; Draft EIR, Section 4.6.3-1; County Staff Presentations, Board of Supervisors November 18 and December 6, 2016, Meetings.

**Conclusions**: For the foregoing reasons, the Board denies the twenty-eighth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**29. Twenty-ninth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the EIR does not provide an accurate baseline for groundwater resources because it fails to measure the actual recharge rate of the on-site groundwater basin, which may differ geologically from other nearby aquifers. (CEQA Guidelines, section 15125.)

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

Refer to response to LRC’s ninth ground of appeal (see Resolution No. 2016-180).

**Citations**: Refer to citations for response to LRC’s ninth ground of appeal (see Resolution No. 2016-180).

**Conclusions**: For the foregoing reasons, the Board denies the twenty-ninth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**30. Thirtieth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that County provides an inadequate discussion of the project’s surface water-groundwater connectivity and connectivity between the project’s and other groundwater basins. (CEQA Guidelines, section 15125.) Appellant states that, due to this, the EIR does not adequately discuss the impacts to surface waters, wildlife, other local groundwater users, and other aquifers from the direct, indirect, or cumulative drawdown of the project’s groundwater supplies, nor does it require sufficient mitigation. (CEQA Guidelines, sections 15126, 15126.4.)

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

Refer to response to Circle Oaks’ thirty-second ground of appeal (see Resolution No. 2016-181).

**Citations**: Refer to citations for response to Circle Oaks’ thirty-second ground of appeal (see Resolution No. 2016-181).

**Conclusions**: For the foregoing reasons, the Board denies the thirtieth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**31. Thirty-first Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the EIR applies an inappropriate significance threshold, which allows for the project to withdraw water at a faster rate than the aquifer would recharge and lead to the drawdown of other local wells. (CEQA Guidelines, sections 15126, 15382.)

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

Refer to response to LRC’s thirteenth ground of appeal (see Resolution No. 2016-180).

**Citations**: Refer to citations for response to LRC’s thirteenth ground of appeal (see Resolution No. 2016-180).

**Conclusions**: For the foregoing reasons, the Board denies the thirty-first ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**32. Thirty-second Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that that the EIR erroneously does not ensure an adequate water supply for the project, in violation of SB 610.

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

Senate Bill (SB) 610 does not apply to the Walt Ranch Project. SB 610 promulgates that projects defined by Water Code Section 10912 are subject to the bill.

A “project” as defined by Section 10912(a) means any of the following:

1. A proposed residential development of more than 500 dwelling units.
2. A proposed shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space.
3. A proposed commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space.
4. A proposed hotel or motel, or both, having more than 500 rooms.
5. A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.
6. A mixed-use project that includes one or more of the projects specified in this subdivision.
7. A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project.

Agricultural projects are not “projects” as defined by the Water Code and therefore are not governed by SB 610. That said, the definition of a “project” that is most applicable would be 10912(a)(7); however, the Walt Ranch Project as mitigated only requires 144.5 af per year, well below the requirement of a 500 dwelling unit project, which would be a minimum of 0.5 af per year per unit or 250 af per year.

**Citations**: SB 610; California Water Code Section 10912.

**Conclusions**: For the foregoing reasons, the Board denies the thirty-second ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**33. Thirty-third Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that County’s mitigation measures are inadequate to prevent overdraft of local groundwater resources, and, thus, ensure that impacts to groundwater resources remain less than significant. (CEQA Guidelines, section 15126.4.) The County does not require the adoption of all feasible mitigation measures to ensure these impacts will be less than significant. In addition, County proposes deferred, unenforceable mitigation, in violation of CEQA. (CEQA Guidelines, section 15126.4.)

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

As discussed in the response to LRC’s thirteenth ground of appeal (see Resolution No. 2016-180), the approved 209-acre project would require a groundwater demand of 144.5 af per year and the Sonoma Volcanics on the Walt Ranch property recharge a minimum of 161 af per year. As such, there is no risk of long-term overdraft of the Sonoma Volcanics.

Groundwater pumping could still impact neighboring wells and cause drawdown, as discussed in Impact 4.6-4. However, Mitigation Measure 4.6-4 requires the development of a groundwater monitoring and mitigation plan (GWMMP), which has been developed and presented to the County for review and approval. The GWMMP provides methodology for the ongoing monitoring of designated wells (both on- and off-site) and trigger points, as well as a range of mitigation options if impacts to offsite wells occur. These mitigation options include:

1. reducing the instantaneous pumping rate in all or in selected project wells (the specific wells will be determined by the RCS geologist after determining which project wells may be causing the impact);
2. reducing the volume of groundwater pumped in each irrigation season by all or by selected project wells (the specific wells will be determined by the Geologist after determining which project wells may be causing the impact;
3. shifting of the rates and/or volumes of groundwater extraction by existing project wells to different portions of the subject property;
4. ceasing production from certain onsite wells and replacing that lost production by constructing new onsite wells at the project property;
5. lowering the pump, if possible, in an offsite well that has been shown to have been impacted;
6. constructing a new water well to replace an offsite well that has been shown to have been impacted; and/or
7. providing an alternative source of water to the owner of the impacted well in order to allow the owner to maintain the quantity and quality of the groundwater that has been otherwise lost by the impacts.

CEQA Guidelines, section 15126.4, subd. (a)(1)(B), states that mitigation measures should not be deferred indefinitely:

Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.

An EIR may rely on a resource management plan as an element of mitigation as long as the agency has committed to reducing impacts to less-than-significant levels. In accordance with CEQA Guidelines, significant impact determinations and formulation of mitigation measures must occur before project approval. The details of exactly how mitigation will be achieved under the GWMMP can properly be determined at a later date within the confines of the plan. The mitigation measures for potential impacts to neighboring wells (Mitigation Measure 4.6-4) identified in the EIR are directly analogous to those that have been upheld by the courts.

In addition, Conditions of Approval 15 and 18 were added to the Project. Condition of Approval 15 was added to require the Walt Ranch groundwater monitoring efforts be consistent with other County approved projects and as required by the Updated MMRP. Condition of Approval 18 was added to acknowledge that the Project will be developed over four phases which allow groundwater monitoring data to be collected and assessed by the County in consultation with a qualified hydrogeologist before the next phase of development may occur.

The Lead Agency has not improperly deferred any mitigation as defined by CEQA Guidelines, section 15126.4.

**Citations**: Refer to citations for response to LRC’s thirteenth ground of appeal (see Resolution No. 2016-180); EIR, Impact 4.6-4; Mitigation Measure 4.6-4; County Staff Presentations, Board of Supervisors November 18 and December 6, 2016, Meetings; Memorandum from David Morrison and Brian Bordona to Chair Pedroza and Board Members, December 5, 2016.

**Conclusions**: For the foregoing reasons, the Board denies the thirty-third ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**34. Thirty-fourth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that County provides an inadequate discussion of air quality, and it fails to supply an adequate baseline, accurately describe impacts, or to set adequate mitigation for a variety of air quality impacts. Appellant states that, for example, County erroneously ignores air quality impacts from important sources, such as pesticides. (CEQA Guidelines, section 15126.) County’s significance determination regarding air quality impacts is not supported by substantial evidence (Cal. Code Civ. Proc., sections 1085, 1094.5.)

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

Per the methodology outlined in Section 4.1.3-1 of the Draft EIR, the analysis of Proposed Project emissions compares daily emissions with the Bay Area Air Quality Management District (BAAQMD) thresholds in accordance with the 2012 BAAQMD CEQA Guidelines. Per the BAAQMD Guidelines, CEQA Guidelines, Appendix G, and Napa County Local Procedures for Implementing CEQA, the air quality analysis presented in Section 4.1 of the EIR focused on criteria air pollutants (CAPs), which include: ozone (O3), carbon monoxide (CO), nitrogen dioxide (NO2), sulfur dioxide (SO2), respirable particulate matter (PM10), fine particulate matter (PM2.5), sulfates (SOX), lead (Pb), and hydrogen sulfide (H2S). With implementation of mitigation measures presented in the EIR and compliance with required BAAQMD mitigation measures, implementation of the Walt Ranch Project would not result in a significant air quality impact. Therefore, the EIR appropriately concluded that the construction and operation emissions would be less than significant and provided substantial evidence as required by CEQA Guidelines, section 15384.

In addition to the CAPs discussed in Section 4.1, the EIR presented a discussion of potential impacts due to wind drift of pesticides in Section 4.5 for hazardous materials. The mitigation measures provided in the EIR, as well as compliance with all USEPA, California Department of Pesticide Regulation (CDPR), and Napa County regulations, will ensure that pesticides are used appropriately and in accordance with all Best Management Practices and safety procedures to minimize wind drift. In addition, the owner shall apply for a private applicator certificate and a restricted materials permit from the Napa County Agricultural Commissioner pursuant to Mitigation Measure 4.5-4. Limitations on pesticide and fertilizer use will minimize the risk for wind drift occurrences. In addition, setbacks and buffers provided in Mitigation Measure 4.2-4 will act as a filter/barrier to reduce the potential for petroleum products, pesticides, or fertilizers to cause a significant impact.

Furthermore, pesticide applicators are restricted by California Code of Regulations (CCR), Title 3, Section 6614 called “Protection of Persons, Animals, and Property.” This mandates that pesticide applicators must consider meteorological conditions (wind and precipitation events) and the potential risk to the environment and nearby persons prior to application. Section 6614 states that no pesticide application shall be made or continued when there is a “reasonable possibility of contamination of nontarget public or private property, including the creation of a health hazard, preventing normal use of such property. In determining a health hazard, the amount and toxicity of the pesticide, the type and uses of the property and related factors shall be considered.”

The USEPA routinely evaluates the potential for drift as part of the pesticide risk assessments in order to estimate drift impacts on: communities living near fields where crops are grown; farmworkers; water sources; and the environment. The potential for pesticide drift is considered by the USEPA during the labeling of pesticides, and is a factor in the strength of the toxicity label applied to an agrichemical. The Walt Ranch IPM Plan (Appendix N of the Draft EIR) has already committed to only using chemicals classified by the USEPA as Class 3 or Class 4 (Low Toxicity or Very Low Toxicity, respectively). As such, there is negligible potential for impacts from wind drift for the chemicals that may be applied on the Walt Ranch property.

The Napa County Agricultural Commissioner’s Office does random inspections of pesticide application to ensure that CCR Title 3, Section 6614 is being followed. The existing mitigation measures in place within the EIR, compliance with CDPR and Napa County Agricultural Commissioner’s rules and regulations, and the Applicant’s commitment to the IPM Plan (also required by Mitigation Measure 4.5-4), would adequately minimize any risk of pesticide drift.

The EIR analysis of pesticide use relied on a combination of site-specific analysis and conditions, compliance with applicable laws and regulations, and mitigation measures designed to ensure the proper and safe handling and application of agricultural chemicals. This type of analysis has been upheld by the courts in *Ebbetts Pass Forest Watch v. CDF* (2008)43 Cal. 4th 936, where the Court considered whether a THP and the California Department of Forestry and Fire Protection’s (CAL FIRE) responses to comments on herbicide use were deficient based on the statement that compliance with CDPR label restrictions would not necessarily have a significant effect on the environment. The Court found that “if the THP and [CAL FIRE’s] response to public comments on the use of herbicides had relied entirely on the Department of Pesticide Regulation’s regulatory program and had not themselves analyzed the significant environmental effects, mitigation measures, and alternatives to herbicide use on the harvested sites,” then CAL FIRE would have failed in its duty to consider and disclose information relevant to its decision. However, since CAL FIRE’s responses included more analysis at that point, including an extensive discussion of potential impacts, mitigation measures, and alternatives to herbicide use, CAL FIRE did not erroneously rely on CDPR’s regulatory program and fail to conduct its own environmental impacts assessment. Similarly in the Walt Ranch EIR, extensive analysis of pesticide and herbicide use was provided in Section 4.5, and Mitigation Measures 4.5-1 through 4.5-4 were provided to reduce the risk to the environment.

**Citations**: EIR, Sections 4.1, 4.5; Mitigation Measures 4.5-1 through 4.5-4, 4.2-4; California Code of Regulations, Title 3, Section 6614; *Ebbetts Pass Forest Watch v. CDF* (2008)43 Cal. 4th 936; County Staff Presentations, Board of Supervisors November 18, 2016 Meeting.

**Conclusions**: For the foregoing reasons, the Board denies the thirty-fourth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**35. Thirty-fifth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that County erroneously concludes that mobile source emissions are less than significant and requires insufficient mitigation for these impacts. (CEQA Guidelines, sections 15126, 15126.4.)

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

Per the methodology outlined in Section 4.1.3-1 of the EIR, the analysis of Proposed Project emissions compares daily emissions from all sources (including mobile emissions) with the BAAQMD thresholds in accordance with the 2012 BAAQMD CEQA Guidelines and found no significant impact. This was addressed in Impact 4.1-2 and Impact 4.1-3 of the Draft EIR, and Final EIR Response to Comment O21-126, which explains that mobile trips are accounted for in the CalEEMod analysis. If the mobile source emissions combined with all other emissions sources did not exceed the BAAQMD significance thresholds, then no mitigation is required. Although this was a less-than-significant impact, the EIR adopted mitigation measures recommended by the BAAQMD to further reduce these impacts. With implementation of the mitigation measures presented in the EIR and compliance with required BAAQMD mitigation measures, implementation of the Walt Ranch Project would not result in a significant air quality impact. Therefore, the EIR appropriately concluded that the construction and operation emissions would be less than significant and provided substantial evidence as required by CEQA Guidelines, section 15384.

**Citations**: EIR, Section 4.1.3-1; Draft EIR, Impacts 4.1-2, 4.1-3; Final EIR, Response to Comment O21-126; County Staff Presentation, Board of Supervisors November 18, 2016, Meeting.

**Conclusions**: For the foregoing reasons, the Board denies the thirty-fifth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**36. Thirty-sixth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that County does not set an adequate pre-project greenhouse gas (GHG) baseline, discussion of GHG-related impacts, or mitigation for these impacts. Appellant asserts that the County uses an inappropriate baseline against which to compare project-related GHG impacts. (CEQA Guidelines, section 15125.)

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

As noted in Final EIR Response to Comment O21-115, the baseline conditions on the project site are discussed frequently throughout the Draft EIR, and specific mentions of the baseline condition that affects GHG emissions are discussed in Sections 3.2, 4.1.1, 4.2.1, 4.2.2, and 6.1.4-1. As stated therein:

The property consists primarily of *undeveloped* oak woodland, chaparral, and grassland habitats occurring at elevations that range from approximately 850 to 2,150 feet (259 to 655 meters) above mean sea level (Draft EIR page 4.2-6; emphasis added).

Table 4.2-2 provides a breakdown of each habitat type over the 2,300-acre Walt Ranch property and within the 507-acre gross disturbance area, and shows that there are approximately 1,697 acres of woodland or forest habitats on the property. In numerous locations throughout the Draft EIR, the property is described as an undeveloped area. Given that there are no stationary sources of GHG emissions and no significant developments on the property, the baseline condition of current GHG emissions are conservatively estimated to be net zero for the analysis. The current woodland provides sequestration benefits greater than or equal to the GHG emissions emitted to the atmosphere on the property today, but the emissions were assumed to be net zero to provide a more conservative analysis.

The analysis of the GHG emissions of the construction and operational phases of the Walt Ranch Project was conducted in accordance with CEQA Guidelines, section 15064.4 for determining the significance of impacts from GHG emissions. Because climate change and the quantification of GHG emissions are evolving sciences, the Walt Ranch climate change analysis has been updated several times to ensure compliance with relevant laws and guidance. The analysis first presented in the Draft EIR utilized the California Air Resources Board (CARB)-approved CalEEMod, which is consistent with CEQA Guidelines, section 15064.4, subd. (a)(1). The CalEEMod model output files for both construction and operational phases of the project were provided in Appendix H, and consolidated emissions information compared to appropriate significance thresholds is provided in Table 6-2 and Table 6-3 of the Draft EIR. These significance thresholds initially utilized the Solano County Climate Action Plan, which is discussed in more depth in the response to Appellant’s thirty-seventh ground of appeal.

In April 2015, after comment letters were received on the Draft EIR, Napa County updated the climate change analysis. Specifically, Napa County reviewed the climate change analysis prepared for the adjacent Circle S project and compared it to the methodology and results of the Walt Ranch climate change analysis. The Circle S analysis attempted to quantify sources of biogenic emissions, calculated loss of sequestration due to vegetation removal, and also utilized the Urbemis air quality model (now obsolete). The Walt Ranch analysis calculated loss of sequestration due to vegetation removal and utilized the CARB-approved CalEEMod, but followed BAAQMD guidance which states to not quantify biogenic emissions. It should be noted that the 2015 comparison showed that, although the Walt Ranch analysis did not include biogenic emissions, the analysis still resulted in a larger GHG emissions estimate on a per-acre basis than the Circle S analysis, further demonstrating that the Walt Ranch analysis was an appropriate and even conservative estimation of GHG emissions.

In March 2016, Napa County updated the climate change analysis as a result of the California Supreme Court’s *Newhall Ranch* Decision. As discussed further in the response to Appellant’s twenty-seventh ground of appeal, the analysis was updated to 1) utilize the Mitigated Project acreage; 2) include blocks voluntarily eliminated by the Applicant; and 3) incorporate the 524.8 acres of oak woodland preservation required by biological mitigations. In addition, the analysis used a numerical significance threshold rather than the Solano County Climate Action Plan, consistent with the Court’s guidance from the *Newhall Ranch* Decision.

The air quality and GHG analyses have evolved over time in accordance with the best available and most up-to-date analytical methodologies, including the air quality modeling software CalEEMod recommended by both CARB and BAAQMD. The analytical methodologies were valid and relied upon the most recent agency guidance and case law. Here, the Walt Ranch GHG analysis has been updated as required by evolutions in science and regulation surrounding climate change, and each time Napa County has provided transparent discussions regarding how and why the analysis was revised.

CEQA Guidelines, section 15064.4, subd. (a), states that the “determination of the significance of greenhouse gas emissions calls for a careful judgment by the lead agency consistent with the provisions in section 15064. A lead agency should make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project.” Napa County has demonstrated a good-faith effort to keep the analysis updated in the face of changing science.

Consistent with CEQA Guidelines, section 15126.4, subd. (c), which provides guidance for Lead Agencies in reducing GHG emissions, Mitigation Measure 6-1 of the Draft EIR provides for permanent preservation of 248 acres of woodland on the property as a means of sequestering greenhouse gases. Specifically, CEQA Guidelines, section 15126.4, subd. (c) states:

Consistent with Section 15126.4(a), lead agencies shall consider feasible means, supported by substantial evidence and subject to monitoring or reporting, of mitigating the significant effects of greenhouse gas emissions. Measures to mitigate the significant effects of greenhouse gas emissions may include, among others:

1. Measures in an existing plan or mitigation program for the reduction of emissions that are required as part of the lead agency’s decision;
2. Reductions in emissions resulting from a project through implementation of project features, project design, or other measures, such as those described in Appendix F;
3. Off-site measures, including offsets that are not otherwise required, to mitigate a project’s emissions;
4. *Measures that sequester greenhouse gases*… (emphasis added).

Nothing in the CEQA statute or CEQA Guidelines suggests that carbon sequestration must occur offsite, or on woodlands otherwise proposed for imminent conversion to non-woodland uses, in order to constitute adequate mitigation. To the contrary, the CEQA Guidelines, and relevant case law demonstrate that permanent preservation of onsite woodlands is reasonable and adequate mitigation.

**Citations**: Final EIR Response to Comment O21-115; EIR, Sections 3.2, 4.1.1, 4.2.1, 4.2.2, 6.1.4-1; AES, 2015, Technical Memorandum Re: Comparison of Circle S GHG Emissions Analysis to Walt Ranch GHG Emissions Analysis, April 22, 2015; AES, 2016, Technical Memorandum Re: Revised Walt Ranch Greenhouse Gas Emissions Analysis per *Newhall Ranch* Decision, March 28, 2016; County Staff Presentations, Board of Supervisors November 18 and December 6, 2016, Meetings.

**Conclusions**: For the foregoing reasons, the Board denies the thirty-sixth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**37. Thirty-seventh Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that County’s GHG analysis failed to use an adequate significance threshold. (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 223; CEQA Guidelines, section 15064.4.) Appellant asserts that the County’s significance determination is invalid.

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

The GHG analysis significance thresholds selected were consistent with the CEQA Guidelines, section 15064.4. The County used the BAAQMD’s adopted operational GHG significance thresholds in evaluating the operation of the Walt Ranch Project. This significance threshold was used since the Draft EIR was published in July 2014. The use of the adopted Solano County Climate Action Plan for the construction significance threshold was supported by substantial evidence (refer to AES April 22, 2015 memorandum), although it was eventually superseded by the 2016 analysis. The use of the Solano County Climate Action Plan was supported by the following rationale:

“The Solano County [Climate Action Plan] was chosen as the significance threshold for the Walt Ranch EIR because Napa County has not yet adopted its draft CAP. Solano County, located east to southeast of Napa County, also has an agricultural land base as does Napa County. The Solano County [Climate Action Plan] was approved by the Solano County Board of Supervisors on June 7, 2011. As stated in the Solano County [Climate Action Plan], implementation of the proposed [Climate Action Plan] measures and the statewide reductions would enable Solano County to achieve GHG emissions reductions of 26 percent below the 2005 baseline. This reduction is based on the AB 32 reduction goal. Therefore, if a project implements applicable Solano County CAP measures, then the project would be consistent with AB 32 reduction goal and have a less-than-significant impact on climate change. In addition, many of the Solano County [Climate Action Plan] measures are consistent with the Napa County draft [Climate Action Plan] reduction measures, further emphasizing that the Solano County [Climate Action Plan] is a comparable and appropriate significance threshold for use in the absence of an adopted Napa County [Climate Action Plan].”

On November 30, 2015, the California Supreme Court filed a decision in the case *Center for Biological Diversity v. California Department of Fish and Wildlife* (2015)62 Cal.4th 204 (hereafter the *Newhall Ranch* Decision). The *Newhall Ranch* Decision upheld the use of a “Business as Usual” (BAU) scenario as a significance threshold to analyze a project’s GHG emissions. The Court also held, however, that the EIR in that instance did not contain substantial evidence supporting the application of that threshold to the project at issue. As discussed in the 2016 AES memorandum:

“The Newhall Ranch EIR determined whether the project would impede achievement of AB 32’s goals by relying on CARB’s Scoping Plan and comparing the project’s emissions to a BAU projection as a measure of GHG emission reductions needed to meet the AB 32’s 2020 goal (determined to be a reduction of 29 percent from BAU). Although the Court determined that the EIR employed a legally permissible threshold of significance, it maintained that the EIR’s finding that the project’s emissions would not be significant under that threshold was “not supported by a reasoned explanation based on substantial evidence.” The Court explained that the lead agency erred in assuming that because the Scoping Plan concluded that the State of California, as a whole, had to reduce its GHG emissions by 29 percent compared with the hypothetical BAU scenario, the project would not have significant GHG-related impacts if the project itself also reduced its own GHG emissions by 29 percent compared with what would have occurred under a BAU scenario (RMM, 2015). The Court held there was no substantial evidence to support that assumption. Therefore, the EIR’s reliance on the project-specific reduction in GHG emissions compared to the BAU scenario was not sufficient to support the conclusion that GHG impacts would be less than significant.”

In regards to the Walt Ranch EIR, the operational GHG analysis utilized an established GHG emissions significance threshold adopted by the BAAQMD. In the *Newhall Ranch* Decision, the Court stated that reliance on such a threshold was permissible. For this reason, no further analysis of operational GHG emissions was necessary as a result of the *Newhall Ranch* Decision.

Construction emissions were compared to the Solano County Climate Action Plan and relied on the Solano County BAU reduction of 26 percent. This approach is potentially implicated by the *Newhall Ranch* Decision. The 2016 AES memorandum therefore provided additional information on construction emissions, in light of the guidance provided by the Supreme Court. That analysis, which was made publicly available online and discussed at the April 4, 2016, public hearing, utilized both a BAU reduction with the Solano County Climate Action Plan and a nearby adopted significance threshold to provide two methodologies to determine the Walt Ranch Project’s significance level in accordance with the *Newhall Ranch* Decision. As discussed in the 2016 AES memorandum:

“The nearest jurisdiction with an adopted GHG significance threshold for construction is Sacramento Metropolitan Air Quality Management District (SMAQMD), which covers the entirety of Sacramento County. The SMAQMD adopted the following GHG significance thresholds on October 23, 2014:

* Construction phase – 1,100 MT/CO2e per year
* Operational phase – 1,100 MT/CO2e per year
* Stationary source projects – 10,000 MT/CO2e per year

In order to use this significance threshold for the Proposed Project, the annual construction emissions were calculated by determining the greatest construction year emissions from CalEEMod, the loss of sequestration from tree removal, and carbon reductions produced by placing 524.8 acres of forest land into permanent preservation, as shown in Table 4. This value was then compared to the SMAQMD significance threshold of 1,100 MT of CO2e per year. With the inclusion of the permanent preservation of 524.8 acres of woodland as required by biological mitigation measures in the Final EIR, the construction GHG emissions do not exceed the significance threshold.”

Although the significance thresholds used in the Walt Ranch climate change analysis have been updated since the initial publication of the Draft EIR, these updates have been necessitated by advances in climate change science and new court decisions. CEQA Guidelines, section 15064.4, subd. (b)(2), states that a lead agency should consider, when assessing the significance of impacts from greenhouse gas emissions on the environment, “whether the project emissions exceed a threshold of significance that *the lead agency determines applies to the project*” (emphasis added). CEQA allows the lead agency to choose the appropriate significance threshold at its discretion, which Napa County did by considering air quality management district recommendations, climate action plans of the neighboring county, and finally the Court’s recommendations from the *Newhall Ranch* Decision.

**Citations**: AES, 2015, Technical Memorandum Re: Comparison of Circle S GHG Emissions Analysis to Walt Ranch GHG Emissions Analysis, April 22, 2015; AES, 2016, Technical Memorandum Re: Revised Walt Ranch Greenhouse Gas Emissions Analysis per *Newhall Ranch* Decision, March 28, 2016; AES, 2016, County Staff Presentation, Board of Supervisors November 18, 2016, Meeting.

**Conclusions**: For the foregoing reasons, the Board denies the thirty-seventh ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**38. Thirty-eighth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the County did not adopt all feasible mitigation to ensure project-related GHG impacts will remain less than significant. (CEQA Guidelines, section 15126.4.) Appellant states that the County fails to show how its proposed mitigation will reduce project-related impacts to less than significant. (CEQA Guidelines, section 15126.4.)

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

This was addressed in Final EIR Response to Comment O10-15. Mitigation Measure 6-1 of the Draft EIR provides for permanent preservation of 248 acres of woodland on the property as a means of sequestering greenhouse gases. This is consistent with CEQA Guidelines, section 15126.4, subd. (c), which provides guidance for Lead Agencies in reducing GHG emissions:

Consistent with Section 15126.4(a), lead agencies shall consider feasible means, supported by substantial evidence and subject to monitoring or reporting, of mitigating the significant effects of greenhouse gas emissions. Measures to mitigate the significant effects of greenhouse gas emissions may include, among others:

(1) Measures in an existing plan or mitigation program for the reduction of emissions that are required as part of the lead agency’s decision;

(2) Reductions in emissions resulting from a project through implementation of project features, project design, or other measures, such as those described in Appendix F;

(3) Off-site measures, including offsets that are not otherwise required, to mitigate a project’s emissions;

(4) *Measures that sequester greenhouse gases*… (emphasis added).

Nothing in the CEQA statute or CEQA Guidelines suggests that carbon sequestration must occur offsite, or on woodlands otherwise proposed for imminent conversion to non-woodland uses, in order to constitute adequate mitigation. To the contrary, the CEQA Guidelines, and relevant case law demonstrate that permanent preservation of onsite woodlands is reasonable and adequate mitigation.

The CEQA Guidelines define “mitigation” in section 15370 to include:

* Avoiding the impact altogether by not taking a certain action or parts of an action;
* Minimizing impacts by limiting the degree or magnitude of the impact and its implementation;
* Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment;
* Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
* Compensating for the impact by replacing or providing substitute resources or environments.

Furthermore, it should be noted that the carbon offsetting ability of the preserved woodland was calculated using the USEPA emissions factor for “Carbon Sequestered by 1 Acre of Forest Preserved from Conversion to Cropland.” Both the California Air Resources Board Cap-and-Trade Program and their Compliance Offset Protocol for U.S. Forest Projects that guides the Cap-and-Trade program both recognize conservation easements and avoided woodland conversion as appropriate mitigation.

Mitigation Measure 6-1 *rectifies* and *compensates* for the project’s impact on climate change by ensuring that an estimated 27,628 metric tons of carbon dioxide equivalent (CO2e) are sequestered (captured and stored) thereby off-setting 27,628 CO2e generated by the project’s construction. This sequestration will be accomplished through permanent protection of no less than 248 acres of woodland habitat onsite. This mitigation measure is not “illusory,” as it will provide a measurable means of reducing the emissions due to project construction by 26 percent. Table 6-2 from the Draft EIR provides support that preserving 248 acres of woodlands on the property would provide carbon sequestration benefits. Furthermore, preservation of onsite oak woodlands is an effective mitigation even if all or some of the acreage was not proposed to be converted to vineyards as part of the project. If this acreage of woodland were not placed in permanent protection, then it is theoretically possible that the land could be developed in the future with the appropriate documentation and approvals under CEQA and County policies. Mitigation Measure 6-1 affirmatively requires the permanent conservation of no less than 248 acres of woodland habitat (and Mitigation Measure 4.4-2 requires the preservation of 524.8 acres of oak woodland). Accordingly, the final conservation easement language now proposes the permanent preservation of 524.8 acres of woodland, providing over twice as much woodland than what is required to offset project-related GHG emissions. These restrictions will run with the land and bind any successor in interest, and would not be provided absent such mitigation. It should be noted that the ultimate conservation easement will include other natural habitats for the preservation of certain special-status plants, which will also have a carbon sequestration benefit. Only counting the 524.8 acres of woodland within the conservation easement therefore shows a conservative carbon sequestration benefit.

Given the relatively recent adoption of CEQA Guidelines, section 15126.4, subd. (c), there is no case law directly interpreting subdivision (c)(4) (measures that sequester greenhouse gases). However, case law addressing mitigation for biological and agricultural resources holds that a resource need not be created in order to constitute adequate mitigation. In *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal. App. 4th 477, for example, the city required a development project to preserve habitat onsite and offsite to address the project’s impacts on coastal sage scrub habitat. (*Id*. at p. 495.) The court held that preservation of “undisturbed habitat,” in particular, qualified as mitigation because it both reduced and compensated for the loss of onsite wildlife under CEQA Guidelines, section 15370. (*Ibid.*; see also, e.g., *Masonite Corporation v. County of Mendocino* (2013) 218 Cal.App.4th 230 [agricultural easements may appropriately mitigate for the direct loss of farmland caused by a project, even though the easement does not replace the lost resources]; *Save Panoche Valley v. San Benito County* (2013) 218 Cal.App.4th 503, 529 [upholding conservation as mitigation and noting that “[t]he goal of mitigation measures is not to net out the impact of a proposed project, but to reduce the impact to insignificant levels”] see also Pub. Resources Code, section 21083.4, subd. (b)(1) [conservation easements identified as acceptable mitigation for the direct loss of oak woodlands].)

Similarly here, the permanent preservation of oak woodland for carbon sequestration both reduces and compensates for the project’s impact on climate change. Mitigation Measure 6-1 is therefore adequate under CEQA.

**Citations**: Final EIR Response to Comment O10-15; Mitigation Measures 4.4-2, 6-1; Draft EIR, Table 6-2; County Staff Presentations, Board of Supervisors November 18 and December 6, 2016, Meetings.

**Conclusions**: For the foregoing reasons, the Board denies the thirty-eighth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**39. Thirty-ninth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the EIR does not adequately consider cumulative impacts and other projects’ cumulative impacts to wildlife, traffic, water quality and supply, and air quality, and, instead, erroneously equates CEQA compliance with less than significant cumulative impacts. (CEQA Guidelines, section 15355, subd. (a).) Appellant claims that the Draft EIR does not specifically discuss the cumulative effects the construction project and the continued agricultural operation of the vineyard will have on wildlife. (See Draft EIR at 6-20- 6-23.) Appellant states that instead of providing an informative cumulative wildlife impacts discussion in its cumulative impacts analysis, the Draft EIR dismisses outright the possibility that the Proposed Project will have any cumulative impact on these species. (See *Id*. at 6-21.) Appellant states that the County simply concludes that “the special status habitats and species addressed in [the County’s proposed] mitigation measures will reduce the impacts from the Proposed Project to less than significant, and since each of the other projects in the cumulative environment is held to the same CEQA standards . . . there will be no significant cumulative impacts to the sensitive species and habitats analyzed in the Draft EIR.” (*Id*.)

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

As discussed further in response to LRC’s seventh ground of appeal (see Resolution No. 2016-180), a two-step process was used in preparing the cumulative impact analysis in the Draft EIR, consistent with CEQA Guidelines, section 15130. First, for each impact area, the impacts of the Proposed Project, in combination with those from other past, present, or reasonably foreseeable projects, were analyzed to assess whether they are cumulatively significant. Then, the effect of the Proposed Project was assessed to determine if it was a considerable contribution to that impact. It should be noted that the EIR found that there were cumulative impacts to certain environmental areas, specifically greenhouse gases, and mitigation measures were provided to reduce impacts to less-than-significant levels.

The Appellant incorrectly states that the EIR does not consider cumulative impacts to wildlife species as a result of continued agricultural operation of vineyards on the Walt Ranch property. The EIR’s cumulative impact analysis on wildlife is comprehensive and complies with CEQA. As one example, Section 6.1.4-2 of the EIR acknowledges that in the larger cumulative environment, habitat loss could be a significant impact to bird species. Therefore, Table 6-4 of the EIR analyzed the potential for cumulative projects to significantly impact the foraging habitat of various birds of prey to determine if the Walt Ranch Project would have a considerable contribution to that cumulative impact. While minor changes in quality of foraging habitat may occur as a result of the Walt Ranch Project, mitigation measures for foraging habitat are not required under CEQA or the CDFW pursuant to California Fish and Game Code, section 3511(a)(1). As disclosed in Section 6.1.4-2 of the Draft EIR, “of all grassland foraging birds with potential to occur on the project site, white tailed kite would likely be unaffected by landscape changes to foraging habitat because they can forage in woodland habitat, including vineyards.” In addition, the baseline condition includes patches of grassland on the property but no large expanses of grassland, and therefore species that require large expanses of grassland to forage would not be present on the property today and would not be impacted by proposed vineyard development.

To cite another example mentioned by the Appellant, the analysis of cumulative traffic impacts assessed the potential cumulative impact of the construction and ongoing agricultural operation separately. Section 6.1.4-7 of the EIR states that “[c]onstruction of the Proposed Project in combination with other past, present, and reasonably foreseeable future projects may result in a significant cumulative impact to local roadways and traffic conditions, specifically State Route 121.” The EIR then presents an analysis of construction-related traffic trips in the cumulative environment by adding the project-related trips to the existing number of trips on local roadways to determine whether or not the capacities of those roadways would be exceeded. The EIR concludes that this “one-time trip generation will not be a considerable contribution cumulatively significant to traffic in the area. There are no reasonably foreseeable future vineyard or development projects that will require access via Circle Oaks Drive, and therefore there is no significant impact to Circle Oaks Drive in the cumulative condition.” In order to analyze ongoing agricultural operations in the cumulative environment, the EIR uses similar methodology to determine that, although additional vineyard projects in the cumulative environment would create similar volumes of traffic as the Proposed Project, “the incremental contribution of the Proposed Project would be less than cumulatively considerable.” This analysis complies with CEQA and the CEQA Guidelines.

**Citations**: EIR, Sections 6.1.4-2, 6.1.4-7; refer to citations for response to LRC’s seventh ground of appeal (see Resolution No. 2016-180); County Staff Presentation, Board of Supervisors November 18, 2016, Meeting.

**Conclusions**: For the foregoing reasons, the Board denies the thirty-ninth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**40. Fortieth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that County’s alternatives discussion fails to meet CEQA standards because the EIR does not discuss whether other, lower-intensity alternatives meet most or all of the project objectives. (CEQA Guidelines, section 15126.6.) Appellant states that the EIR does not consider an alternative that would meet all project objectives, but would have a greatly decreased environmental impact, such as an alternative that would concentrate all vineyards in one location or that would greatly reduce fencing. (CEQA Guidelines, section 15126.6.)

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

Refer to response to Circle Oaks’ nineteenth ground of appeal (see Resolution No. 2016-181).

**Citations**: Refer to citations for response to Circle Oaks’ nineteenth ground of appeal (see Resolution No. 2016-181).

**Conclusions**: For the foregoing reasons, the Board denies the fortieth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**41. Forty-first Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that no substantial evidence supports the County’s findings that impacts to biological resources, water quality, water supply, air quality, traffic, and climate change will be directly, indirectly, and cumulatively less than significant (Cal. Code Civ. Proc., sections 1085; 1094.5).

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

Substantial evidence was provided in the EIR to support the County’s findings on biological resources (refer to responses to Appellant’s third through twentieth grounds of appeal), water quality (refer to responses to Appellant’s twenty-third through twenty-fifth grounds of appeal), water supply (refer to responses to Appellant’s thirty-first through thirty-third grounds of appeal), air quality (refer to responses to Appellant’s thirty-fourth and thirty-fifth grounds of appeal), traffic (refer to response to Appellant’s twenty-first ground of appeal), and climate change (refer to responses to Appellant’s thirty-sixth through thirty-eighth grounds of appeal).

**Citations**: Refer to citations for responses to Appellant’s third through twenty-first, twenty-third through twenty-fifth, and thirty-first through thirty-eighth grounds of appeal.

**Conclusions**: For the foregoing reasons, the Board denies the forty-first ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**42. Forty-second Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that no substantial evidence supports the County’s findings that greenhouse gas-related impacts will be less than significant. (Cal. Code Civ. Proc., sections 1085; 1094.5).

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

Substantial evidence was provided in the EIR to support the County’s findings on greenhouse gas-related impacts (refer to responses to Appellant’s thirty-sixth through thirty-eighth grounds of appeal).

**Citations**: Refer to citations for responses to Appellant’s thirty-sixth through thirty-eighth grounds of appeal.

**Conclusions**: For the foregoing reasons, the Board denies the forty-second ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**43. Forty-third Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that no substantial evidence supports the County’s findings that no additional feasible alternatives or mitigation measures exist to eliminate or reduce the project’s significant adverse environmental impacts. (Cal. Code Civ. Proc., sections 1085; 1094.5).

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

Substantial evidence was provided in the EIR to support the County’s findings on alternatives (refer to response to Circle Oaks’ nineteenth ground of appeal (see Resolution No. 2016-181)).

**Citations**: Refer to citations for response to Circle Oaks’ nineteenth ground of appeal (see Resolution No. 2016-181).

**Conclusions**: For the foregoing reasons, the Board denies the forty-third ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**44. Forty-fourth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that County’s conclusion that all alternatives would have similar impacts is not supported by substantial evidence. (CEQA Guidelines, section 15126.6; Cal. Code Civ. Proc., sections 1085; 1094.5.)

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

The EIR does not claim that all alternatives have similar impacts. The EIR specifically analyzes and compares each alternative to the Mitigated Project for each environmental impact area. The EIR states that the Multiple Resource Protection Alternative would result in slightly lesser impacts to biological resources as compared to those of the Mitigated Project because it has a smaller footprint and specifically avoids overlapping biological resources. The EIR also acknowledges that “[o]verall, the Multiple Resource Protection Alterative would likely result in lesser direct impacts to the environment than the Proposed Project, but it would have greater impacts to biological resources than the Reduced Intensity Alternative.” The EIR also discusses that the Reduced Intensity Alternative would have lesser impacts to biological resources, as additional habitats would be protected on the property (see Draft EIR page 5-12 through 5-14).

As discussed in response to Circle Oaks’ nineteenth ground of appeal (see Resolution No. 2016-181), CEQA Guidelines, section 15126.6 requires that a Draft EIR contain only “sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.” A full quantitative analysis for each environmental impact area for each proposed alternative is not required under CEQA or the CEQA Guidelines. A “matrix displaying the major characteristics and significant environmental effects of each alternative” is presented in Table 5-3 of the Draft EIR, pursuant to CEQA Guidelines, section 15126.6. The comparative analysis that compares the levels of impact of each alternative with the Proposed Project provided in the Draft EIR is sufficient under CEQA to allow “informed decision making and public participation.” In addition, Table 15 of the BRMP (Appendix P to the Final EIR) included a detailed comparison of potential impacts of the Mitigated Project, Reduced Intensity Alternative, and the Multiple Resources Protection Alternative for each of the biological resources (habitats and plants) addressed within the BRMP.

**Citations**: Draft EIR, pp. 5-12 through 5-14; BRMP, Appendix P to the Final EIR; refer to citations for response to Circle Oaks’ nineteenth ground of appeal (see Resolution No. 2016-181).

**Conclusions**: For the foregoing reasons, the Board denies the forty-fourth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**45. Forty-fifth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that County’s statement of overriding considerations is not supported by substantial evidence. (Cal. Code Civ. Proc., sections 1085; 1094.5).

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

No statement of overriding considerations was issued for the project because no impacts are significant and unavoidable. Pursuant to CEQA Guidelines, section 15093, a lead agency must prepare a statement of overriding considerations when “the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened.” As stated in the EIR (see Response to Comment O21-076), “there are no significant and unavoidable impacts associated with the Mitigated Project. All impacts would be reduced to less-than-significant levels with the implementation of the mitigation measures outlined in Section 4.0 of the Draft EIR. The Mitigated Project demonstrates the feasibility of avoiding significant impacts to biological resources, meets all project objectives, and is consistent with Napa County General Plan policies and regulations.

**Citations**: Response to Comment O21-076; Draft EIR, Section 4.0.

**Conclusions**: For the foregoing reasons, the Board denies the forty-fifth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**46. Forty-sixth Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that County’s failure to amend and recirculate the EIR is not supported by substantial evidence and represents a failure to proceed in the manner required by law. (Cal. Code Civ. Proc., sections 1085; 1094.5).

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

CEQA Guidelines, Section 15088.5 requires recirculation of an EIR prior to certification when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review but before certification. New information added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project’s proponents have declined to implement. “Significant new information” requiring recirculation includes, for example, a disclosure showing that:

(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

(2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

(3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project’s proponents decline to adopt it.

(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. (CEQA Guidelines, section 15088.5, subd. (b).) By codifying the “significant new information” language the Legislature did not intend to promote endless rounds of revision and recirculation of EIRs. Recirculation was intended to be an exception, rather than the general rule. “[R]ules regulating the protection of the environment must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development and advancement.” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 576.)

During environmental review and processing of the project, certain portions of the Draft EIR were modified and new information was added in the Final EIR and Appendices. This information amplified and clarified the information and conclusions already contained within the Draft EIR. While the information may appear voluminous, none of it rises to the level of triggering recirculation under CEQA Guidelines, Section 15088.5. There are no substantial changes in the Walt Ranch Project or the circumstances under which the project is being undertaken that necessitate revisions of the Draft EIR, nor has significant new information become available.

**Citations**: Draft EIR; Final EIR.

**Conclusions**: For the foregoing reasons, the Board denies the forty-sixth ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**47. Forty-seventh Ground of Appeal.**

**Appellant’s Position**: Appellant CBD asserts that the EIR is invalid and County must revoke its approvals of the project, revise its EIR to ensure its environmental analysis complies with all applicable environmental laws, and recirculate the revised EIR for public comment.

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

The Draft EIR and the Final EIR were prepared in accordance with CEQA (California Public Resources Code section 21000-21178) and the CEQA Guidelines (California Code of Regulations [CCR], Title 14) to provide the Lead Agency (County of Napa) with an informational document to be used in the planning and decision-making process, as stated in Section 1.1 of the Draft EIR.

In accordance with CEQA Guidelines, section 15082, a Notice of Preparation (NOP) was circulated to the public, local, State, and federal agencies, and other known interested parties for a 30-day public and agency review period which began on October 22, 2012 (included as Appendix B of the Draft EIR). In accordance with CEQA Guidelines, section 15063, the Initial Study (Appendix B of the Draft EIR), in conjunction with comments received during scoping (Appendix B of the Draft EIR), was used to focus the scope and content of the EIR. The environmental resources determined during scoping to have the potential to be significantly affected by the Proposed Project, which were therefore addressed in detail in the Draft EIR, include: Air Quality, Biological Resources, Cultural and Paleontological Resources, Geology and Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Noise, and Transportation and Traffic. The baseline environmental setting for each resource along with the relevant federal, State, and local regulatory laws, codes, ordinances, and standards are described in Section 4.0 of the Draft EIR, as well as mitigation measures where appropriate to reduce impacts to less-than-significant levels, as required by CEQA Guidelines, section 15126.4. A range of reasonable alternative projects that could feasibly attain most of the objectives of the Proposed Project and comparative merits of the alternatives are presented in Section 5.0 of the Draft EIR, pursuant to CEQA Guidelines, section 15126.6. Pursuant to CEQA Guidelines, section 15126.2, discussions regarding cumulative impacts; secondary impacts, including potential impacts resulting from growth inducement; and significant irreversible changes to the environment are included in Section 6.0 of the Draft EIR. A list of preparers is provided in Section 7.0 of the Draft EIR, pursuant to CEQA Guidelines, section 15129.

The Draft EIR was submitted to the State Clearinghouse and other interested parties on July 11, 2014 (SCH# 2012102046), initiating a 45-day public comment period. This comment period was extended by the Lead Agency through November 21, 2014, for a total review period of 133 days.

The contents of the Final EIR match CEQA Guidelines, section 15132, which states that a “Final EIR shall consist of:

1. The draft EIR or a revision of the draft.
2. Comments and recommendations received on the draft EIR either verbatim or in summary.
3. A list of persons, organizations, and public agencies commenting on the draft EIR.
4. The responses of the Lead Agency to significant environmental points raised in the review and consultation process.
5. Any other information added by the Lead Agency.”

Although general or master responses were provided to the topics that were mentioned most frequently, each comment was responded to individually. Where appropriate, the commenter was directed to the general response or another individual response that addressed the same concern. This kept the Final EIR from becoming too lengthy and repetitive. This is supported by CEQA Guidelines, which requires that the Lead Agency respond to significant environmental points but do not require repeating the same comment each time it is received.

**Citations**: Draft EIR, Section 1.1; Final EIR.

**Conclusions**: For the foregoing reasons, the Board denies the forty-seventh ground of appeal and upholds the PBES Director’s decisions to certify the EIR, approve the Reduced Intensity Alternative with associated Mitigation Measures and Conditions of Approval, and approve Agricultural Erosion Control Plan No. P11-00205-ECPA (as revised).

**Section 3. Incorporation of SSE Appeal Decision by Reference.**

The Board hereby incorporates by reference all findings and decisions made in connection with Appellants Circle Oaks, Sierra Club, and LRC’s Appeals as set forth in Resolution Nos. 2016-181, 2016-183, and 2016-180.

**Section 4. Conditions of Approval.**

The Board revises the Director’s conditions of approval and the Updated MMRP as set forth in Exhibits A and B attached and incorporated herein by reference.

**Section 5. 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 Walt Ranch Erosion Control Plan Project are incorporated herein by reference.

**Section 6. Summary of Decision.**

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

1. Adopts the findings of fact and rationales as set forth in this Resolution;
2. Denies the first through forty-seventh grounds of appeal to CBD’s appeal as set forth above;
3. Upholds the Director’s approval of the Reduced Intensity Alternative as contained in the Draft EIR and Final EIR with additional modifications and certifies the EIR;
4. Approves the revised Erosion Control Plan P11-00205-ECPA, subject to the attached revised Conditions of Approval and amended Updated MMRP, attached as Exhibits A and B and incorporated herein by reference;
5. Revises the Conditions of Approval and Updated MMRP adopted by the Director and finds that the Revised Conditions of Approval and amended Updated MMRP, attached as Exhibits A and B, are both necessary and well justified; and
6. Adopts the Revised Conditions of Approval and amended Updated MMRP, attached as Exhibits A and B.

**Section 7. Effective Date.**

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

**Section 8. Judicial Challenge.**

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

**[Continued on Next Page]**

**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 20th day of December, 2016, by the following vote:

AYES: SUPERVISORS DILLON, WAGENKNECHT, CALDWELL,

LUCE and PEDROZA

NOES: SUPERVISORS NONE

ABSENT: SUPERVISORS NONE

NAPA COUNTY, a political subdivision of the

State of California

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ALFREDO PEDROZA, Chair of the

Board of Supervisors

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| APPROVED AS TO FORM  Office of County Counsel  By: Laura J. Anderson  Deputy  Date: December 14, 2016 | APPROVED BY THE NAPA COUNTY  BOARD OF SUPERVISORS  Date: December 20, 2016  Processed By:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Deputy Clerk of the Board | ATTEST: GLADYS I. COIL  Clerk of the Board of Supervisors  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

Attachments:

* Exhibit A- Updated MMRP
* Exhibit B - Revised COA