**BEFORE THE BOARD OF SUPERVISORS**

**OF NAPA COUNTY**

In the Matter of:

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| An Appeal by Living Rivers Council 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. 2016-180**  **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;

**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 29, 2016, Living Rivers Council (hereafter Appellant LRC or LRC) submitted a timely Appeal packet;

**WHEREAS**, timely appeals to the PBES Director’s decision were also submitted by Center for Biological Diversity (CBD), Circle Oaks County Water District and Circle Oaks Homes Association (Circle Oaks), and 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 PBES 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, and interested persons having been given an opportunity to address the Board regarding this proposed Resolution;

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

**Section 1.** **Recitals.**

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

**Section 2. 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 LRC asserts that the EIR fails as an informational document with respect to increased stream sedimentation in the Napa River drainage and associated impacts on the aquatic ecosystem.

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

The Napa River Watershed Sediment TMDL and Habitat Enhancement Plan states that an “effective means of reducing sediment delivery from sheetwash erosion would be for all vineyards to meet the performance standards specified under the Napa County Conservation Regulations (Chapter 18.108).” The Walt Ranch Project is designed to comply with Chapter 18.108 and the goals and policies of the Napa County General Plan, and is therefore compliant with the Napa River Sediment TMDL and its implications for the Walt Ranch Project. As the EIR states: “Since the mainstem Napa River has been listed as sediment-impaired according to Section 303(d) of the CWA, no net increase in sediment yield from the project site is allowed to occur from development of the Proposed Project. As discussed in Impact 4.4-1, the erosion control measures that are incorporated into the project design would result in a 43.61 percent *decrease* in amount of erosion from vineyard blocks in the Milliken Reservoir watershed (which is a tributary to the Napa River).” (EIR, p. 4.6-41, emphasis added.) Because the Walt Ranch Project is in compliance with Napa County Code Chapter 18.108 and the no-net-increase policies for sediment contained within the Napa County General Plan, and will result in decreased sediment loads in the Milliken Creek watershed, the project is in compliance with the TMDL requirements. Further response is provided in response to Appellant LRC’s twenty-fourth ground of appeal.

**Citations**: Final EIR Response to Comments O21-096 and O21-097; EIR, p. 4.6-41; Napolitano, M.S. Potter and D. Whyte, 2009, Napa River Sediment TMDL and Habitat Enhancement Plan, report prepared by the California Regional Water Quality Control Board, San Francisco Bay Region, September 2009, p. 126, available online at http://www.waterboards.ca.gov/sanfranciscobay/water\_issues/programs/TMDLs/napariversedimenttmdl.shtml.

**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 LRC asserts that the EIR fails as an informational document with respect to sediment impacts on special status fish species below Milliken Reservoir.

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

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 CBD’s seventeenth ground of appeal). These anadromous species cannot access the project site, but the waters of the project site are hydrologically connected to downstream habitat. 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. Therefore, Mitigation Measure 4.2-15 ensures that measures protective or water quality are implemented during project construction and operation. As discussed in the response to Appellant LRC’s first ground of appeal, above, the project will result in a decrease in sediment production from the property of up to 43.61 percent on the Milliken Creek portion of the property which flows to the Napa River. As such, there are no significant sediment impacts on special-status fish species in the Milliken Creek watershed, either above or below Milliken Reservoir.

**Citations**: EIR, Impact 4.2-15; EIR, Mitigation Measure 4.2-15; County Staff Presentation, Board of Supervisors 11/18/2016 Meeting.

**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 LRC asserts that the EIR fails as an informational document with respect to sediment impacts on aquatic ecosystems and fish above Milliken Reservoir.

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

The Walt Ranch property straddles two watersheds, the Milliken Creek and Capell Creek watersheds, and the EIR analyzed the potential for impacts to aquatic species in both watersheds, not just the Milliken Reservoir portion of the property as stated in this appeal. The project site is not accessible to anadromous fish 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, step, and ephemeral to support anadromous fisheries even if they were able to access the property as discussed in Impact 4.2-15. The implementation of the project would not affect these species. No mitigation is required for a species that will not be impacted. The potential for the Walt Ranch Project to impact other highly aquatic species, such as special-status reptiles and amphibians, is discussed in more detail in the responses below.

**Citations**: EIR, Impact 4.2-15.

**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 LRC asserts that the EIR fails as an informational document with respect to impacts on wetlands, amphibians and reptiles, including California red-legged from (CRLF) and foothill yellow-legged from (FYLF).

**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 amphibians (CRLF, FYLF) and reptiles (Western Pond Turtle [WPT]). After general life histories were provided for each species, site-specific discussion was provided regarding 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(a) regarding the discussion of the environmental setting.

The EIR analyzes potential impacts to CRLF and FYLF in Impact 4.2-11 and analyzes WPT in Impact 4.2-10. Mitigation measures are provided to address potential impacts to each of these species. In response to comments from the public, additional protective measures were added to the Mitigation Monitoring and Reporting Plan (MMRP) to protect special-status amphibians, which the County published with the Responses to Final EIR Comments document at the time the Notice of Decision was made. These protective measures include the development of an invasive species eradication plan to ensure that bullfrogs do not become established in proposed groundwater storage reservoirs, worker training for frog identification, daily review of the construction site to check for presence of CRLF beneath construction equipment, limitations on pile burning, and frog exclusionary fencing around grading and construction activities. In addition, potential impacts due to agrichemical use are minimized via Mitigation Measures 4.5-1, 4.5-2, 4.5-3, 4.5-4, and 4.2-10.

The impacts analysis was conducted consistent with CEQA Guidelines, section 15126 and 15126.2, and considered “all phases of [the] project … planning, acquisition, development, and operation.” As explained in section 2.10 of the Responses to Final EIR Comments memo:

“While CRLF presence is assumed in the Capell Creek watershed portion of the property, this does not mean that CRLF are present everywhere within the watershed; CRLF have specific habitat requirements that restrict them to only using portions of the watershed immediately adjacent to drainages. The Final EIR analyzed these habitat requirements (see pages 2.4-58 through 60 of the Final EIR, Volume II) and determined that several aquatic features within the project site have the potential to support CRLF. These features include: 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. Based on the possibility for these areas to support CRLF, appropriate mitigation measures (Mitigation Measures 4.2-11 and the related Mitigation Measure 4.2-4) were proposed to reduce impacts to CRLF to less than significant. As the [Walt Ranch Project] has been designed to avoid impacts to waters of the U.S. and take of CRLF, no ITP is required at this time. Additionally, Mitigation 4.2-4 requires a U.S. Army Corps of Engineers nationwide permit (Section 404 permit) be obtained 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 U.S. Fish and Wildlife Service (USFWS) for 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 Proposed Project has “avoid[ed] or *substantially lessen[ed]*” the project’s significant impacts to CRLF (Pub. Resources Code, section 21002).”

The environmental baseline for WPT and FYLF is discussed in more detail in the response to Appellant CBD’s eighth ground of appeal.

**Citations**: EIR section 4.2.4-3; Impacts 4.2-10 and 4.2-11; Mitigation Measures 4.5-1, 4.5-2, 4.5-3, 4.5-4, and 4.2-10; Responses to Final EIR Comments memo, section 2.10; County Staff Presentation, Board of Supervisors 12/6/2016 Meeting.

**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 LRC asserts that the EIR fails as an informational document with respect to impacts on groundwater resources, and that the EIR fails to analyze the Project’s use of groundwater in the environmental setting where this use will impact groundwater resources.

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

The EIR describes in detail the proposed groundwater uses for the project, the hydrogeologic conditions at the project site, estimates of the available groundwater at the property, and estimates of potential offsite impacts to neighboring groundwater users. Substantial analysis and consideration of groundwater resources was provided through the EIR; refer to Impact 4.6-4 (Final EIR: Volume II), the 2013 RCS 96-Hour Pumping Test, the 2015 RCS Response to Draft EIR Comments Memorandum, and the 2016 RCS Response to Final EIR Comments Memorandum. The pumping test was performed in 2009, which was a drought year according to DWR. The drawdown created while pumping is not affected by the initial water level in the well or the time of year in which the test is conducted. Hence, the water level drawdown while pumping Well WR-3 would be approximately 26.9 feet, whether or not the static water level at the beginning of the pumping test was 300 feet, 350 feet, or 370 feet, etc.

Therefore, the results of the 2009 pumping test are still valid and applicable to the groundwater analysis. Substantial analysis was conducted in accordance with CEQA Guidelinessection 15126.2, and Impact 4.6-4 of the EIR found this to be a potentially significant impact. As such, Mitigation Measure 4.6-4 required preparation and adoption of a Groundwater Monitoring and Mitigation Plan (GWMMP) to minimize the potential impacts to offsite wells.

As discussed in the response to Appellant CBD’s thirty-first ground of appeal (see Resolution No. 2016-182), 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, however, could still impact neighboring wells and cause drawdown, as discussed in Impact 4.6-4. Therefore, Mitigation Measure 4.6-4 requires the development of a GWMMP, which has been developed and presented to the County for review and approval. Such a GWMMP has been prepared, and is incorporated into the Project. 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:

a) 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);

b) 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);

c) shifting of the rates and/or volumes of groundwater extraction by existing project wells to different portions of the subject property;

d) ceasing production from certain onsite wells and replacing that lost production by constructing new onsite wells at the project property;

e) lowering the pump, if possible, in an offsite well that has been shown to have been impacted;

f) constructing a new water well to replace an offsite well that has been shown to have been impacted; and/or

g) 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.

In addition, 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.

**Citations**: EIR, Impact 4.6-4; EIR, Mitigation Measure 4.6-4; RCS, 2013, Updated Report on the Results and Analysis of 96-Hour Constant Rate Pumping Test, Irrigation-Supply Well No. 3 for Walt Ranch in Napa County, California, prepared for Hall Wines, LLC, February 2013, included as Appendix D to the Draft EIR; RCS, 2015, Technical Memorandum Re: Response to Comments on the Walt Ranch Draft EIR, August 13, 2015, included as Appendix Q to the Final EIR; RCS, 2016, Technical Memorandum Re: Response to Comments on the Walt Ranch Final EIR, June 10, 2016, included as Attachment C to the Responses to Final EIR Comments Memorandum; County Staff PowerPoint presentations, Board of Supervisors 11/18 and 12/6/2016 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 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 LRC asserts that the EIR fails as an informational document with respect to project impacts on oak woodlands.

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

Napa County General Plan policies relating to oak woodlands are cited on page 4.2-75 and the state Oak Woodlands Conservation Act is discussed on page 4.2-70 of the EIR. The EIR analyzed the Walt Ranch Project for inconsistency with those policies in Impacts 4.2-2 and 4.2-16. As discussed throughout the EIR, General Plan Policy CON-24 requires that oak woodland habitat be maintained and improved to provide for slope stabilization, soil protection, species diversity, and wildlife habitat through appropriate measures, particularly through providing replacement of lost oak woodlands or preservation of like habitat at a 2:1 ratio when retention of existing vegetation is found to be infeasible.

With the incorporation of mitigation provided in the EIR, the Walt Ranch Project is in compliance with General Plan Policy CON-24. Specifically, potential impacts to oak woodlands are discussed in Impact and Mitigation Measure 4.2-2, which addresses impacts to sensitive habitats and biotic communities of limited distribution. As discussed in Impact 4.2-2, the following woodlands are considered oak woodlands: Black Oak Alliance, Blue Oak Alliance, Coast Live Oak (Foothill Pine) Alliance, Coast Live Oak-Blue Oak-(Foothill Pine) NFD Association, and Mixed Oak (Foothill Pine/Ponderosa Pine) Alliance. The Final EIR was revised to include additional acreage of tree species that are included within the definition of “oak woodlands.” In doing so, the Final EIR characterized additional habitat types as “oak woodlands” that were not identified as such in the Draft EIR. Based on the inclusion of additional tree species, the EIR mitigation acreage was increased for the Mitigated Project to require the permanent protection (by way of a permanent conservation easement) of a total of 524.8 acres of oak woodlands on the property as outlined in Table 4-1 from the Final EIR (Volume I), excerpt below:

**TABLE 4-1 OF THE FINAL EIR (VOLUME I)**

OAK WOODLAND IMPACT AND MITIGATION ACREAGE

|  |  |  |
| --- | --- | --- |
| **Habitat Type** | **Impacted Acreage**  **(After Avoidance)** | **Acreage for Preservation (2:1)** |
| Black Oak Alliance | 35.7 | 71.4 |
| Blue Oak Alliance | 2.6 | 5.2 |
| Coast Live Oak (Foothill Pine) Alliance | 20.1 | 40.2 |
| Coast Live Oak-BlueOak-(Foothill Pine) NFD Association | 100.2 | 200.4 |
| Mixed Oak (Foothill Pin/Ponderosa Pine) Alliance | 103.8 | 207.6 |
| **Total** | **262.4** | **524.8** |

Further, the project after mitigation, including avoidance of oak woodlands, will leave approximately 1,984 acres (greater than 86 percent) of the total property in open space, resulting in the requisite avoidance required by General Plan Policy CON-24.

The applicant has submitted several analyses regarding infeasibility of further avoidance; for example, Comment Letter I116 on the Draft EIR sent to Napa County dated November 21, 2014, discusses the economic feasibility of further avoidance, including the following statement: “It is important to note that we remain concerned that additional reductions in acreage will have the net effect of driving vineyard entitlement costs further beyond the current value of vineyards in the area and make further avoidance of sensitive species potentially infeasible.” At that time, the Mitigated Project was approximately 278 net acres of vineyard; the final project that was adopted on August 1, 2016 was reduced to 209 net acres of vineyard. The November 21, 2014 feasibility analysis acknowledged that “to the extent these fixed costs [of implementing the ECPA and the mitigation measures] are spread over a smaller number of vineyard acres, the project becomes incrementally less feasible.” Given even further reductions in acreage from 278- to 209-net acres, the project has become even less economically viable. Furthermore, PPI Engineering also submitted Comment Letter I103 on the Draft EIR on November 20, 2014, detailing where in PPI’s opinion, biological mitigations had reduced the farmability of some blocks to the point where the portions of the blocks that remained could not be developed. Additional evidence of infeasibility has also been submitted to the County by the Applicant on November 7, 2016.

**Citations**: EIR, pp. 4.2-75, 4.2-70; EIR, Impacts 4.2-2, 4.2-16; Final EIR Volume I, Table 4-1; Draft EIR comment letters I116, I103; EIR, Mitigation Measure 4.2-2; Letter from Hall Brambletree to County re: infeasibility, November 7, 2016.

**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 LRC asserts that the EIR Fails as an informational document with respect to cumulative impacts, and that the EIR fails to disclose relevant information regarding the environmental setting and fails to use the best available information to assess the Project’s cumulative impacts on biological resources.

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

This was addressed in General Response 21 in the Final EIR, which explains that a two-step process was used in preparing the cumulative impact analysis in the Draft EIR, consistent with CEQA Guidelinessection 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 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 Board finds that this statement is incorrect. 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 by the California Department of Fish and Wildlife (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**: Final EIR, General Response 21; EIR, sections 6.1.4-2, 6.1.4-7; EIR, Table 6-4.

**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 LRC asserts that the EIR fails as an informational document with respect to cumulative impacts, and that the EIR’s analysis of cumulative impacts fails to disclose all closely related past, present and reasonably foreseeable future projects.

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

The projects identified in the cumulative environment discussed in Table 6-1 of the EIR meet the definition of cumulative as defined in CEQA Guidelinessection 15355, which states that the incremental impact of the project should be added to “other closely related past, present, and reasonably foreseeable probable future projects.” The cumulative analysis included all future “closely related” projects within the Milliken Reservoir and Capell Creek watersheds for each impact area. Where appropriate, the cumulative environment was expanded to include additional potential impacts; for example, the entire SFBAAB was included in the cumulative analysis for air quality.

**Citations**: EIR, Table 6-1.

**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 LRC asserts that the EIR fails to provide an adequate description of the environmental setting. The EIR mischaracterizes the rate of groundwater recharge on the Project site.

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

Lead agencies have discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence. (*Communities for a Better Env’t v South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 336.) The County reasonably determined the appropriate baseline for groundwater resources. The estimates of groundwater recharge as a percentage of rainfall presented in Appendix D and Impact 4.6-4 of the EIR are reasonable and are supported by many evidentiary sources. As discussed therein, the analysis very conservatively assumed a deep percolation percentage of 7 percent, even though a 9 percent value would be supportable (page 48 of Appendix D). In doing so, the EIR would have overstated any impacts from the project, if they existed.

Estimates of deep percolation of 7 to 9 percent for the Milliken Creek watershed are derived, in part, on review of United States Geological Survey (USGS) Water Resources Investigation Reports WRI 77-82 and WRI 03-4229 (USGS 1977 and USGS 2003, respectively) and from RCS experience in preparing numerous hydrogeologic assessments throughout Napa and Sonoma counties for properties underlain by the Sonoma Volcanics. Notably, a relatively recent groundwater study prepared by another consultant as a part of the Napa Pipe Project Environmental Impact Report estimated that 10.5 percent rainfall recharge occurred within the Sonoma Volcanics. Project areas not underlain by the Sonoma Volcanics were not included in the recharge calculations.

The EIR presented two appropriate recharge rates based on best available science, and analyzed the proposed groundwater pumping against the lower recharge rate to present a more conservative analysis. Therefore, utilization of the more conservative recharge rate is an appropriate environmental baseline in accordance with CEQA Guidelinessection 15125.

**Citations**: EIR, Appendix D; EIR, Impact 4.6-4; United States Geological Survey (USGS) Water Resources Investigation Reports WRI 77-82 (1977) and WRI 03-4229 (2003); BHFS (Brownstein Hyatt Farber Shrek), *Water Supply Assessment For The Napa Pipe Project, Napa County, California*,August 25, 2011; County Staff PowerPoint presentation, Board of Supervisors 12/6/2016 Meeting; 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 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 LRC asserts that the EIR fails to provide an adequate description of the environmental setting, and that the EIR mischaracterizes the hydraulic connection between groundwater to be pumped for the Project and groundwater in the MST Groundwater Deficient Area.

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

This was addressed in Draft EIR Section 4.6.1-3, Final EIR General Response 12, and the RCS 96-Hour Pumping Test Report. The County-defined Milliken-Sarco-Tulocay (MST) groundwater deficient area is not a groundwater basin, as discussed on page 18 of the RCS 2015 Report. As discussed in Final EIR General Response 12:

“Several commenters use the terms “groundwater basin,” “drainage basin,” and “MST Study Area” interchangeably. To clarify, the MST area is not a groundwater basin as defined by the Department of Water Resources (DWR), and is not included as part of Basin 2-2.01 the “Napa –Sonoma Valley Groundwater Basin”, except for a small portion of the water-bearing alluvium associated with Tulocay Creek (DWR, 2003). In the report *Updated Hydrogeologic Conceptualization and Characterization of Conditions*, the MST is referred to as the “MST subarea” (LSCE&MBK 2013), not a groundwater basin. Farrar and Metzger refer to the area as a “study area,” which was clearly defined on Figure 1 therein; Figure 4.6-3 of the Draft EIR was adapted from Figure 1 of that study (USGS, 2003). Figure 4.6-3 also defines the “Milliken Creek Drainage Basin”. A “drainage basin” is a watershed; surface water within a drainage basin collects in streams and creeks, and flows to a single point where the surface water exits the drainage basin. A drainage basin is not a groundwater basin. As shown on Figure 4.6-3, the “MST study area” does not include the entire Milliken Creek watershed and does not include any portion of the Walt Ranch property; it does include other portions of adjoining watersheds (USGS, 2003).”

Walt Ranch is located at the northernmost portion of the Milliken Creek watershed, approximately 2.8 miles north-northeast of the MST area, as noted in Section 4.6.1-3 of the Draft EIR. Farrar and Metzger reference the volume of inflow (2,100 af per year) that was estimated by Johnson to move into the MST groundwater deficient area from the volcanic rocks east of the study area. That USGS study estimated other sources of inflow into the MST area including 5,400 af per year from streamflow infiltration and 250 af per year from direct infiltration of precipitation. RCS adapted a figure from the USGS (2003) study to show that only 30 percent of the MST area shares a boundary with the Milliken Creek drainage basin. Hence, of the approximately 2,100 af per year of groundwater estimated to flow into the MST area in the subsurface, assuming the flow across the study area boundary is evenly distributed across the boundary, then only ±630 af per year of groundwater underflow is estimated to be derived from the Milliken Creek watershed.

The average rainfall for the Milliken Creek watershed was calculated using the PRISM rainfall dataset and GIS software, because that dataset is spatially gridded. An approximate estimate of groundwater recharge within the portion of the Milliken Creek watershed that lies outside of the MST area is approximately 2,688 af per year, which is substantially larger than the 630 af per year that is estimated to actually enter the MST area from the Milliken Creek watershed. In light of this conclusion, it is the expert opinion of the project groundwater hydrologist that, given the assumptions listed above, pumping from the Walt Ranch wells will not affect the groundwater underflow into the MST area. Because the underflow to the MST area is approximately one fourth of the total recharge to the Milliken Creek watershed, then it is reasonable that underflow to the MST area is derived from the southern portion of the Milliken Creek watershed closest to the underflow boundary. Water that recharges in the vicinity of Walt Ranch is not likely the source of underflow from the Milliken Creek watershed to the MST area.

**Citations**: RCS, 2013, Updated Report on the Results and Analysis of 96-Hour Constant Rate Pumping Test, Irrigation-Supply Well No. 3 for Walt Ranch in Napa County, California, prepared for Hall Wines, LLC., February 2013, included as Appendix D to the Draft EIR; RCS, 2015. Response to Comments Walt Ranch Draft Environmental Impact Report (DEIR) Memorandum, August 13, 2015, included as Appendix Q to the Final EIR; USGS, 2003, *Ground-water resources in the Lower Milliken-Sarco-Tulocay Creeks area, southeastern Napa County, California, 2000-2002*, USGS, Water-Resources Investigations Report 03-4229, Farrar, C.D. and L. F. Metzger; County Staff PowerPoint presentation, Board of Supervisors 11/18/16 and 12/6/2016 Meetings.

**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 LRC asserts that the EIR fails to provide an adequate description of the environmental setting. The EIR mischaracterizes the direction of groundwater flow between the Project site and the MST Groundwater Deficient Area.

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

A thorough analysis of groundwater flow direction in the vicinity of the Walt Ranch property has been provided in the 2013 RCS Report (page 9), the 2015 RCS Report (page 20 and 21), and the 2016 RCS Responses Memo (pages 7 and 8). The analysis utilized site specific studies as well as larger peer-reviewed scientific studies; as discussed in the 2016 RCS Responses Memo, “page 16 of the Johnson report stated that groundwater flow is generally to the west across the MST study area. Farrar and Metzger show similar results on Figure 15, and in fact their results show very steep groundwater gradients on the southeast and east of the study area, with an arrow showing groundwater flow across the study area boundary on the east side of the study area from the Sarco Creek watershed, and not the Milliken Creek watershed. Hence, available groundwater flow data from other reports also suggest a lack of connection between the Walt Ranch property and the MST study area.”

**Citations**: RCS, 2013, Updated Report on the Results and Analysis of 96-Hour Constant Rate Pumping Test, Irrigation-Supply Well No. 3 for Walt Ranch in Napa County, California, prepared for Hall Wines, LLC., February 2013, included as Appendix D to the Draft EIR; RCS, 2015. Response to Comments Walt Ranch Draft Environmental Impact Report (DEIR) Memorandum, August 13, 2015, included as Appendix Q to the Final EIR; USGS, 1977, Ground-water hydrology of the Lower Milliken-Sarco-Tulocay Creeks Area, Napa County, California, Johnson, M.J. USGS Water-Resources Investigations 77-82; USGS, 2013, USGS Circular 1376, *Streamflow Depletion by Wells – Understanding and Managing the Effects of Groundwater Pumping on Streamflow*; County Staff Presentations, Board of Supervisors 11/22/2016 and 12/6/2016 Meetings.

**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 LRC asserts that the EIR fails to provide an adequate description of the environmental setting, including that the EIR fails to include reliable surveys to determine the presence, absence, and location of threatened and sensitive wildlife species and their habitat, including CRLF, FYLF, and WPT (Ex 2, pp. 18-29.) Appellant contends that the 2007 and 2008 surveys expired before the NOP issued for this EIR (See Ex 2, p. 20; Ex 14, p. 2), and the RTC admits the 2012 surveys were not to “protocol.” Thus, the Appellant asserts, the 2012 surveys are also now expired due the passage of time.

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

Refer to the responses to LRC’s fourth ground of appeal (see Resolution No. 2016-180) and CBD’s fourth ground of appeal (see Resolution No. 2016-182) regarding the environmental setting presented in the EIR for these species.

The validity of the CRLF surveys was addressed in Final EIR Response to Comments O21-004 through O21-007 and again in Section 2.10 of the Responses to Final EIR Comments memorandum. As explained further in Final EIR Response to Comment O21-004, critical habitat for CRLF occurs within 0.5 mile of the project site and the nearest documented occurrence of CRLF is three miles northeast of the Walt Ranch Project.

Contrary to some claims, CRLF presence has never been assumed on the Milliken Creek watershed portion of the property. As 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.

The surveys of the Milliken Creek portion of the watershed, which are outlined in the CRLF Habitat Assessment, concluded that CRLF was not present within the area based on three years of studies (2007, 2008, and 2012). The CRLF surveyors were well qualified (as noted in Appendix A of the CRLF Survey Report) (Appendix K of the Draft EIR), and their analysis met the established thresholds in the USFWS CRLF Guidance. (See Final EIR Response to Comment O22-095). In addition, preconstruction surveys will be conducted prior to any earthmoving activity.

The EIR appropriately limited the impacts analysis and mitigation for CRLF to the Capell Creek portion of the property where the species actually could occur.

**Citations**: Final EIR, Responses to Comments O21-004 through O21-007, O22-095; Responses to Final EIR Comments Memorandum, section 2.10; Final EIR, pp. 4.2-37, 4.2-60, 4.2-80, and 4.2-120; CRLF Habitat Assessment, Appendix K to Draft EIR; County Staff Presentations, Board of Supervisors 11/18/2016 and 12/6/2016 Meetings.

**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 LRC asserts that the EIR fails to assess the significance of impacts of all aspects of the Project description by ignoring specific mechanisms of impacts raised in comments on the Draft EIR. The EIR fails to analyze the significance of pumping more groundwater than is recharged on-site on local groundwater supplies.

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

The significance threshold used in the EIR for Impact 4.6-4 (potential impacts to groundwater resources) stated that a significant impact would occur if the project would “[s]ubstantially deplete groundwater supplies, or interfere substantially with groundwater recharge, such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table.” This qualitative significance threshold is consistent with CEQA Guidelines Appendix G and the Napa County Local Procedures for Implementing CEQA.

A conservative rainfall estimate of 35 inches per year was used to calculate the recharge rate of 161 acre-feet per year (af per year) on the Sonoma Volcanics portion of the Walt Ranch property, in addition to a very conservative assumption that only 7 percent of that rainfall infiltrates into the Sonoma Volcanics. Data presented in the EIR provided a detailed discussion of rainfall totals for the Walt Ranch property, and showed “that an annual average rainfall estimate of 35 inches is a conservative estimate for the Walt Ranch area.” In addition, numerous references were provided that support a 7 to 9 percent estimate of rainfall recharge as being conservative. These various sources are also summarized in Table B of Appendix Q (Final EIR), wherein the calculated groundwater recharge volume for volcanic rock at the Walt Ranch property is shown to range from a low of 161.3 af per year to a high of 276.5 af per year, depending on the rainfall dataset used and on the estimate of deep percolation of rainfall. As such, using the most conservative of all factors to calculate the 161 af per year recharge rate likely understates the recharge potential of the property.

Because the final acreage of vineyard is now 209 acres, the groundwater demand is now:

(209 acres of vines)\*(0.5 af per year irrigation)+(40 af per year frost protection) = **144.5 af/year**

As shown, even using conservative recharge assumptions, the final ECPA would not exceed the capability of the Sonoma Volcanics to recharge each year. The EIR did not ignore potentially significant impacts due to groundwater pumping. Impact 4.6-4 of the EIR clearly states that the “effects to groundwater levels could cause drawdown in offsite wells, and if this drawdown interference were to be substantial, the existing pump in the impacted well might become less efficient; if this were to occur, the existing pump might not be able to maintain its normal operational pumping rate. *This would be a significant impact*” (EIR at p. 4.6-43; emphasis added). As such, Mitigation Measure 4.6-4 was required to protect offsite wells from significant impacts due to project-related groundwater pumping. Furthermore, a new Condition of Approval No. 15 is recommended for the project to limit the annual groundwater extraction to no more than 145 af per year in order to ensure the Applicant operates the vineyards in compliance with the groundwater estimates presented above.

In addition, 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.

**Citations**: EIR, Impact 4.6-4; EIR, Mitigation Measure 4.6-4; Napa County, 2015, Napa County’s Local Procedures for Implementing the California Environmental Quality Act, Revised February 2015; RCS, 2015, Response to Comments Walt Ranch Draft Environmental Impact Report (DEIR) Memorandum, August 13, 2015, included as Appendix Q to the Final EIR; Condition of Approval No. 15; County Staff PowerPoint presentation, Board of Supervisors 11/18/16 and 12/6/2016 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 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 LRC asserts that the EIR fails to assess the significance of impacts of all aspects of the Project description by ignoring specific mechanisms of impacts raised in comments on the Draft EIR. The EIR fails to analyze the significance of increased channel erosion and sediment production caused by increases in peak runoff caused by installing engineered drainage structures.

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

Refer to the response to the twenty-fourth ground of appeal.

**Citations**: See citations for the twenty-fourth ground of appeal.

**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 LRC asserts that the EIR fails to assess the significance of impacts of all aspects of the Project description by ignoring specific mechanisms of impacts raised in comments on the Draft EIR, and that the EIR fails to analyze the significance of herbicide/pesticide drift on threatened and sensitive wildlife species and their habitat, including CRLF, FYLF, and WPT. Appellant contends that the Draft EIR relies on “compliance with all USEPA, CDPR, and Napa County regulations” governing the use of herbicides/pesticides to reduce impacts to less-than-significant and that this is improper under CEQA.

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

The pesticide and herbicide wind-drift analysis was located within the Hazardous Materials Section of the EIR (not in the Air Quality or Biological Resources sections); the Final EIR and the Responses to Final EIR Comments memorandum pointed reviewers to its location. CEQA allows some flexibility in the organization of the EIR, provided that all of the contents required by CEQA Guidelinessections 15120 through 15132 are included. As explained in the response to CBD’s forty-seventh ground of appeal (see Resolution No. 2016-182), all required contents of the EIR were present in the Walt Ranch EIR.

In regards to the potential for wind-borne pesticides or herbicides to impact amphibians and reptiles, a detailed discussion of the analysis of pesticide use and potential for wind drift was provided in Impact 4.5-3 of the EIR and again in Section 2.8 of the Responses to Final EIR Comments memorandum. As discussed therein, airborne drift is analyzed as a potentially significant impact in Impact 4.5-3 of the Draft EIR and the mitigation measures provided therein protect amphibian and reptile species. Numerous protective measures are in place to ensure that wind drift does not significantly impact human or wildlife health. These protections include CCR Title 3, Section 6614 for the protection of persons, animals, and property; the USEPA evaluation of chemical toxicity, for which the Integrated Pest Management (IPM) Plan commits to only using chemicals with low potential for wind drift; and the existing enforcement mechanism of the Napa County Agricultural Commissioner’s Office.

The IPM Plan was provided within Appendix N to the Draft EIR; although the Applicant has not provided a full list of potential pesticides and fertilizers that may be used on the project site, as there are hundreds of legal and low-toxicity agrichemicals, the IPM Plan limits the chemical use onsite to those classified by the USEPA as Class 3 or Class 4 (Low Toxicity or Very Low Toxicity, respectively). Mitigation measures provided in the EIR to minimize risk of hazardous material drift into the environment include the following:

* Mitigation Measure 4.2-4: Maintain appropriate stream and wetland buffers
* 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

In addition to the agrichemical mitigation measures listed above, protective measures for WPT, CRLF, and FYLF include the development of an invasive species eradication plan to ensure that bullfrogs do not become established in proposed groundwater storage reservoirs, worker training for frog identification, daily review of the construction site to check for presence of CRLF beneath construction equipment, limitations on pile burning, and frog exclusionary fencing around grading and construction activities (refer to response to LRC’s fourth ground of appeal for additional discussion).

**Citations**: EIR, Impact 4.5-3; Mitigation Measures 4.2-4, 4.5-1, 4.5-2, 4.5-3, 4.5-4, 4.5-5; Responses to Final EIR Comments Memorandum, section 2.8; Draft EIR, Appendix N.

**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 LRC asserts that the EIR unlawfully defers the development of mitigation measures until after Project approval, and that the EIR asserts that the Project’s Integrated Pest Management Strategy will reduce potentially significant impacts on CRLF, FYLF, and WPT.

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

As discussed in response to LRC’s fourth and fifth grounds of appeal, the EIR contains numerous measures to protect WPT, CRLF, and FYLF. The IPM Plan provides protection to these species from agrichemicals, but it is not the only or even primary method for reducing impacts to less-than-significant levels. The IPM Plan is required via Mitigation Measure 4.2-10 and has been incorporated into the Updated MMRP adopted with the project, which is a legally binding and enforceable plan. Compliance with the IPM Plan is compelled by the MMRP, consistent with other vineyard projects in the County and with CEQA Guidelinessection 15126.4(a)(2). This is discussed in Impacts 4.2-10 and 4.2-11 of the EIR, as well as Section 2.8 and 2.10 of the Responses to Final EIR Comments memorandum.

**Citations**: EIR, Impacts 4.2-10, 4.2-11; EIR, Mitigation Measures 4.2-10 and 4.2-11; Responses to Final EIR Comments Memorandum, sections 2.8, 2.10.

**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 LRC asserts that the lead agency’s response to comments fails to provide legally adequate responses to comments. With respect to Oak Woodlands, the Draft EIR found impacts to be less-than-significant based on small reductions in the areas to the cleared. The Final EIR changed the rationale for the less-than-significant finding to referencing the acres of oak woodlands to be permanently preserved. Appellant claims this triggers a recirculation of the Draft EIR. (*Laurel Heights Improvement Assn. v. Regents of University of* *California* (1993) 6 Cal.4th 1112, 1130.) Appellant states that preserving areas not slated for destruction, even in perpetuity, is not appropriate mitigation. The EIR’s finding that the unmitigated impact is significant is based on the loss of oak woodlands in the areas to be converted to vineyard; it is not based on the possibility that oak woodlands not slated for destruction might be destroyed in the future. Appellant asserts that, therefore, preventing their destruction in the future does not reduce the significant impact identified in the EIR.

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

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 GuidelinesSection 15088.5(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.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1132.)

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 Guidelinessection 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. The expanded definition of “oak woodlands” mentioned by the Appellant resulted in more woodland acreage being placed into permanent preservation to ensure the impact remained less-than- significant, which does not trigger recirculation pursuant to CEQA Guidelinessection 15088.5(a)(2), as mitigation measures were “adopted that reduce the impact to a level of insignificance” for this previously identified impact. Refer to the response to CBD’s thirty-eighth ground of appeal regarding the validity of mitigation measures requiring permanent preservation.

**Citations**: Draft EIR; Final EIR; See response to CBD’s thirty-eighth ground of appeal.

**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 LRC asserts that the EIR provides inadequate assessment and mitigation of groundwater drawdown impacts. The EIR finds that the project will cause a significant groundwater drawdown impact unless mitigation is adopted. But Appellant asserts that the EIR defers analysis of the degree of this significant groundwater drawdown impact and defers the development of specific measures to reduce such impacts until after project approval. Deferring the impact analysis is not allowed under CEQA. Deferring the development of mitigation measures is not allowed under CEQA unless it is impracticable to develop mitigation measures during the CEQA process, there is evidence that future mitigation is feasible, and the project is required to meet specific performance standards. (*CBE v. Richmond* (2010) 184 Cal.App.4th 70, 92-96.)

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

CEQA Guidelines,section 15126.4, subd. (a)(1)(B), states:

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 analogous to those that have been upheld by the courts.

As discussed in the response to LRC’s thirteenth ground of appeal, the EIR utilizes the qualitative significance threshold provided in CEQA GuidelinesAppendix G relating to groundwater resources, requires the development of a GWMMP which requires specific quantitative thresholds or trigger points, and provides numerous potential mitigation options in the event that impacts do occur to offsite wells. As such, the Lead Agency has not improperly deferred mitigation as defined by CEQA Guidelinessection 15126.4.

In addition, 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.

**Citations**: See citations for response to LRC’s thirteenth ground of appeal; EIR, Mitigation Measure 4.6-4; County Staff PowerPoint presentation, Board of Supervisors 12/6/2016 Meeting, 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 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 LRC asserts that Mitigation Measure 4.6-4 does not specify performance standards for the project. With respect to standards, Mitigation Measure 4.6-4 provides: the Director of Environmental Management shall be authorized to require additional reasonable conditions on the Applicant, or revocation of this permit, as necessary to meet the requirements of the Napa County Groundwater Ordinance and protect public health, safety and welfare." (Final EIR, 4.6-51-52.) Appellant claims that the Final EIR fails, however, to explain whether the Napa County Groundwater Ordinance even applies to this project, given the exemption for agriculture at County Code section 13.15.040. Further, Appellant states, this GWMMP standard only measures impacts on neighboring land uses, not on the groundwater resource as a whole. Finally, as noted above, Appellant asserts that the Updated Mitigation Monitoring and Reporting Plan, in the column for "Performance Criteria" merely refers to "County standards." What these putative County standards might be is unknown.

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

Refer to response to CBD’s thirty-third ground of appeal (see Resolution No. 2016-182) regarding the GWMMP. As discussed therein, mitigation measures should not be deferred indefinitely (CEQA Guidelines,section 15126.4, subd. (a)(1)(B)). However, 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. Courts uphold mitigation measures that require preservation or restoration of sensitive habitat at specified ratios as adequate mitigation under CEQA. (See, e.g., *Save Panoche Valley v. San Benito County* (2013) 217 Cal.App.4th 503, 526 [mitigation for impacts to special status species upheld]; *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1233 [upholding mitigation requiring preservation and restoration of sensitive habitat at identified ratios]; *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477 [upholding mitigation for impacts to sensitive species requiring restoration and enhancement of habitat at specified ratios].) The mitigation measures identified in the EIR are analogous to those that have been upheld by the courts.

Although the project may be exempt from the groundwater permit requirement contained in the County’s Groundwater Ordinance (see Napa County Code 13.15.040) due to its agricultural nature, it is not exempt from the Napa County Water Availability Analysis requirements nor is it exempt from mitigation measures adopted as part of the MMRP. The reference to the County Groundwater Ordinance is for the purposes of ensuring that any proposed action by the County conducted pursuant to Mitigation Measure 4.6-4, GWMMP, or the adopted MMRP will be done consistent with the purpose of the ordinance which states:

Purpose. This chapter is intended to regulate, to the maximum extent possible, the extraction and use of groundwater resources in Napa County and to prohibit extraction for wasteful, unreasonable or non-beneficial purposes in order to promote groundwater conservation and the use of Best Management Practices and maximize the long-term beneficial use of the county's groundwater resources, thus serving to enhance environmental quality and protect the public health, safety and welfare of the citizens of Napa County. (Napa County Code Section 13.15.010.)

The EIR language on page 4.6-31 states that Napa County relies on the CEQA GuidelinesAppendix G checklist for its hydrology and water quality significance thresholds, as discussed inthe Napa County Local Procedures (2015). The Napa County Groundwater Ordinance isdiscussed on page 4.6-22 of the Draft EIR, and although the project is exempt from therequirement for a groundwater permit, the purpose of the ordinance is achieved through theimplementation of Mitigation Measure 4.6-4. Napa County adopted its updated WAA on May13, 2015. The development of specific trigger points after monitoring and the incorporation ofspecific mitigation strategies within the GWMMP ensures that the Lead Agency has notimproperly deferred any mitigation as defined by CEQA Guidelinessection 15126.4. These standardsare clearly laid out within the GWMMP, which is referenced within Mitigation Measure 4.6-4and incorporated by reference into the Updated MMRP.

In addition, 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.

**Citations**: EIR, p. 4.6-31, 4.6-22, Mitigation Measure 4.6-4; Updated MMRP; County Staff PowerPoint presentation, Board of Supervisors 12/6/2016 Meeting; 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 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 LRC asserts that the EIR analysis related to increases in precipitation runoff is based on informational deficiencies: it fails to include the project’s many engineered drainage facilities in its estimate of project-induced increases in runoff and it assumes that deep ripping the soil causes a permanent increase in soil moisture permeability. As a result of the informational deficiencies, Appellant asserts, the EIR’s assessment of the significance of project-caused increases in runoff, and of the many adverse environmental impacts associated with increased runoff, including stream sedimentation, degraded fish habitat, flooding, and landsliding does not comply with CEQA. (See *CBE v. City of Richmond* (2010) 184 Cal.App.4th 70, 82 [“the existence of substantial evidence supporting the agency’s ultimate decision ... is not relevant when one is assessing a violation of [CEQA’s] information disclosure provisions”]; accord, *Joy Road Area Forest and Watershed Ass’n v. California Dept. of Forestry & Fire Protection* (2006) 142 Cal.App.4th 656, 684.)

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

See the response to LRC’s twenty-third ground of appeal which applies regarding the effects of deep ripping, and the response to the twenty-fourth ground of appeal which applies regarding the inclusion of engineered drainage facilities in the hydrologic analysis.

**Citations**: See citations for LRC’s twenty-third and twenty-fourth grounds of appeal.

**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 LRC asserts that the EIR impermissibly defers the design of berms and detention basins to capture runoff in active landslides areas. The EIR makes no attempt to design these structures to ensure they have adequate design capacity. Instead this work is deferred until after project approval. This violates CEQA because there is no showing that it is impracticable to design these structures during the CEQA process and the project is not required to meet specific performance standards. (*CBE v. Richmond* (2010) 184 Cal.App.4th 70, 92-96.) Indeed, the Updated MMRP merely refers vaguely to “County standards” without specifying what those standards are.

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

CEQA Guidelines,section 15126.4, subd. (a)(1)(B), states:

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.

In accordance with CEQA Guidelines, significant impact determinations and formulation of mitigation measures must occur before project approval. The mitigation measures identified in the EIR are analogous to those that have been upheld by the courts. Specifically, the mitigation measure that the Appellant claims is deferred (Mitigation Measure 4.6-1) requires the installation of specific measures to avoid runoff increases and sedimentation, such as gravel berms, small detention structures, or rock checks; in addition to identifying which types of structures, it also identifies exact locations by block where they are required. The “vague County standards” are listed in Section 4.6.2 of the EIR and include Napa County General Plan Policy CON-50, which requires a no-net-increase in peak runoff for 2-, 10-, 50-, and 100-year storm events. As such, the Lead Agency has not improperly deferred any mitigation as defined by CEQA Guidelinessection 15126.4.

In addition, as a result of mitigations and voluntary reductions by the Applicant, blocks requiring detention structures have been eliminated and the design details for the gravel berms were finalized and included with the final Erosion Control Plan submitted to Napa County.

**Citations**: EIR, section 4.6.2; EIR, Mitigation Measure 4.6-1.

**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 LRC asserts that the EIR utterly fails to assess the potentially significant landsliding impacts the berms and detention basins could cause by allowing runoff to escape through overtopping or infiltration through the soil. (Guidelines, section 15126.4(a)(1)(D).)

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

See the response to LRC’s twenty-fifth ground of appeal.

**Citations**: See citations for response to LRC’s twenty-fifth ground of appeal.

**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 LRC asserts that the increase in infiltration associated with deep ripping is short-lived and infiltration rates will revert back towards original pre-tillage values. Thus, the estimated project runoff rates will occur only immediately after vineyard construction and the EIR fails to accurately assess/quantify the long-term changes in runoff rates and the associated erosion potential.

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

Hydrologic soil group (HSG) is a parameter used to define a soil’s ability to infiltrate surface water. HSG is a soil property dictated by the water transmitting soil layer with the lowest saturated hydraulic conductivity and depth to the impermeable layer or depth to water table (whether that be clay barrier, rock layer, etc.). The Natural Resources Conservation Service (NRCS), which is the authority on HSG subject matter, states in the National Engineering Handbook (NEH), Part 630 Chapter 7, that infiltration rates can increase in soils where there is an increase in soil depth to an impermeable layer. This is also described in subsection 4.6.1-2 of the EIR, which states that “[s]oil infiltration beneath this layer is largely a function of the underlying bedrock, particularly for the shallow soils…” (page 4.6-7).

This is relevant to the Walt Ranch Project, and to many vineyard projects in Napa County, as the modification of HSG has been used by numerous engineers throughout Napa County for many years during preparation of hydrologic modeling of proposed vineyard developments. This procedure involves the reclassification of certain soil types from HSG “D” to HSG “C” as a result of vineyard development practices. Previous NRCS guidance provided in 2008 and 2014 has supported the notion that, as a result of the vineyard development process, deep ripping will fracture and remove portions of shallow bedrock and therefore will increase the soil depth to the impermeable layer. Fractured rock remaining in the developed soil matrix will not reconsolidate and the increase of soil depth is permanent. As such, the HSG changes are due to the breaking up of a rock barrier, not the tilling or ripping of the surface soil.

Concerns have been raised that any reduction in HSG due to deep ripping will be short lived because soils will reconsolidate after multiple wetting and drying cycles. The concern is that, while infiltration rates following deep ripping may increase over the short term, there will be no increase in infiltration rates over the long term. If this concern is correct, then modeling should not assume that the HSG categorization should change as a result of deep ripping in rocky soil types. However, infiltration rate alone is not the only factor used to assign HSG. In this instance, the specific soils where credit for HSG reduction takes place are stony loam soils such as Hambright-Rock Outcrop complex. In these soils, the designation of HSG “D” is based solely on the shallow depth to bedrock, which causes moderate to rapid runoff rates. The soil constituent of this complex (Hambright) by itself contains infiltration properties that would place it in HSG “C” or HSG “B”, which indicate more infiltration potential and lower runoff rates. Ripping and fracturing of the shallow bedrock layer will only add additional coarse aggregate to the existing Hambright part of the soil complex and is not expected to further reduce the inherent permeability of the Hambright portion in and of itself.

It is important to note that the EIR’s hydrologic analysis only takes into account increased infiltration rates for ripping in rocky soil complexes where shallow bedrock barriers exist. The fracturing of monolithic bedrock by ripping will increase the depth class of the soils and therefore increase infiltration. This increase in infiltration will occur over both the short and long term, as the bedrock will not recompact the way a fine-grained soil would. This is explained in Impact 4.6-1 of the Draft EIR:

[W]ith certain soils onsite, such as the Hambright soil type, ripping the consolidated bedrock to create the vineyards will convert the hydrologic soil group from a “D” to a “C.”…In Capell Creek watersheds, no credit can be taken for the ripping practice since these areas do not exhibit rocky soils, except in subwatershed 10 where 3.7 acres of rocky soils do occur.

In an effort to provide scientific data that supports the claim of HSG modification, a site investigation was performed on October 20, 2016 at Walt Ranch on an existing vineyard block that was developed in 2006. A complete technical report detailing the results of this testing has been provided to County staff. As a part of this onsite investigation, a total of nine test pits were excavated and evaluated by Mr. Ken Oster of NRCS, who also provided his report to Napa County staff. The test pits were excavated both inside the vineyard block and in adjacent areas that had not been affected by construction activities.

Excavation of the test pits confirmed that the depth to a water-impermeable layer inside of the developed vineyard block had permanently increased when compared to pits that were dug outside of the development area. The changes in depth were a direct result of construction activities and place the HSG in a different category based on the criteria given in the NEH. Data from the infiltration testing were analyzed to calculate the field saturated hydraulic conductivity, which is the other parameter for HSG classification. Results concluded that the soil within the developed vineyard block contained saturated hydraulic conductivity values that, together with the increased depth, place the soil in a different HSG when compared to the pre-development condition. The findings from this investigation support the use of modified HSG for hydrologic modeling purposes. Please note that Mr. Oster categorizes the soil within the 10-year-old vineyard as Hydrologic Soil Group “B”. Modeling for the Walt Ranch project used a modified HSG of “C”, which is a more conservative value.

In summary, a site-specific investigation of the disturbed soil condition has occurred in accordance with the revised NRCS guidance, and has conclusively demonstrated that the vineyard development process permanently modifies HSG in the rocky soils present on portions of the Walt Ranch. In fact, the hydrologic modeling prepared for the Walt Ranch Project used a conservative HSG modification from “D” to “C” within these soil types.

In addition, Condition of Approval 16 was added to require pre- and post-development soil testing to identify the natural/undisturbed and modified hydrologic soil group to confirm that the soils have in fact been modified in a manner that decreases runoff on a long term basis. If the testing shows that the soils have not been modified in the manner expected, additional best management practices and a revised ECP will be required. Additional CEQA review may also be required.

**Citations**: Natural Resources Conservation Service, National Engineering Handbook, Part 630, Chapter 7; EIR, section 4.6.1-2; EIR, Impact 4.6-1; Field Testing for Determination of Hydrologic Soil Group on Developed Vineyard at the Walt Ranch, October 28, 2016, prepared by PPI Engineering; Soils Report of Hydrologic Soil Groups at Walt Ranch, October 21, 2016, from Mr. Ken Oster, NRCS, to Mr. Nate Galambos, Napa County PBES; County Staff PowerPoint presentation, Board of Supervisors 11/18/2016 and 12/6/2016 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 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 LRC asserts that a determination of the changes in runoff from vineyard blocks based solely on a qualitative analysis of runoff curve number can lead to incorrect conclusions and unmitigated impacts. Appellant claims that this also calls into question the suitability of the EIR in identifying and evaluating the potential adverse impacts associated with project erosion control measures/structures. Appellant states that the project vineyard drainage elements were not included in the modeled post-project stormwater runoff estimates.

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

Regarding the inclusion of drainage elements, calculations for increase in peak runoff are based upon the time of concentration (Tc), as explained in the “Hydrology Analysis Methodology” subsection of the EIR (page 4.6-2). In addition to being disclosed in the body of the EIR (Impact 4.6-1) and the Hydrologic Analysis (Appendix G of the Draft EIR), a supplemental memo was prepared by RiverSmith Engineering (May 25, 2016) and included as Attachment D to the Responses to Final EIR Comments memo. Further clarification provided in the Responses to Final EIR Comments memo stated that “only project drainage modifications that were along the longest hydrologic path were considered in the computation of time of concentration. Modifications to drainage paths that are off the longest path will not change the time of concentration and therefore are not considered in the computation.

In the cases where there is an improved drain off the longest hydrologic path, there can be a change in the shape of the hydrograph by bringing in some of the runoff sooner than in the pre-project condition, but it will not increase the peak runoff; this only occurs when the entire watershed is contributing from the most hydraulically distant point. An improved drainage in itself does not create more water, and if it is off the longest hydrologic path, it cannot increase the peak flow.”

Small increases in peak runoff were modeled on the Capell Creek portion of the property, as discussed in Impact 4.6-1. Mitigation Measure 4.6-1 of the EIR required numerous measures which were incorporated into the final ECPA to mitigate the peak runoff increases and reduce the potential impact to less-than-significant levels. An additional analysis included in Appendix F of the Hydrologic Analysis identifies potential runoff increases from each proposed vineyard block based on parameters related to changes in land cover and hydrologic soil group (see Grounds for Appeal No. LRC23). The curve number (CN) is a value derived from these parameters and indicates the potential runoff from a given site. In general, an increase in CN relates to less infiltration and by extension more runoff. The effect of engineered drainage structures potentially conveying storm runoff faster than natural drainages is typically obscured by changes in CN when analyzing relatively small watershed areas.

The Appellant provided a sample analysis of Block 21B and claimed that including the drainage infrastructure resulted in large increases in peak flow. RiverSmith Engineering attempted to replicate these results for Block 21B in an additional supplemental memo (November 3, 2016) using the same assumptions stated in the Appellant’s letter. The Appellant’s model estimated a runoff rate of 20 cubic feet per second (cfs) peak flow for the 100-year storm event from a 2-acre site, which is greater than 10 cfs per acre. A more realistic flow rate in Napa County agricultural watersheds is typically 1 to 2 cfs per acre for the 100-year storm. Although the results of RiverSmith’s analysis show that the Appellant’s data does not appear to be valid, the exercise did provide further validation of the qualitative method used in the Walt Ranch hydrologic analysis. The sample block chosen by the Appellant “showed a small reduction in peak flow post-project rather than the large increases reported in [Kamman’s] letter. [RiverSmith’s] computations demonstrated a slight reduction from 4.2 cubic feet per second (cfs) to 4.1 cfs for the 100-year event, which corresponds with the slight decrease in composite curve number.”

RiverSmith concludes, “A qualitative approach to mitigate potential increases within small watersheds (less than 5 acres) based on predicted increases in curve number are appropriate given the short overall travel times and minor changes to peak flow.”

The results of supplemental hydrologic modeling for the final 209-acre vineyard were submitted to the County with the final ECPA. The attached RiverSmith Engineering memo (November 3, 2016) also concludes the “revised hydrologic modeling incorporates all mitigations and the results now fully meet the no-net-increase requirement.” Therefore, there is no potential for increased sediment production caused by increases in peak runoff because there are no increases in peak runoff, in compliance with Napa County General Plan Policy CON-50.

**Citations**: EIR, p. 4.6-2; EIR, Impact 4.6-1; EIR, Mitigation Measure 4.6-1; EIR, Hydrologic Analysis, included as Appendix G; Riversmith, 2016, Memorandum Re: Discussion of Walt Ranch Hydrology Comments by Kamman Hydrology and Engineering, April 2, 2016; County Staff Presentations, Board of Supervisors 11/22/2016 and 12/6/2016 Meetings; Memorandum from Riversmith Engineering to Brian Bordona, November 3, 2016.

**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 LRC asserts that a number of vineyard blocks discharge runoff from vineyard blocks directly onto mapped landslides and that project activities may increase the potential to reactivate these slides. Appellant also states that the March 2016 landslide damage to State Route (SR) 121 is indicative of land instability issues in the area.

**Findings and Decision**: The Board finds and determines that the potential for the Walt Ranch Project to impact slope stability (including landslide potential) was thoroughly reviewed by Gilpin Geosciences Inc. for the larger Proposed Project. This analysis, included as Appendix F of the Draft EIR, provided several recommended measures to ensure slope stability which were incorporated into the EIR and MMRP as Mitigation Measure 4.4-3. These measures included, but were not limited to, limiting ripping depths in specific blocks, requiring keyways for rock repository areas, constructing sub-drains to reduce saturated conditions, and increasing setbacks from active landslides. The Gilpin Geosciences Inc. report (2013) concludes that proposed development of vineyard blocks on dormant or ancient landslides will improve the slope stability of the underlying or downslope deposits by controlling the surface runoff to outlet on erosion resistant or controlled surfaces. Such surface runoff controls proposed include wattles, rolling dips, rock and pipe level spreaders, diversion ditches and rock energy dissipaters. These surface erosion improvements combined with the presence of inactive, dormant or ancient, deep-seated (greater than 20 feet in depth) landslides combine to reduce the chance of future slope instability.

As required by Mitigation Measure 4.4-3, the final ECPA submitted to the County on July 11, 2016 included those measures to avoid potential slope stability issues. Another geological review was conducted of the final 209-acre vineyard development plan and was submitted to the County with the final ECPA. Per Gilpin, the “document is in substantial conformance with our recommendations and that it incorporates all geological and geotechnical mitigations and requirements presented in our “Engineering Geological Evaluation”, dated 6 March 2013 as well as revisions in response to various comments to the draft EIR.”

The Appellant contends that having erosion control measures discharging near dormant landslides is inappropriate in blocks 31A, 40B, 50, 52, 54, 57 and 61. It should be noted that blocks 40, 52, and 57 were all specifically called out in Mitigation Measure 4.4-3 as requiring additional protective measures, which were incorporated into the final ECPA. As a result of the Appellant’s assertions, the engineering geologist provided another technical review of each of these vineyard blocks. While each listed block was reviewed, only Block 54 remains in the project following mitigation. The detailed analysis for this block from the Gilpin memo is included below:

“Block 54 is located on the nose of a prominent upland ridgeline above Capell Creek. It is not located on any identified landslide deposit. Dormant landslides are mapped downslope of the proposed vineyard to the north and southeast. A steep slope with a drainage at lower elevations lies to the northeast of the block. The Erosion Control Plan shows a rock energy dissipater proposed for the northwest edge of the vineyard block located above a drainage channel that flows across the dormant landslide that lies north of the block. A minimum two foot high gravel berm is proposed for the northeast downslope edge of the block above the steep slope and drainage.

It is our opinion that the proposed construction of the Block 54 vineyard will reduce the sheetflow energy an improvement over the existing condition, and will not adversely impact the stability of the dormant landslides. The landslides mapped in the vicinity of Block 54 are characterized as dormant slump or slump-flow type deposits with an estimated depth of 5 to 15 feet. The proposed storm water control improvements for Block 54 will reduce the potential for surface runoff to impact the existing dormant landslides. At present the largest part of the proposed Block 54 drainage area is directed at the northeast edge with the steep slope and drainage channel downslope. The newest revisions show an additional set back from the top of this slope, and placement of a proposed gravel berm to reduce the surface sheet flow velocities. Likewise, the rock energy dissipater at the northwest edge of the vineyard will reduce the erosion power of the drainage channel through the downslope dormant landslide.”

As indicated in the Gilpin memo detailing the results of additional in-depth geologic review of the blocks listed by the Appellant, there are no significant impacts that were not assessed within the EIR, and all relevant mitigations were incorporated into the final ECPA. Although no significant stability impacts have been identified, only one of the blocks listed by the Appellant remain in the final ECPA after the inclusion of avoidance mitigation measures.

In addition, Gilpin Geosciences, Inc. provided an assessment of the recent SR 121 failure that occurred on March 13, 2016 to determine whether this event is relevant to the potential for unstable slopes in the Walt Ranch vicinity. Gilpin visited the site and concluded that the road failure was a result of several factors, including vulnerable road alignment caused by cut slopes up to 35 feet in height, under-designed culverts, and lack of attention to ongoing road failure as evidenced by 4 to 5 feet of accumulated asphalt on the downslope road edge. Gilpin concluded that the vineyard development at the Walt Ranch does not incorporate any of the aforementioned factors that led to the slide at SR 121.

**Citations**: EIR, Mitigation Measure 4.4-3; Gilpin Geosciences Inc. Report, 2013; Engineering Geological and Geotechnical Evaluation, Walt Ranch ECPA/EIR, July 5, 2016, from Lou Gilpin of Langan Treadwell Rollo; Gilpin Geosciences, Inc. Technical Memorandum Re: Response to Comments from Kamman Hydrology and Engineering, Inc., September 27, 2016; Gilpin Geosciences, Inc., Memorandum Re: Highway 121 Failure 13 March 2016, from Lou Gilpin to Brian Bordona, October 26, 2016; County Staff PowerPoint presentation, Board of Supervisors 11/18/16 and 12/6/2016 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 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 LRC asserts that the project Water Quality Monitoring Program should include the measurement of sediment yields entering and exiting the project site as a necessary approach at monitoring erosion from the site and potential impacts to aquatic and riparian resources in Milliken Creek downstream of the Project.

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

Turbidity monitoring is required within the Water Quality Monitoring Plan. As explained in greater depth in response to Circle Oaks’ fifth ground of appeal (see Resolution No. 2016-181), 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). These measures include maintenance of appropriate stream and wetland buffers, ensuring no-net-increase in runoff and erosion, development and enforcement of a HMBP, following SOPs, restrictions on agrichemical mixing and application, restrictions on use and storage of oil, and upgrading rocked water crossings prior to use. Substantial evidence provided within the record details how each of these mitigation measures “avoid or *substantially lessen*” the project’s significant impacts. (Pub. Resources Code, section 21002.)

Furthermore, in addition to these protective measures for water quality, 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 adopted by the Board.

This Water Quality Monitoring Plan is a voluntary effort between the City of Napa and the Applicant and was not required to reduce an impact to less-than-significant levels, and as such is not subject to regulation by Napa County with this Appeal. However, in order to acknowledge the Appellant’s concerns, it should be noted that turbidity monitoring is required within this Plan at each of the nine locations shown therein.

**Citations**: Water Quality Monitoring Plan; see citations for response to Circle Oaks’ fifth ground of appeal (see Resolution No. 2016-181).

**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 LRC asserts that the recharge rate presented in the groundwater analysis is artificially high because it is a composite recharge rate derived from watershed areas that, in addition to Sonoma Volcanics, include large areas of alluvium and other rock types.

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

As discussed in the response to LRC’s ninth ground of appeal, the estimates of groundwater recharge as a percentage of rainfall presented in the EIR are reasonable and are supported by many sources. As discussed therein, the analysis assumed a conservative deep percolation percentage of 7 percent of the average annual rainfall, although a value of 9 percent value would be supportable (page 48 of Appendix D).

The Appellant’s statement that the “volcanic bedrock” aquifers in the San Juan Islands area of Washington are better suited for comparison to the Sonoma Volcanics than data derived from USGS Water Resources Investigation Reports WRI 77-82 and WRI 03-4229, or derived from the report titled “Updated Hydrogeologic Conceptualization and Characterization of Conditions, Prepared for Napa County,” is misleading and scientifically unsound. The three studies listed above analyze data derived from the Milliken Creek watershed in Napa County, the same watershed in which a vast majority of the volcanic rock portion of the Walt Ranch property lies.

Further, the Appellant’s assertion that the referenced USGS study by Orr, Bauer and Wayenberg (2002) addresses aquifers comprised of rock types similar to the Sonoma Volcanics is misleading and inaccurate. The Sonoma Volcanics are relatively young, of Plio-Pleistocene geologic age (i.e., less than ±2.6 million years). In the area of western Washington State that is the focus of the USGS study (Water Resources Investigations Report 02-4114), the “volcanic” rocks are very old (of Triassic to Devonian age, i.e., roughly 200 million to 416 million years) and are actually described as “metavolcanics rocks” on a geologic map of the area. A metavolcanic rock is a type of volcanic rock that underwent metamorphosis after its original disposition, i.e., it was subjected to elevated temperatures and pressures which caused varying degrees of recrystallization of the original volcanic material rock. Thus, this geologically much older variety of volcanic rock is harder and much more competent, and therefore, much less fractured, than the geologically much younger and well fractured, and clearly not metamorphosed, Sonoma Volcanics that underlie the Walt Ranch property.

The EIR presented a range of supportable groundwater recharge estimates based on best available science and based on peer-reviewed data sources specific to the watershed in question. No consideration should be given to the misleading information provided by the Appellant related to the USGS 2002 study focused in Washington State, as it is not applicable to the project site.

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.

**Citations**: EIR, Appendix D; USGS, 1977, Ground-water hydrology of the Lower Milliken-Sarco-Tulocay Creeks Area, Napa County, California. Johnson, M.J, USGS Water-Resources Investigations 77-82; USGS, 2013, USGS Circular 1376, *Streamflow Depletion by Wells – Understanding and Managing the Effects of Groundwater Pumping on Streamflow;* Luhdorff & Scalmanini Consulting Engineers and MBK Engineers (LSCE&MBK), 2013, *Updated Hydrogeologic Conceptualization and Characterization of Conditions*, January 2013, prepared for Napa County; Orr, L.A., Bauer, H.H., and J.A. Wayenberg, 2002, *Estimates of groundwater recharge from precipitation to glacial-deposit and bedrock aquifers on Lopez, San Juan, Orcas, and Shaw Islands, San Juan County, Washington*, USGS Water-Resources Investigations Report 02-4114, 122p; Logan, R.L., 2003, Geologic Map of the Washington Portion of the Roche Harbor 1:100,000 quadrangle: Washington Division of Geology and Earth Resources, Open File Report 2003-17, scale 1:100,000; County Staff PowerPoint presentation, Board of Supervisors 12/6/2016 Meeting; 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-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 LRC asserts that the responses to comments provided on the Draft EIR and Final EIR were never adequately addressed.

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

The County has made a good faith effort to adequately respond to all comments as evidenced by the Final EIR, Response to Final EIR Comments memo, and the staff reports provided to the Board. Responses to comments need not be exhaustive; they only need to demonstrate a good faith, reasoned analysis. (CEQA Guidelinessection 15088(c).; *Towards* *Responsibility in Planning v. City Council* (1988) 200 Cal.App.3d 671.) A general response to a general comment is sufficient. (*Paulek v. Department of Water Resources* (2014) 231 Cal.App.4th 35.)

The contents of the Final EIR match CEQA Guidelinessection 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. CEQA does not require written responses to comment letters received on a Final EIR; however, Napa County prepared a “Responses to Final EIR Comments Memorandum” that was circulated with Director Morrison’s August 1, 2016 decision packet.

**Citations**: EIR, Responses to Comments.

**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 LRC asserts that the Updated MMRP which requires that a qualified biologist be involved during bullfrog eradication efforts for eggs, larvae, and sub-adult bullfrogs is inadequate. Appellant states that Mitigation Measure 4.2-11 should not allow persons knowledgeable in the identification of the species (i.e., a worker who has been trained by a qualified biologist and has obtained the appropriate fishing license) to capture and remove adult bullfrogs.

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

Final EIR Response to Comment A7-13 explains that bullfrogs are a nonnative species that are predators to many native species of concern, including FYLF and CRLF. Therefore, the establishment of bullfrogs in the proposed groundwater storage reservoirs may have a significant impact on special status amphibians. Mitigation Measure 4.2-11 was expanded to include invasive species management at the request of California Department of Fish and Wildlife (CDFW). The invasive species removal techniques are mentioned in the CDFW comment letter and have been utilized in other vineyard projects in northern California without causing detrimental impacts to native species.

Based on comments provided by the Appellant to the Final EIR, the language of Mitigation Measure 4.2-11 was updated for the final MMRP to provide a more conservative approach and to minimize the potential for accidental disruption to the eggs or tadpoles of other frog species. The previous version of the language was vague on which bullfrog life stage the knowledgeable person could remove. Due to the Appellant’s concerns that younger life stages (i.e., eggs, larvae, and sub-adults) are more difficult to differentiate, Mitigation Measure 4.2-11 now limits the direct removal efforts to adult specimens only. Controlling or eliminating non-native species / predators (including bullfrogs) is recommended by the USFWS’s *Recovery Plan for the* *California Red-Legged Frog*.

**Citations**: EIR, Mitigation Measure 4.2-11; Final EIR, Response to Comment A7-13; USFWS, 2002, *Recovery Plan for the California Red-legged Frog*,available online at: https://www.fws.gov/carlsbad/SpeciesStatusList/RP/20020528\_RP\_CRLF.pdf; County Staff PowerPoint presentation, Board of Supervisors 12/6/2016 Meeting.

**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 LRC asserts that surveys for biological resources were completely inadequate and do not provide sufficient nor comprehensive data that support the conclusions in the Draft EIR and Final EIR.

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

This appeal ground is not specific enough to determine what, if any, inadequacies are being asserted. The surveyor’s qualifications have been discussed in depth in the EIR [refer to Final EIR Response to Comment O22-083 through Response to Comment O22- 095] and the Response to Final EIR Comments memo. As stated therein, “the surveyors’ qualifications were presented in Appendix A of the CRLF Survey Report (Appendix K of the Draft EIR), and they meet the established thresholds in the USFWS CRLF Guidance” (Final EIR Response to Comment O22-095). The USFWS does not require that a surveyor hold a CRLF permit: “the site assessment and survey methods recommended in this Guidance do NOT require the surveyor to have a permit.” As stated below, the surveyor must be otherwise qualified to conduct the surveys.” In regards to timing of the surveys, Final EIR Response to Comments

O22-085 and O22-086 state:

“Although breeding season surveys were not conducted between January 1 and February 28 during the 2012 surveys, the survey timing and methodology are acceptable under the USFWS CRLF Guidance (USFWS, 2005):

‘Surveys may begin anytime during January and should be completed by the end of September. Multiple survey visits conducted throughout the survey-year (January through September) increases the likelihood of detecting the various life stages of the CRLF. For example, adult frogs are most likely to be detected at night between January 1 and June 30, somewhere in the vicinity of a breeding location, whereas, sub-adults are most easily detected during the day from July 1 through September 30. Due to the geographic and yearly variation in egg laying dates, it is not possible to specify a range of dates that is appropriate for egg surveys throughout the range of the CRLF.’

The Guidance does recommend that the best period for detecting CRLF egg masses in Northern California along the coast and interior to the Coast Range (north of Santa Cruz County) is between January 1 and February 28. However, this does not invalidate the surveys, as they were conducted following the recommendations of the protocol and within the timing to locate adult CRLF.”

Refer to response to LRC’s fourth ground of appeal regarding the environmental baseline for CRLF that was presented in the EIR.

**Citations**: EIR, Responses to Comments O22-083 through O22-095; Response to Final EIR Comments Memorandum; CRLF Survey Report, included as Appendix K to the Draft EIR; USFWS, 2005, Revised Guidance on Site Assessments and Field Surveys for the California Red-legged Frog, available online at: http://www.fws.gov/sacramento/es/documents/crf\_survey\_guidance\_aug2005.pdf; County Staff PowerPoint presentation, Board of Supervisors 12/6/2016 Meeting.

**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 LRC asserts that the Draft EIR and Final EIR did not identify and address all potential impacts to special-status species and their habitats.

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

See responses to CBD’s sixth ground of appeal (CRLF), eighth ground of appeal (WPT and FYLF), ninth ground of appeal (VELB), tenth ground of appeal (peregrine falcons and white-tailed kite), thirteenth ground of appeal (Contra Costa goldfields), and seventeenth ground of appeal (various listed species) (see Resolution No. 2016-182).

**Citations**: See citations for CBD’s sixth, eighth, ninth, tenth, and thirteenth grounds of appeal (see Resolution No. 2016-182).

**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 LRC asserts that the mitigation measures are inadequate to mitigate the impacts identified, and argues that CRLF and FYLF are not mentioned in the MMRP.

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

Mitigation Measure 4.2-11 provides numerous measures to avoid or substantially lessen impacts to CRLF and FYLF in accordance with Pub. Resources Code, section 21002. Refer to the response to LRC’s fourth ground of appeal and CBD’s sixth ground of appeal (see Resolution Nos. 2016-180 and 2016-182).

**Citations**: EIR, Mitigation Measure 4.2-11; See citations for response to LRC’s fourth ground of appeal and CBD’s sixth ground of appeal (see Resolution Nos. 2016-180 and 2016-182).

**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 LRC asserts that the Draft EIR and Final EIR do not represent good faith efforts, do not use the best available science, and in general, make conclusory statements that are not supported by the peer-reviewed literature or in fact, even the small amount of data they did collect.

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

This appeal ground provides no specific examples of how the EIR fails to represent a good faith effort, make use of best available science, or use conclusory statements. Based on the voluminous record supporting the conclusions of the EIR as reflected in the Draft EIR, Final EIR, and the responses provided herein, the conclusions of the EIR are supported by substantial evidence based on best available science and establish that a good faith effort has been made to evaluate and mitigate the project’s environmental impacts. See responses to CBD’s forty-seventh ground of appeal and LRC’s thirty-fourth ground of appeal (see Resolution Nos. 2016-182 and 2016-180).

**Citations**: See citations for responses to LRC’s thirty-fourth ground of appeal and CBD’s forty-seventh ground of appeal (see Resolution Nos. 2016-180 and 2016-182).

**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 LRC asserts that the written responses did not offer additional factual information or analyses to support the response, and the major environmental issues raised were not addressed in detail nor were reasons articulated as to why specific comments and suggestions were rejected.

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

The County has made a good faith effort to adequately respond to all comments as evidenced by the Final EIR, Response to Final EIR Comments memo, and the staff reports provided to the Board. Responses to comments need not be exhaustive; they only need to demonstrate a good faith, reasoned analysis. (CEQA Guidelines section 15088(c).; *Towards Responsibility in Planning v. City Council* (1988) 200 Cal.App.3d 671.) A general response to a general comment is sufficient. (*Paulek v. Department of Water Resources* (2014) 231 Cal.App.4th 35.)

As it relates to specific concerns raised by the Appellant, it is unclear how the responses to comments were dismissive or not in-depth. In the Final EIR, 11 pages were devoted to respond to Comments O22-083 through O22-122 and updates were made to the EIR text where necessary as a result of specific concerns brought up by the Appellant. In the Response to Final EIR Comments memo, 7 pages were used to clarify or elaborate on issues raised by the Appellant. As discussed in response to LRC’s twenty-ninth ground of appeal, Mitigation Measure 4.2-11 was revised in direct response to the Appellant’s concerns. Numerous peer-reviewed articles and government publications were reviewed and cited in order to provide detailed responses using best available science, including information from the Bio-Integral Research Center, the Biological Conservation journal, Cornell University, the Journal of Herpetology, CDFW and USFWS. It is unclear how this has been dismissive or shows a lack of detail.

**Citations**: EIR, Mitigation Measure 4.2-11; Final EIR, Responses to Comments O22-083 through O22-122; Response to Final EIR Comments Memorandum.

**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).

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

The Board hereby incorporates by reference all findings and decisions made in connection with Appellants CBD, Sierra Club, and Circle Oaks’ Appeals as set forth in Resolution Nos. 2016-182, 2016-183, and 2016-181.

**Section 4. Conditions of Approval.**

The Board modifies 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 thirty-fourth grounds of appeal to LRC’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 modified Conditions of Approval and amended Updated MMRP, attached as Exhibits A and B and incorporated herein by reference;
5. Modifies the Conditions of Approval and Updated MMRP adopted by the Director and finds that the Modified Conditions of Approval and amended Updated MMRP, attached as Exhibits A and B, are both necessary and well justified; and
6. Adopts the Modified Conditions of Approval and amended Updated MMRP, attached as Exhibits A and B.

**Section 8. Effective Date.**

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

**Section 9. Judicial Challenge.**

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

**THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED** by the Napa County Board of Supervisors, State of California, at a regular meeting of said Board held on the 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