



via usps and e-mail

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Dear Ms. Cahill,

These comments are submitted on behalf of the Center for Biological Diversity (“Center”) and the Napa Group Sierra Club (collectively “conservation groups”) on the Draft Environmental Impact Report (“DEIR”) for the proposed Walt Ranch vineyard development project (“Project”). The DEIR fails to adequately analyze a range of environmental impacts, mitigation measures, and alternatives. At a minimum, the DEIR must be revised and recirculated to remedy these deficiencies. The Project must also be revised to resolve its conflicts with the County of Napa General Plan, failure to comply with the California Environmental Quality Act (CEQA) as well as the California Endangered Species Act (CESA).

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has 800,000 members and online activists throughout California and the United States. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in Northern California.

The Sierra Club is a national nonprofit organization of over 732,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth’s ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Over 193,500 Sierra Club members reside in California. The Napa Sierra Club focuses on issues within Napa County.

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While the DEIR's shortcomings are numerous, this letter focuses specifically on the DEIR's analysis of the project's impacts on biological resources, traffic, water resources, air quality, and greenhouse gases.

I. Biological Resources

The DEIR provides conflicting information between its appendices and its EIR regarding the California Red Legged Frog ("CRLF") and the Valley Elderberry Longhorn Beetle ("VELB"). The DEIR also ignores potential impacts to the Contra Costa goldfield and allowed vineyard development on the species' critical habitat, which occurs over a large area on the southwest portion of the Walt Ranch property. The County's analysis overlooks the lost ecosystem value of the largest old growth trees on the Walt Ranch property which will be destroyed by the developer to create vineyard land. The DEIR downplays this habitat value loss by erecting exclusionary fencing around vineyard plots scattered across the Walt Ranch property. Additionally, the DEIR fails to discuss effects on special status species despite requests from the U.S. Fish and Wildlife Service ("USFWS") for further analysis or that biologists sighted at the Ranch. Finally, several of the mitigation measures meant to alleviate the Project's significant impacts on biological resources are based on incomplete analysis and are therefore inadequate.

A. California Red Legged Frog

1. The DEIR fails to establish an accurate baseline for the California red-legged frog

An EIR must accurately identify the significant impacts that would result from a proposed project. (14 Cal. Code Regs., tit. 14, § 15126.2(b) [hereinafter "CEQA Guidelines"].) An EIR must determine significance in relation to an analysis of the physical conditions in the project area as they exist at the time of the notice of preparation. (CEQA Guidelines § 15125(a) & (e); "[T]he significance of a project's impacts can be ascertained only if the agency first establishes the physical conditions against which those impacts are to be measured." (MICHAEL H. REMY ET AL., GUIDE TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT 198 (11th ed., Solano Press 2007).) CEQA then requires the County to compare "what will happen if the project is built with what will happen if the site is left alone." (*Woodward Park Homeowners Assn, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 687.)

The DEIR fails to establish an accurate baseline for the California red-legged frog ("CRLF"). The CRLF is listed as threatened under the federal Endangered Species Act ("FESA"). (Napa County, Walt Ranch Erosion Control Plan Application No. P11-00205-ECPA: Draft Environmental Impact Report 4.2-58 (2014) [DEIR].) Critical habitat for the CRLF lies only 0.5 miles from proposed vineyard plots 22A-F, 46A1, 46A2, 46B, 47A1, 47A2, and 47B, in the northeast quadrant of the Project site. (DEIR, Fig. 3-4 (map of Walt Ranch proposed vineyard plots); Appendix K, Walt Ranch Erosion Control Plan Application No. P11-00205-ECPA: Draft Environmental Impact Report Appendices—Vol. II Fig. 3 (2014) [hereinafter "DEIR Appendices"] (map of CRLF critical habitat in relation to Walt Ranch).) The CRLF critical habitat and the northeast three-quarters of Walt Ranch are located in the Capell Creek watershed. (Appx. K, DEIR Appendices, at 7.)

Appendix K to the DEIR assumes CRLF to be present on all of the northeastern three-quarters of Walt Ranch property that is part of the Capell Creek watershed “because the Capell Creek watershed supports CRLF habitat.” (*Id.* at 1; DEIR, fig. 4-6.) Because survey biologists presume that CRLF are present in all of the northeastern three-quarters of the Walt Ranch property, they concluded they only needed to conduct CRLF surveys “within the Milliken Creek watershed, on the south[we]stern [*sic*] portion of the Walt Ranch property.” (Appx K, DEIR Appendices, 1, fig. 2; *see also U.S. Fish & Wildlife Service Species Search*, Appx. I, DEIR Appendices 1 (identifying CRLF as being present at or within the vicinity of Walt Ranch).)

However, contrary to the assumptions of the surveying biologists made in Appendix K that CRLF is likely present in the entire Milliken Creek watershed, Appendix M concludes that CRLF presence in all of Walt Ranch was “unlikely” because “protocol-level surveys in 2007 did not result in any findings of this [frog].” (Appx. M, DEIR Appendices, B-8.) The DEIR repeats this conclusion, simply stating that CRLF was not observed during the Milliken Creek watershed survey. (DEIR 4.2-33, 4.2-59-60.) The DEIR also stated the distance from Walt Ranch to the CRLF’s critical habitat to be “three miles northeast of the project site.” (*Id.* at 4.2-59.) These misleading and false assumptions undermine the DEIR analysis of impacts on this threatened species.

Appendix M and the DEIR misunderstood the significance of biologists only conducting a CRLF survey in the southwest portion of Walt Ranch. The DEIR and Appendix M inaccurately concluded that the absence of CRLF in the bottom quarter of Walt Ranch in the Milliken Creek watershed meant that CRLF were not present on the remaining three-quarters of Walt Ranch. This assumption, however, conflicts with the information before the County. Contrary to the County’s misconception, biologists chose not to survey the northern three-quarters of Walt Ranch that falls within the Capell Creek watershed because they did not see the need to survey in an area where they expected the frogs to be *present*. (Appx. K, DEIR Appendices, 1.) Thus, the DEIR underestimates the CRLF’s presence at Walt Ranch and the likely impacts on CRLF from the Project.

The DEIR also incorrectly states that the critical habitat for the CRLF occurs “three miles northeast of the project site.” (*Id.* at 4.2-59.) Because the County stated this critical habitat was much farther than it actually is (three miles as opposed to 0.5 miles), this statement misleads decision-makers and the public by providing the impression that CRLF critical habitat is too distant to be impacted by vineyard development at Walt Ranch. (Guidelines § 15125(a) & (e).)

Both of these errors discussed above result in the DEIR establishing an erroneous baseline from which to judge the Project’s impacts to CRLF. (Guidelines § 15125(a) & (e).) Since the County failed to establish an accurate baseline for the impacts on the CRLF, it deprives decision-makers and the public of an adequate means to determine the impact of vineyard development on this species. (Cal. Pub. Res. Code § 21003; *Woodward Park Homeowners Assn., Inc.*, 150 Cal.App.4th, at 687.) Prior to moving forward with this Project, the DEIR should be revised to more accurately reflect the Project’s impacts on CRLF on the Project site and on CRLF nearby critical habitat.

2. The DEIR's proposed CRLF mitigation is inadequate

The DEIR must include the full range of potentially significant impacts, as well as reasonably prudent avoidance, minimization, and mitigation measures in the EIR to comply with California Environmental Quality Act's ("CEQA") information disclosure requirements. (Cal. Pub. Res. Code § 21000 et seq.) CEQA requires the County to "mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." (Pub. Res. Code § 21002.1(b).) Mitigation of a project's significant impacts is one of the "most important" functions of CEQA. (*Sierra Club v. Gilroy City Council* (1990)222 Cal.App.3d 30, 41 (1990).) Importantly, mitigation measures must be "fully enforceable through permit conditions, agreements, or other measures" so "that feasible mitigation measures will actually be implemented as a condition of development." (*Federation of Hillside & Canyon Ass'ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.)

It is the "policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which will avoid or substantially lessen the significant environmental effects of such projects." (Pub. Res. Code § 21002.) Under CEQA, "[e]conomic unfeasibility is not measured by increased cost or lost profit, but upon whether the effect of the proposed mitigation is such that the project is rendered impractical." (*Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 600 (internal citation omitted).) Even where an EIR includes some actual discussion of economic infeasibility, it must still be sufficient "to allow informed decision-making." (*Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 884.)

Possibly because the County incorrectly assumed the Project would not harm CRLF individuals, it did not create a specially tailored set of mitigation measures for the CRLF. For its primary mitigation measure, the County adopted its proposed mitigation for western pond turtles—a protected reptile that is in no way biologically similar or related to the CRLF. (DEIR 2-26.) As a secondary mitigation measure, Napa simply referred to the mitigation measure that dealt with the applicant obtaining a federal section 404 permit. (*Id.*) This mitigation measure focused solely on federal water quality compliance and not on protecting threatened biological resources in wetlands, such as the CRLF.

The County neglected to propose a mitigation scheme specific to CRLF that analyzed or would directly address the project's harm or the cumulative harm to the threatened CRLF or its critical habitat. The DEIR also found the Applicant did not need to obtain a federal incidental take permit ("ITP"), although the Project would potentially take individuals of this listed species. (*Id.*, at 2-26, 2-13; 16 U.S.C. § 1539(a).) Although elements of the mitigation measures regarding the western pond turtle and obtaining Section 404 permit may incidentally benefit CRLF, these measures cannot claim to directly respond to threats to CRLF, such as environmental stressors specific to CRLF or essential habitat features these frogs need to survive. (*See* Appx. K, DEIR Appendices, 5 (discussing CRLF essential habitat features); *U.S. Fish and Wildlife Service Species Search*, Appx. I, DEIR Appendices, 5 (effect of pesticide drift on CRLF); 75 Fed. Reg. 12,816, 12,816-18, 25 (Mar. 17, 2010) (discussing the effects of drought, water flow, CRLF life history, habitat types and uses, habitat connectivity, climate change, and pesticide use unique to the CRLF).) In fact, one of the mitigation measures the County proposed

for the western pond turtle was to install turtle exclusion fencing, which may impair CRLF dispersal and recolonization efforts. (DEIR, 2-26.)

In its designation of the critical habitat 0.5 miles away from Walt Ranch's doorstep, USFWS expressed special concern about habitat connectivity for the CRLF:

The long-term probability of the survival and recovery of the California red-legged frog is dependent upon the protection of existing breeding habitat and associated uplands (Fellers and Kleeman 2005, pp. 1, 17-18), the movement of individuals between aquatic habitat patches, and the ability to recolonize newly created or vacated habitats. Recolonization of vacant habitat patches, which is vital to maintaining the California red-legged frog populations and the recovery of this species, is dependent upon landscape characteristics, including appropriate distances between suitable breeding and non-breeding aquatic habitat, and limited fragmentation of interconnecting habitat. (75 Fed. Reg. 12,816, 12,818 (Mar. 17, 2010).)

However, nothing in the DEIR addresses the need to connect Walt Ranch CRLF habitat with the CRLF's critical habitat. Instead, the Project further fragments CRLF habitat on Walt Ranch.

Because the DEIR did not address any of the stressors and habitat needs specific to the CRLF in its proposed mitigation for this species, the DEIR fails to reduce Project impacts to CRLF to less than significant as required under CEQA. (Pub. Res. Code §§21002, 21002.1(b), 21081(a); 14 Cal Code Regs. §§ 15002(a)(3), 15021(a)(2), 15091(a)(1).)

3. The DEIR fails to adequately address and mitigate the impacts of pesticides on CRLF

In order to fully mitigate the likely impacts to CRLF and other sensitive species on site, the County must prohibit the use of harmful pesticides. Pesticides, insecticides, rodenticides, fungicides have damaging effects on amphibians such as the red-legged frog. (See EPA (2013); Amended Complaint for Declaratory and Injunctive Relief, *Center for Biological Diversity v. Environmental Protection Agency*, No. 3:11-cv-00293-JCS (filed June 5, 2013); Miller (2006); Litmans & Miller (2004).) For frogs, pesticides cause birth defects, brain defects, reproductive disorders, immune system dysfunction, cancer, and neurological disorders. (Litmans & Miller (2004), at 10-15.) Some pesticides may also directly kill or paralyze CRLF individuals. (*Id.* at 22.)

The DEIR's reliance on integrated pest management ("IPM") for the pond turtle and, thus, the CRLF, is ill-placed. IPM is entirely voluntary; it does not legally bind the Applicant to employ IPM strategies, and it only loosely defines which products the Applicant has promised not to use. (*Integrated Pest Management Memorandum*, Appx. N, DEIR Appendices, 1 (describing Applicant's voluntary adherence to use IPM).) Because the Applicant is under no legal compulsion to adhere to this promise, the County cannot and should not rely on this mitigation measure to reduce harm to CRLF individuals on or near the Walt Ranch property. (CEQA Guidelines § 15126.4(a)(2); *Federation of Hillside & Canyon Ass'ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 (mitigation measures must be "fully enforceable

through permit conditions, agreements, or other measures” so “that feasible mitigation measures will actually be implemented as a condition of development”).) Additionally, the DEIR does not point to any study or analysis that would suggest IPM is an effective means to mitigate harm to sensitive species, such as amphibians. Thus, the County DEIR fails to present IPM for the Project to interested members of the community from becoming fully informed of the benefits and risks of this form of mitigation. (Cal. Pub. Res. Code § 21002, 21003.)

The DEIR’s failure to prohibit certain pesticides is all the more glaring in light of recent litigation enjoining the use of 62 pesticide ingredients in Napa County. In 2006, the Environmental Protection Agency (“EPA”) entered into a stipulated injunction barring the use of 62 pesticide ingredients in and around CRLF habitat. (EPA (2012); *see also* Stipulated Settlement and Order, *Center for Biological Diversity v. Environmental Protection Agency*, No. 3:11-cv-5108-JSW (Nov. 4, 2013); Amended Complaint for Declaratory and Injunctive Relief, *Center for Biological Diversity v. Environmental Protection Agency*, No. 3:11-cv-00293-JCS (filed June 5, 2013).) Napa was one of the listed counties subject to this injunction. (*Id.*; *see also* EPA (2014) (map showing Walt Ranch as land subject to the injunction).) However, the DEIR makes no mention of this injunction, nor does it stop the Applicant from using any of the pesticides included in the injunction. The EIR must be revised to include this injunction, and should prohibit the use of any product that contains any of the enjoined ingredients in order to avoid harmful impacts to CRLF.

B. The DEIR fails to establish adequate mitigation measures for the foothill yellow legged frog

The County determined that the same mitigation measures it applied to the CRLF would reduce the impact to the foothill yellow legged frog (“FYLF”), a California species of special concern, to less than significant as well. (DEIR 2-26.) The above CRLF analysis should apply to the FYLF to the extent that these mitigation measures similarly misrepresent the general impacts to frog species, such as the FYLF.

C. The valley elderberry longhorn beetle

1. The DEIR fails to set an adequate baseline for the valley elderberry longhorn beetle

The DEIR fails to set a valid baseline for the valley elderberry longhorn beetle (“VELB”) because it based its conclusions on misstatements and invalid conclusions. The DEIR concludes that no mitigation was necessary to protect the VELB because it assumes no VELB were present on Walt Ranch. (DEIR 2-26, 2-27, 4.2-37.) The DEIR states that “focused entomological surveys conducted on the Walt Ranch property [citation] found that Mexican elderberry shrubs on the property provide habitat for the non-threatened California elderberry longhorn beetle and not the federally threatened valley elderberry longhorn beetle.” (*Id.* at 4.2-37 (citing R.A. Arnold, Report on the Threatened Valley Elderberry Longhorn Beetle on the Walt Ranch in Napa County, Entomological Consulting Services, Ltd. (2012) [hereinafter Arnold, *VELB Report*]).)

The DEIR’s appendices contradict the view espoused in the DEIR. Appendix M states that the VELB “has a high potential for occurring within the Project Area.” (Appx. M, DEIR

Appendices, 25.) It further states that “the presence of both riparian habitat and elderberry bushes suggests that VELB presence at Walt Ranch cannot be ruled out.” (*Id.*) Biologists further noted there might be another species of elderberry longhorn beetle, but that “the bore holes of the two subspecies are indistinguishable from one another” and that the only way to distinguish between the two species is through direct observation of adult beetles, which “can be very difficult due to the rarity of encountering adult beetles.” (*Id.*) Appendix M continues on to note that biologists found signs of elderberry longhorn beetles on Walt Ranch elderberry bushes, and that “VELB presence is typically assumed if it cannot be positively ruled out.” (*Id.*) This appendix determined that “[e]ncroachment within 100 feet of an elderberry shrub is considered an impact and will require mitigation,” and it delineated the exact mitigation required for each individual impacted shrub. (*Id.* at 25, 27 tbl. 2.)

In addition to Appendix M, Appendix I—a USFWS inventory of listed species within the vicinity of Walt Ranch—lists the VELB as present at or near Walt Ranch. (*U.S. Fish & Wildlife Service Species Search*, Appx. I., DEIR Appendices, at 1.)

Unfortunately, the DEIR completely disregards the findings in Appendices M and I, and instead misstates and overstates the sole source upon which it relies—a 2012 VELB survey conducted at Walt Ranch. The DEIR bases its determination not to mitigate any impacts to VELB on the assumption that VELB were not present at Walt Ranch. (DEIR 2-26.) The DEIR bases this determination on its erroneous conclusion that “Mexican elderberry shrubs on the property provide habitat for the non-threatened California elderberry longhorn beetle (CELB), but do not provide habitat for the federally threatened VELB.” (*Id.* at 4.2-37, 4.2-65 (citing Arnold, *VELB Report*.) The DEIR also concludes that exit holes on elderberry bushes made by elderberry longhorn beetles “were from the common California elderberry longhorn beetle” and not the VELB. (*Id.* at 4.2-120.) The 2012 VELB survey report—the only source the DEIR cites for its conclusions—makes statements that are the polar opposite of the assertions in the DEIR. The 2012 VELB report asserts that “[b]oth [the CELB and the VELB] feed on the same elderberries, have the same life histories, and make the same type of emergence or exit hole in the elderberry food plant prior to pupation by the larva.” (Arnold, *VELB Report*, at 3.) Thus, contrary to the DEIR’s conclusions, the 2012 VELB survey determined that the elderberry on Walt Ranch was suitable habitat for the VELB. (*Id.* at 8 (confirming the presence of elderberry longhorn beetles at Walt Ranch).) Because the 2012 VELB survey was the only source the DEIR cited in support of its assertions, the DEIR’s conclusions find no support in the record.

The DEIR uses the 2012 VELB survey to conclusively state that VELB are not present at Walt Ranch, and proposed no mitigation to the VELB or its habitat and food source, the Mexican elderberry. (DEIR 2-26, 4.2-37.) However, the 2012 VELB survey was anything but conclusive. In fact, the 2012 VELB survey corroborated the need for caution when dealing with VELB protections. The 2012 VELB report underlined how difficult it was to identify the VELB and how rare it was to locate them even in areas where they are known to exist. (*Id.* at 3, 8.) The VELB survey report noted that “[VELBs] generally occur at very low densities compared to most other insects,” and that, “at locations that support the VELB, [it is common to] observe[] only one or two adults on a particular date, and it is not unusual to find no adults.” (*Id.* at 8.) The 2012 VELB report also noted the extent of the VELB range is unknown (*Id.* at 5-6.) The VELB analysis in Appendix M recorded a VELB sighting approximately five miles away from the Walt Ranch elderberry bushes, which is likely near enough to establish connectivity between this

sighting and Walt Ranch. (Appx. M, DEIR Appendices, at 25 (recording recent VELB sighting near Walt Ranch); Arnold, *VELB Report*, at 7 (discussing VELB dispersal distance.) VELB may simply be harder to spot because they are rare. Additionally, contrary to the DEIR's conclusions, no information before it ever suggested there was any geographical or habitat limitations to VELB presence at Walt Ranch, and no information determined these beetles were absent from Walt Ranch. The rarity of the VELB combined with a nearby sighting and suitable habitat should compel the County to be more protective of the VELB, not less.

The 2012 VELB survey on which the DEIR relies on may also have underestimated VELB populations. The VELB survey biologists visually identified all CELB and VELB with mostly black elytra, or shells, as the more common CELB. (*Id.* at 4.) However, the VELB report noted how easy it was to misidentify the common variety of the elderberry longhorn beetle with the VELB, stating that, “[t]o further confound matters, the color pattern of the CELB *is identical to* one of the two color patterns of the VELB.” (*Id.* at 3 (emphasis added).) Even after recognizing this fact, the VELB survey biologists simply assumed that, because the elytra of the VELB is sometimes more red than black, that all mostly black shells it sighted were not VELB, but instead the more common CELB. (*Id.* at 3, 8.) The survey biologists did not note this fault in their survey. (*Id.* at 8.)

It is troubling that the DEIR completely ignored the analysis and suggested mitigation in Appendix M. The results of the 2012 VELB survey—the sole source of the DEIR's conclusions—are inconclusive and do not actually support the assertions in the DEIR. Because, at best, the 2012 VELB survey corroborates the uncertainty of VELB presence at Walt Ranch, this survey supports the finding of uncertainty in Appendix M. The DEIR cannot simply ignore the evidence before it in favor of more preferable interpretation. To establish a valid baseline, the County needed, at a minimum, to admit that VELB presence is likely, that VELB have previously been sighted in the area surrounding Walt Ranch, and that Walt Ranch contains suitable habitat for the VELB. As Appendix M confirms, the general protocol is to assume VELB presence where VELB presence is plausible. (Appx. M., DEIR Appendices, at 25.) A valid baseline would have addressed all of these issues in order to accurately depict the “physical conditions in the project area as they exist at the time of the [DEIR].” (Guidelines § 15125(a) & (e).) Because the DEIR fails to provide this baseline, neither it nor the interested public could compare “what will happen if the project is built with what will if the site is left alone.” (*Woodward Park, supra*, 150 Cal.App.4th, at 687.) The current VELB baseline only supplied the public with misinformation and false conclusions, thus failing to inform the public as required by CEQA. (Cal. Pub. Res. Code § 21002, 21003.)

2. The DEIR fails to provide adequate mitigation for VELB

The DEIR's incorrect baseline caused it to propose no mitigation for any VELB present at Walt Ranch. (DEIR 2-26.) This is in contrast to Appendix M, which provided detailed mitigation suggestions for each elderberry bush impacted. (Appx. M, DEIR Appendices, at 25, 27.) Appendix M's mitigation would have done much to mitigate VELB habitat loss on site, as it proposed planting multiple Mexican elderberry saplings to mitigate the impact to each elderberry. (*Id.*) Appendix M defines “impact” as “[e]ncroachment within 100 feet of an elderberry shrub.” (*Id.*) The appendix drew its mitigation suggestions from a U.S. Fish and Wildlife Service (USFWS) document titled *Conservation Guidelines for the Valley Elderberry*

Longhorn Beetle. (USFWS, *Conservation Guidelines for the Valley Elderberry Longhorn Beetle* (1999), available at http://www.fws.gov/sacramento/es/Survey-Protocols-Guidelines/Documents/velb_conservation.pdf.)

The results from the 2012 VELB survey are far from conclusive because they are more supported by guesswork than fact. Furthermore, the DEIR's conclusions are not supported by this survey. As Appendix M suggests, it is safer to assume VELB are present where VELB habitat is present. (Appx. M, DEIR Appendices, at 25.) The County's misguided assumptions, however, lead it to determine it was impossible for VELB to exist at Walt Ranch. (*See* DEIR, at 4.2-65.) This conclusion was erroneous and VELB likely do inhabit elderberry bushes at Walt Ranch. Because Walt Ranch provides suitable habitat for VELB, the safer course is to avoid or mitigate all impacts to elderberry bushes.

Because the County should assume members of the federally threatened VELB are present at Walt Ranch, it should also request that the Applicant apply for a federal incidental take permit ("ITP") as part of its required project impact mitigation. Lastly, the DEIR also fails to discuss the effect of pesticides on VELB populations. The EPA has assessed the effect of several pesticide ingredients on the VELB. (EPA (2013), at 27; USFWS (1999).) The County should prohibit the use of any product known to harm these beetles.

D. The DEIR proposes inadequate mitigation for Project impacts on the western pond turtle

The DEIR fails to include sufficient mitigation for the western pond turtle ("WPT")—a species of special concern. (DEIR 4.2-35.) The California Department of Fish and Wildlife ("DFW") defines a species of special concern as a species that, among other things, "is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status." (California Dep't of Fish & Wildlife, *Species of Special Concern* (last visited Oct. 9, 2014), <http://www.dfg.ca.gov/wildlife/nongame/ssc/>.) DFW aims to "achieve conservation and recovery of these animals before they meet California Endangered Species Act criteria for listing as threatened or endangered." (*Id.*) DFW states that species of special concern "should be considered during the environmental review process." (*Id.*; CEQA Guidelines § 15380(b)(B).) An impact to wildlife is significant where it "substantially reduce[s] the number or restrict[s] the range of an endangered, rare or threatened species." (CEQA Guidelines, § 15065.) DFW interprets this provision to apply to species of special concern, such as the WPT. (California Dep't of Fish & Wildlife, *Species of Special Concern, supra* ("[Section] 15065 of the CEQA Guidelines, which address how an impact is identified as significant, are particularly relevant to SSCs.")) The County must mitigate significant effects whenever feasible. (Cal. Pub. Res. Code § 21080.5(d)(2)(A).)

WPT are listed as species of special concern because their numbers have decreased due to increasing habitat destruction and disturbance, especially from farming operations, and depredation from invasive species, such as bullfrogs and bass. (Jennings et al. (1994); Spinks et al. (2003); Pilliod et al. (2013).) The DEIR notes that sensitive WTP nesting sites regularly occur up to 100 meters away from streams, but may occur as far as 400 meters from water. (DEIR 4.2-61.) The WPT also uses this upland habitat for hibernation and refuge. (*Id.* at 4.2-114 – 4.2-115.) WPT make wide-ranging use of their aquatic habitat, sometimes migrating more

than one kilometer per year. (Pilliod et al., *supra*, at 207.) The DEIR also lists “best management practices” or “BMPs” as proposed mitigation to WPT impacts. (*Id.* at 2-26, 4.2-118.)

The DEIR determines that the Proposed Project could significantly impact WPT (DEIR 2-24.) It proposes placing 50-foot buffers along streams, mostly to comply with federal water quality regulations. (DEIR 2-14.) The DEIR also asserts that this buffer would also be sufficient to maintain water quality for the WPT and the DEIR proposes setting aside a total of 486 acres for the turtle, 95 percent of the turtle’s pre-existing habitat. (*Id.* at 2-24-5.) Additionally, the DEIR relies on the Applicant’s voluntary integrated pest management (IPM) to maintain low levels of pesticides in the WPT’s streams and other habitats. (*Id.* at 2-26.) To protect these turtles from human activities, the DEIR proposes that the Applicant install turtle exclusion fencing around all vineyards near the WPT’s upland nesting and hibernation habitat. (*Id.* at 2-26.)

We note that the County-designated nesting habitat comprises a much narrower band around these important breeding areas than the WPT has been shown to use, and it is much narrower than is even allowed for the turtle’s other upland uses of hibernation and refuge. (*Id.* at 4.2-10.) The conservation groups are especially concerned about how near vineyard activities are to the WPT’s sensitive breeding habitat. Because WPT are known to nest as far as 400 meters away from streams, the County should require the Applicant to provide much more of this habitat than is currently proposed. (Pilliod et al., *supra*, at 207.) There currently exists no buffer between the vineyards and the proposed nesting habitat. If there is too much activity near these nesting sites, this may affect the WPT’s ability to reproduce at Walt Ranch. Both recognized nesting sites will border vineyards almost along their entire span. (*See* DEIR, fig. 4.2-10.) Figure 4.2-10 shows that several vineyard plots abut much of this habitat in an almost continuous fashion. (*Id.*) A non-exhaustive list of vineyard plots that would cut into nesting habitat includes lots 18A2, 18A3, 18A5, 19A3, 19B, 69, 20B, 21A, 21B, 42, 45A, and 45B. (*Id.*) Because the Project would require exclusionary fencing during the WPT’s nesting season, this would severely limit these turtles’ ability to find preferable nesting conditions along these streams. (*Id.* at 2-26.) Prohibiting the use of exclusionary fencing would also put WPT adults and young at risk. (*Id.*) To effectively mitigate impacts to the WPT’s nesting sites to below a significant level, the County should increase the buffer around upland nesting habitat.

The County also relies on the Applicant’s use of integrated pest management (IPM) to reduce the harm to WPT to less than significant levels. (*Id.*, at 2-26.) However, the Applicant has only *promised* to use IPM. (*See* Appx. N, DEIR Appendices 1.) IPM compliance at Walt Ranch is left to the applicant; the DEIR does not compel compliance, for example, by requiring the Applicant to only use less environmentally harmful pesticides, herbicides, and fungicides. (*Id.*) Mitigation must be fully enforceable in order to be valid. (CEQA Guidelines § 15126.4(a)(2); *Federation of Hillside & Canyon Ass’ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 (mitigation measures must be “fully enforceable through permit conditions, agreements, or other measures” so “that feasible mitigation measures will actually be implemented as a condition of development”).) For instance, one of the herbicide types the Applicant proposes to use is Roundup—a product that is known to harm ecosystems and species, especially amphibians. (*Id.* at 4.5-3; Relyea (2005); G. L. Pérez et al. (2007).) If the County wishes to use IPM as a mitigation measure, it should at a minimum prohibit the Applicant’s use

of Category 1 and 2 pesticides, herbicides, and fungicides on all of the Applicant's property. The County should also prohibit the use of any product—such as Roundup—that has been shown to migrate into aquatic ecosystems and kill sensitive species.

The DEIR's reliance on BMPs as it is currently stated in the DEIR violates CEQA requirements because they do not commit the Applicant to any specific conduct or provide the public with adequate information upon which to base a recommendation. (CEQA Guidelines § 15126.5(a)(2); Cal. Pub. Res. Code § 21002, 21003.) The DEIR should be revised to clarify what mitigation is required under its "best management practices," or BMPs, mitigation for the WPT. (DEIR 2-26; 4.2-118.) The DEIR does not define what BMPs are in the context of WPT protection. (*Id.*) If the County has specific management practices in mind, the County should list and compel them, or else this proposed mitigation is invalid. (CEQA Guidelines § 15126.5(a)(2).) It is also unclear whether "BMPs" simply refer to the full panoply of mitigation already listed in the DEIR. If this is the case, the County should explicitly state this, and it should explain how mitigation listed elsewhere will serve to mitigate harm to WPT individuals on site.

Certain pesticides may also affect turtle sex ratios and levels of sex hormones. (Litmans & Miller (2004), at 12, 14.) Pesticides may also increase WPT mortality. (*Id.* at 17.) In order to meet CEQA's requirements, the final EIR should investigate which agricultural products can harm WPT and prohibit their use at Walt Ranch.

E. The DEIR does not set an accurate baseline or require species mitigation for several species in accordance with USFWS recommendations

1. The DEIR provides an inadequate baseline for federally listed species identified in the vicinity yet not discussed in the DEIR

Napa County requested species presence information from USFWS to help it establish biological resources its baseline. (*U.S. Fish & Wildlife Service Species Search*, Appx. I, DEIR Appendices.) USFWS responded by providing an inventory of listed species identified as present in the vicinity of Walt Ranch. (*Id.* at 1-4.) The following are federally endangered and threatened species that were identified on this list but not discussed at all in the DEIR:

1. Conservancy fairy shrimp
2. California freshwater shrimp
3. California tiger salamander
4. Winter-run chinook salmon
5. Sebastopol meadowfoam
6. Northern spotted owl
7. Western snowy plover
8. California brown pelican
9. California least tern

(*Id.*; see generally DEIR.)

In addition to the species the DEIR did not mention at all, the DEIR only provides limited discussion of other species USFWS identified as present on or near the Walt Ranch property, including the Keck's checker-mallow, and varieties of salmon. (DEIR 4.2-27, 4.2-32.) The

DEIR recognizes Keck's checker-mallow habitat on site, but failed to provide any further analysis because a survey at Walt Ranch did not identify any members of this species on site. (*Id.* at 4.2-32.) For the various salmon species, the DEIR stated:

Species that do not have suitable habitat onsite were dismissed from consideration Two federally listed critical habitats—critical habitat for Central Valley spring-run chinook and critical habitat for the Central Valley fall/late fall-run chinook—were also dismissed from the list, as they do not occur onsite. Drainages on the project site do not provide habitat for listed fish species such as steelhead and chinook salmon

Id. at 4.2-27.) Appendix I determined there to be Central California coastal steelhead critical habitat within Walt Ranch's watershed. (*U.S. Fish & Wildlife Service Species Search*, Appx. I, DEIR Appendices 1.)

USFWS stated that “[t]he animals [on USFWS’s] species list are ones that occur within, **or may be affected by** projects within quads¹ covered by the list. (*Id.* at 5 (emphasis in original).) It instructed that

[f]ish and other species appear on [the] list if they are in the same watershed as your quad or water use in your quad might affect them. Amphibians will be on the list for a quad . . . if pesticides applied in that area may be carried to their habitat by air currents. Birds are shown regardless of whether they are resident or migratory. *Relevant birds on the county list should be considered regardless of whether they appear on a quad list.* (*Id.* (emphasis added).)

The County's failure to assess or require mitigation for impacts to these species is in direct conflict with UFWFS' directive to do so. It is impermissible under CEQA for the DEIR to entirely disregard species USFWS has determined to be present or affected by activity at Walt Ranch. The DEIR's biological resources baseline is invalid because it provided no information or discussion of these species. (Michael H. Remy et al., *supra*, at 198; Guidelines § 15125(a) & (e); *Woodward Park, supra*, 150 Cal.App.4th, at 687.) Completely ignoring these species in the DEIR fundamentally fails to provide the public and decision-makers with requisite information upon which to base recommendations. (CEQA Guidelines § 15126.5(a)(2); Cal. Pub. Res. Code § 21002, 21003.)

To cure the DEIR's inadequate biological resources baseline, the County should, *inter alia*, (1) conduct further species surveys at Walt Ranch, (2) discuss these species' life histories and whether there is suitable habitat for these species at Walt Ranch, (3) discuss the potential direct impacts of the project to this species, (4) discuss any potential impacts to these species as a result of the Proposed Project and nearby activities that cumulatively effect these species, and (5) anything else necessary to create an accurate baseline, impacts, and mitigation assessment.

¹ USFWS defined a “quad” as “about the size of San Francisco.” (*U.S. Fish & Wildlife Service Species Search*, Appx. I, DEIR Appendices 5.)

2. The EIR should provide for adequate mitigation for species on USFWS' Species Search

Because the DEIR entirely neglected to discuss the above species—including impacts to these species from the Proposed Project—or to propose any mitigation, it is difficult to provide detailed mitigation commentary or suggestions for these species. Below are basic mitigation suggestions.

For the Keck's checker-mallow habitat on site, the County should presume the presence of this federally listed species. The County should protect habitat it identified as suitable for this species at Walt Ranch. The County should consider essential habitat and ecosystem features this species needs to survive and take extra care to protect these features. The County should strive to assess and accommodate for any cumulative impacts to these species.

For populations of threatened and endangered aquatic species including steelhead and chinook salmon that may be affected by activities in their watersheds, the County should analyze how identified Project impacts will affect these sensitive species, including increased pesticide load, sedimentation, alteration of drainage patterns, and groundwater extraction. The County should mitigate any effects this project has on these species or their critical habitat—for example, by preventing any harmful pesticides or sediment from entering into these species' habitat. As previously discussed, the County cannot rely on voluntary restrictions on harmful pesticide use—the County should compel these restrictions.

For the species the DEIR does not discuss, the County should conduct further surveys on-site to determine whether these species are present. Even where the County concludes these species are not present during the survey, the County should consider presuming some of these species to be present on site and require mitigation accordingly. The final EIR should also discuss the potential cumulative effects to these species as a result of activity at Walt Ranch, including downstream and downwind effects. If the Proposed Project is found to exacerbate impacts to these species, the County should require added mitigation to protect these species.

F. The DEIR proposes inadequate mitigation for the white-tailed kite, a fully protected species

The white-tailed kite is a fully protected species. (Fish & Game Code § 3511(a)(12).) As a fully-protected species, it “may not be taken or possessed at any time.” (Fish & Game Code § 3511(a)(1).)

A DEIR-related survey observed white-tailed kite individuals at Walt Ranch. (DEIR 4.2-34.) The DEIR listed as habitat requirements (1) dense oak tree stands, (2) near open foraging areas, such as lowlands with variable tree growth. (*Id.*) The DEIR states this kite can forage in “open grasslands, meadows, farmland, and emergent wetlands.” (*Id.* at 4.2-63.)

The County determined most of Walt Ranch habitat was not suitable for the kite, stating:

Habitat in the proposed vineyard blocks in marginal for nesting because of the requirement for nesting habitat adjacent to foraging habitat, and not many of the proposed vineyard blocks contain woodland/grassland edges. From a broader perspective, a little over a quarter of the property is proposed for development

with abundant proportions of all habitat types preserved, including woodland/grassland edges. (*Id.*)

Important habitat features for successful kite nesting sites include: (1) proximity (within 0.8 km) to “low-lying natural vegetation, fallow fields, wet pasture, [or] alfalfa,” (2) proximity (within 1.5 km) to water, and (3) nests greater than 100 meters from roads. (Andrea L. Erichsen et al., *White-Tailed Kite Movement and Nesting Patterns in an Agricultural Landscape*, in *RAPTORS IN HUMAN LANDSCAPES: ADAPTATION TO BUILT AND CULTIVATED ENVIRONMENTS* 165, 172 (David M. Bird et al., eds. 1996).) Habitat stressors include “chemical use, introduction of exotic species . . . and loss of *natural* habitat.” (*Id.*, at 166 (emphasis added).)

The DEIR proposed to mitigate effects to any nesting sites by (1) surveying within the kite’s potential nesting habitat near vineyard development to locate active nests and (2) requiring a 500-foot buffer between the kite and all construction activities where kites are found nesting. (*Id.* at 2-27.) The DEIR does not propose mitigation for lost foraging habitat because kites “can forage in vineyards.” (*Id.* at 6-24.)

The conservation groups are primarily concerned about the DEIR only requiring mitigation during vineyard construction and not during normal, post-construction vineyard operation. The Applicant is only required to maintain a buffer while the kite is nesting during construction, and not during subsequent years of vineyard operation. (*Id.* at 2-27.) If a 500-foot buffer is required not to harm the species’ nesting behavior during construction, the same mitigation should be required even after construction so as not to disrupt future nesting on-site. Otherwise, the Applicant may cause kite nest abandonment.

White-tailed kites normally nest high up in dense tree canopies, normally 20 to 100 feet above ground. (*Id.* 4.2-63.) The County should provide more information as to how trained biologists will be able to reliably locate white-tailed kite nests without incidentally taking members of this species in violation of Fish and Game Code, Section 3511. It will be difficult to reliably sight kite nests high in dense tree canopies from the ground, while other more invasive observation methods may cause the birds to abandon their nests or otherwise stress these birds during the energy-intensive nesting season. (*See* Andrea L. Erichsen et al., *supra*, at 168 (restricting species observations until after chicks hatched to prevent nest abandonment).) If there is a reliable, low risk observation method, we request that the County explain it in its next draft of the EIR. If such a nesting observation method exists, during each year of operation, the Applicant should hire a specialist to periodically search for kite nests occurring near vineyards during the kite’s nesting season.

The DEIR also assumes, without support, that converting foraging habitat to vineyard habitat does not represent a decrease in the quality of the kite’s foraging habitat because kites can forage in vineyards. (*Id.* at 6-24.) At least one study showed vineyards to be less valuable habitat for these kites. (Andrea L. Erichsen et al., *supra*, at 171.) This study concluded that “[w]hite-tailed kites preferred natural vegetation.” (*Id.*, at 165.) Kites only used orchard habitat during the spring (study only observed 28 kites during this season), while low-lying vegetation such as grasslands and fallow fields were necessary during the winter (when 162 kites were observed). (*Id.*, at 171.) From this study, researchers determined that “[s]uccessful nests had more natural, fallow, and riparian vegetation” within one kilometer from their nesting sites. (*Id.* at 172.)

Researchers stressed that changing land uses “could present future threats to [the kite’s] existence.” (*Id.* at 165, 173.)

The County should cite to support for its conclusion that converting previous foraging habitat to vineyards represents no loss to the quality of the kite’s foraging habitat. The County has claimed that kites often use agricultural land to forage. (*Appendix B: Potential for Special Status Species to Occur in the Project Area*, Appx. M, DEIR Appendices, at B-3.) Not all agricultural habitat would have the same foraging value (e.g., a rice field may provide better foraging than a vineyard), and a study that assesses the quality of vineyard plots for kite foraging would be more helpful than studies of kite foraging success with other crops. (*See* Andrea Erichsen et al., *supra*, at 171.) As the California vole is the kite’s primary food source, it would be especially helpful if the County can find persuasive authority that correlates vole density to vineyard abundance. (*Id.* at 173 (“the California vole is the primary prey of the white-tailed kite.”).) If the County cannot find support for its conclusion that kite foraging will not be affected by the Proposed Project’s added vineyards, then the County should mandate added mitigation to replace the degraded foraging habitat, such as setting aside additional high-quality foraging habitat for the kite for every acre lost to degraded foraging habitat. This mitigation should also promote abundance of the white-tailed kite’s primary food source, the California vole.

The DEIR fails to discuss the effect of pesticide use on the white-tailed kite. (*See, e.g.*, DEIR at 2-27, 4.2-64.) Certain pesticides are known to negatively impact raptors. (*See, e.g.*, Pierre Mineau et al., *Poisoning of Raptors with Organophosphorous and Carbamate Pesticides with Emphasis on Canada, U.S., and U.K.*, 33 J. RAPTOR RESEARCH 1 (1999).) The DEIR should have discussed the potential for these impacts and suggested appropriate mitigation, such as prohibited use of pesticides and other chemicals that are harmful to raptors.

G. The DEIR does not adequately consider the cumulative impacts to wildlife species

CEQA Guidelines define a cumulative impact as “two or more individual effects which, when considered together, are considerable, or which compound or increase other environmental impacts.” (CEQA Guidelines § 15355.) The “individual effects” may arise from “a single project or a number of separate projects.” (CEQA Guidelines § 15355(a).) A “cumulative impact” occurs when there is a “change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable future projects.” (CEQA Guidelines § 15355(b).) In other words, the goal of the required analysis is to first create a broad context in which to assess the project’s incremental contribution to anticipated cumulative impacts, viewed on a geographic scale well beyond the project site itself, and then to determine whether the project’s incremental contribution to any significant cumulative impacts from all projects is significant.

The DEIR does not specifically discuss the cumulative effects the construction project and the continued agricultural operation of the vineyard will have on wildlife. (*See* DEIR at 6-20 - 6-23.) Instead of providing an informative cumulative wildlife impacts discussion in its cumulative impacts analysis, the DEIR dismisses outright the possibility that the Proposed Project will have any cumulative impact on these species. (*See Id.* at 6-21.) The County simply concludes that “the special status habitats and species addressed in [the County’s proposed]

mitigation measures will reduce the impacts from the Proposed Project to less than significant, and since each of the other projects in the cumulative environment is held to the same CEQA standards . . . there will be no significant cumulative impacts to the sensitive species and habitats analyzed in the Draft EIR.” (*Id.*)

By the County’s reasoning, all approved projects would categorically never cause cumulative impacts, no matter how much the intensity of number of local activities increase. So long as the County makes *any* significance determination that legally complies with CEQA requirements, then no project in the County can be susceptible, or contribute, to local cumulative impacts. This is pure fiction, and it nullifies the purpose of the cumulative effects analysis. According to the reasoning in the DEIR, a project can only have cumulative impacts to wildlife if the County or the project violates CEQA. (DEIR 6-21 (concluding that there can be no cumulative impact to species so long as all projects adhere to CEQA mitigation.) This cannot be the purpose of the cumulative impacts reporting duties outlined in CEQA, which requires the County to consider “individually minor but collectively significant projects taking place over a period of time.” (CEQA Guidelines § 15355(b).) Worse, the DEIR’s unsupported cumulative impacts conclusion fails to provide the public and decision-makers of the meaningful cumulative impacts analysis that CEQA mandates. (Cal. Pub. Res. Code §§ 21001(g); 21002.1(a) & (e); 21003(b).)

Contrary to the DEIR’s flawed reasoning, most “less than significant” impacts, when combined with other “less than significant” impacts have the ability to cumulatively harm plant and animal species. “Less than significant” does not equate to “no impact,” so each individual “less than significant” impact has an additive quality that Napa County should have discussed. (*See* DEIR at 6-22.) What the County fails to recognize is that its “less than significant” determination is a legal fiction. The construction and vineyard operations, as well as other human activities in the vicinity, will still have a cumulative impact on wildlife species despite the County’s mitigation proposals. These species will lose habitat, there will be increased human presence and increased traffic, there will be added noise, species will be excluded from suitable habitat by exclusionary fencing, suitable upland and riparian habitat will be destroyed, vehicles driving through streams will alter stream quality, and species health may be affected by pesticide drift. The County should have fully accounted for all combined impacts before it concluded that the cumulative impacts would remain less than significant. The County cannot simply eschew full cumulative effects analysis for all biological resources by hiding behind a legalistic significance determination. Because the DEIR only provides a cursory and conclusory cumulative impacts analysis for wildlife species at and affected by the proposed Project, it fails to provide the public with an accurate and informative cumulative impacts analysis. (Cal. Pub. Res. Code §§ 21001(g); 21002.1(a) & (e); 21003(b).)

Because the County determined that CEQA compliance equates to no cumulative impacts, it ignored potential off-site cumulative effects to local plants and wildlife both within and from the proposed Project. For instance, it fails to include in the DEIR the effect of further habitat fragmentation, water pollution, and traffic that wildlife in the vicinity would experience as a result of Walt Ranch vineyard construction and operation. (*See* DEIR at 6-21 – 6-23.) Furthermore, the County does not consider the effect of other off-site activities at all. (*Id.*) This is despite the fact that the County has identified two adjacent competing land uses—an unincorporated community and a large vineyard-ranching operation—as well as many other

upstream and downstream land uses (*See Id.* at 3-1, 3-8, 6-7, 6-8.) This incomplete and inadequate cumulative impacts analysis is uninformative, and violates CEQA. (Cal. Pub. Res. Code §§ 21001(g); 21002.1(a) & (e); 21003(b); CEQA Guidelines § 15355(b).)

H. Habitat fragmentation and connectivity

1. The DEIR has impermissibly allowed the Applicant to reduce wildlife movement

Napa County's General Plan provides for habitat connectivity. (Napa County General Plan: Conservation Section CON-25 (2009).) One of the County's programmatic goals is to "[p]rotect connectivity and continuous habitat areas for wildlife movement." (*Id.* (Policy CON-5).) Napa Policy CON-18 provides, in part, that:

The County shall require discretionary projects to retain movement corridors of adequate size and habitat quality to allow for continued wildlife use based on the needs of the species occupying the habitat.

The County shall require new vineyard development to be designed to minimize the reduction of wildlife movement *to the maximum extent feasible*. In the event the County concludes that such development will have a significant impact on wildlife movement, the County may require the applicant to relocate or remove existing perimeter fencing installed on or after February 16, 2007 to offset the impact caused by the new vineyard development.

The County shall disseminate information about impacts that fencing has on wildlife movement in wild land areas of the County and *encourage property owners to use permeable fencing*. (*Id.* at CON-28 – CON-29 (Policy CON-18) (emphasis added).)

There are currently approximately 5.6 acres of deer fencing on Walt Ranch. (DEIR 4.2-24.) The Project promises to expand fencing to surround 400 acres or more once the Proposed Project is completed. (*Id.* at 1-2, 5-3.) The DEIR determines that "[d]evelopment of the Proposed Project could interfere with existing wildlife movement corridors and could conflict with General Plan Policy CON-18. (*Id.* at 2-16.) The DEIR concludes that, after certain avoidance measures, "deer fencing [in some areas] may not be necessary due to alterations in vineyard layout," but the DEIR does not state what those avoidance measures might entail. (*Id.*) The DEIR also states that "vineyard blocks shall be fenced individually or in small clusters, with corridors of no less than 100 feet in width." (*Id.*) Despite these guarantees, the DEIR admits that fencing would still "impact[] . . . animal movement as a consequence of the installation of wildlife exclusion fencing." (*Id.* at 4.2-99.) Nowhere does the DEIR specify how many acres of land it will allow the Applicant to fence, how many miles of fencing the County would permit the Applicant to erect, or what type of fence the Applicant should use. (*See, e.g., id.* at 99-101.) However, the DEIR does provide a map that shows extensive fencing scattered throughout the Walt Ranch property. (*See id.* at fig. 3-12.)

The DEIR concludes that the addition of dozens of miles of fencing does not amount to a significant impact. (*Id.* at 2-16, fig. 3-12.) This conclusion conflicts with its admissions that

fencing would impact wildlife movement as discussed above, and fails to adequately analyze and address the impacts of a 60 to 100 fold increase in fencing on Walt Ranch. (*Id.* at 2-16.)

The DEIR recognizes that “deer fencing *may not be necessary*” in some areas, but declines to set any hard limits on how much fencing the applicant can put up. (*Id.* at 4.2-34.) The whole point of exclusionary fencing is to “reduc[e] wildlife movement.” (Napa County General Plan CON-29 (discussing Policy CON-18).) Yet, the DEIR provides no analysis on whether exclusionary fencing is necessary in the first place. (*See* DEIR at 4.2-99 – 4.2-101.) This initial analysis is necessary to productively evaluate the value of added fencing against the cost of this fencing to species mobility.

Napa County General Plan Policy CON-18 “require[s] new vineyard development to be designed to minimize the reduction in wildlife movement to the maximum extent feasible.” (Napa County General Plan CON-29 (discussing Policy CON-18).) Although Policy CON-18 mandates a feasibility finding, the County made no finding as to whether it would be feasible to further reduce the amount of fencing, or whether it would be feasible to limit the types of deer-exclusion barriers the Applicant could erect.

Examples of less-intrusive deer exclusion techniques and devices are abundant. If deer are scarce, a simple repellent, such as slaughterhouse by-product, bar soap, human hair, or Deer Away (37% egg solids) may be sufficient to repel deer. (Kurtural (2014) (“Thinned peanut butter applied directly to poly-rope or poly-tape at the height of a deer’s nose is [] effective, [in]expensive, and eas[y].”); Kurt C. VerCauteren et al. (2006).) Aluminum foil flags on wire have also proven to be effective. (*Id.*) If the County chooses to allow electric fence, single-strand electric fence designs with added chemical repellents may also effectively deter deer. (*Id.*) The County never determined whether deer are scarce or common, and what type of threat they pose to vineyards. If deer are scarce or only moderately abundant, then the County could propose a temporary fence. (S. Kaan Kurtural, *supra*, at 12-13.) If the Applicant only wishes to exclude deer, then it should only approve of less exclusionary fencing types. Because the use of no fencing or less-intrusive fencing should be feasible, the County should not allow more exclusionary fencing, such as the traditional multi-wire fencing or electrified fences. (*See, e.g., id.* at 18-20.)

The need to avoid species-movement impacts from fencing is especially important because the Applicant’s vineyards occur only in areas without steep inclines, mostly in the lowland areas of the ranch. (DEIR fig. 4.4-2 (map overlaying vineyard development with slope percentages); 3-1 (“The majority of proposed vineyard blocks are located on low to moderate gradient sloping terrain, which ranges from 8 to 29 percent slopes.”); 6-18 (slopes greater than 30 percent “not developable.”).) The more level areas of the Applicant’s land are disproportionately important for species movement because many animals are physically limited or otherwise prefer to travel in areas with less steep slopes. If the Applicant places highly exclusionary fencing in the majority of the more level areas on Walt Ranch, this could greatly impede species movement across the Ranch, effectively fragmenting these species’ habitats.

The DEIR also does not discuss the risk of animal mortality from mammals getting tangled in and birds striking fencing. (*See* Baines & Andrew (2003).) State wildlife agencies have recognized the harm certain types of fencing have on birds and other species. For instance, Montana’s Fish and Wildlife agency has stated that “[t]oo often, animals and birds are injured or

killed when they collide with fences or get tangled in wires.” (PAIGE (2008).) This agency has listed components of potentially fatal fencing, including fences that (1) “are too high to jump, (2) are too low to crawl under, (3) have loose wires, (4) have wires spaced too closely together, (5) are difficult for fleeing animals or birds to see, or (6) create a complete barrier.” (*Id.*, at 3.) This agency also recommended against using barbed wire because it may injure protected species, noting that “[i]f animals can’t pull free, they die a slow and desperate death.” (*Id.*) This report dubbed the worst types of fencing a “nightmare tangle” for wildlife, showing several gruesome pictures of dead mammals and birds caught on or fatally struck by fencing. (*Id.*, at 3-5.) This report found that three-quarters of deaths occurred from animals getting caught in the top wires of a fence. (*Id.*, at 5.) 70 percent of mortalities happened on fences higher than 40 inches. (*Id.*) However, even 40-inch-high fencing can be too high if erected on a slope. (*Id.*, at 6.) Woven-wire fencing topped with barbed wire proved to be the most dangerous fence type. (*Id.* at 5.) Often, fencing stops babies from passing through but not their parents: “90% of [ungulate] carcasses found near fences were fawns lying in a curled position—probably separated from their mothers when they could not cross.” (*Id.*) These baby ungulates were more often found next to woven wire fences. (*Id.*)

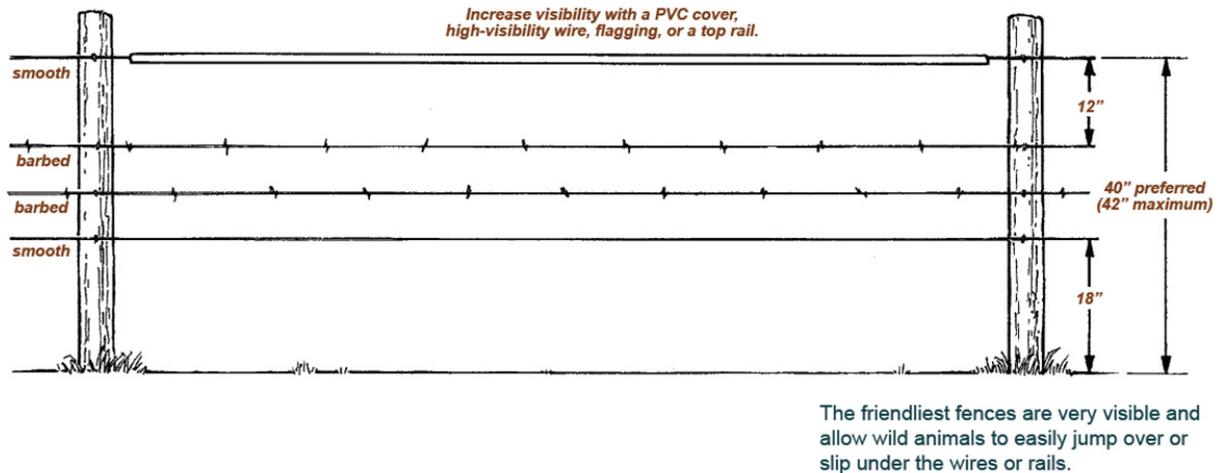
For bird species, the report suggested that agricultural fencing should increase its visibility by placing a PVC cover, high-visibility flagging, or a top rail.” (*Id.* at 8.) To prevent bird strikes, the Applicant can place bright orange flags or netting to reduce fatal bird-fence collisions by more than half, and sometimes as much as 90 percent. (*Id.* at 9; David Baines & Mark Andrew, *supra*, at 169.) However, for some bird species, the researchers found that collisions still significantly contributed to bird mortality. (*Id.*) For these species, researchers recommended completely removing fences and identifying other methods of deer exclusion. (*Id.*) The Montana agency recommended what it deemed to be the “ideal wildlife friendly fence.” (pictured below, figure 1) (*Id.* at 8.) Although this “ideal” fence may be designed more for keeping cattle in rangeland than keeping deer out of farms, this fence design is instructive as to how to reduce species movement restrictions.²

Because death is, by any measure, a significant “reduction of wildlife movement,” the conservation groups request that the County take this threat seriously and in accordance with Napa County’s General Plan Policies. (Napa County General Plan CON-29 (discussing Policy CON-18).) Therefore, the conservation groups asks that the County either entirely prohibit the planned fencing at Walt Ranch, or, at a minimum, require the Applicant to only install ecologically friendly fencing to the extent that prohibiting fencing is infeasible.

² Where fencing was unavoidable, the Montana wildlife agency recommended laying down fencing during heavy migration periods. (*Id.* at 7.)

Figure 1 – Ideal Wildlife Friendly Fence

IDEAL WILDLIFE FRIENDLY FENCE



2. Additional roads at Walt Ranch will further fragment species habitat and reduce connectivity

The Applicant proposes to improve and regularly use 17.4 miles of roads at Walt Ranch. (DEIR 4.6-28.) Most of these roads have not been maintained and had fallen out of use twenty years ago in the 1990s. (*Id.* at 3-5.)

Additional roads and traffic, even on smaller dirt roads, can reduce or completely eliminate wildlife movement between sections of Walt Ranch and habitat beyond. For instance, one study conducted a “9-year live-trapping study of prairie voles” to see how frequently they crossed a “narrow dirt road” with only light traffic (10 to 20 cars per day or less). (Swihart & Slade (1984).) After trapping and marking nearly 9,000 voles and cotton rats, the study found that “[o]nly 47 cotton rats and 23 voles were known to have crossed the road during the 9-year study. (*Id.*)

The mitigation measures regarding roads do not provide decisionmakers or the public with any concrete information, as required by CEQA. (CEQA Guidelines § 15126.4(a)(2); *Federation of Hillside & Canyon Ass’ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 (mitigation measures must be “fully enforceable through permit conditions, agreements, or other measures” so “that feasible mitigation measures will actually be implemented as a condition of development”).)

In particular, in discussing the potential impacts of proposed roads to species the DEIR declines to compel mitigation, promising, instead, that, “[p]rior to the approval [of the Erosion Control Permit Application], the plan shall be modified,” to alter or eliminate proposed roads that are “unnecessary” because of species avoidance needs. (*Id.* at 2-11, 2-16, 2-21, 2-24, 2-29.) In similar language, the DEIR also provides that, “to the maximum extent feasible, access road development shall be relocated as necessary to avoid sensitive habitats.” (*Id.* at 2-13, 2-17, 2-19, 2-21.)

The EIR cannot rely on future, as-yet defined mitigation. (CEQA Guidelines § 15126.4(a)(2), (a)(1)(B); *Federation of Hillside & Canyon Ass'ns, supra*, 83 Cal.App.4th, at 1261.) The final EIR should assess the need for each road in light of habitat connectivity and special-status-species constraints; it cannot punt on this issue until such time when public will have no ability to respond to the County's final decision. The DEIR should be revised to enumerate the stretches of roads it decides are harmful to species because they increase the impacts and reduce species mobility in violation of Napa Policies CON-5 and CON-18. (Napa County General Plan CON-25, CON-28—CON-29.) At the outset, the DEIR implies that most of these roads were expendable, as it was often willing to prohibit road use if doing so would significantly impact certain species. (*See DEIR*, at 2-11, 2-13, 2-16, 2-17, 2-21, 2-24, 2-29.) Species at Walt Ranch are currently habituated to decreased human and vehicular presence, and that road development and use could either fragment habitat for low-mobility species or increase collisions with animals that currently use the roads at Walt Ranch. (*See DEIR*, at 4.2-5.)

At a minimum, the next draft of the EIR should (1) expressly eliminate any unnecessary roads and justify the need for approved roads, (2) determine if there are alternate routes to any of the proposed roads that would decrease habitat fragmentation and other impacts to sensitive species, (3) provide for habitat connectivity, such as steel-tube underpasses or other aids to species mobility, and (4) require mitigation to reduce the risk of animal strikes.

I. The DEIR did not discuss mountain lion presence or require mitigation for this species

Mountain lions are a “specially protected mammal” in California. (Fish & Game Code § 4800(a). “It is unlawful to take, injure, possess, transport, import, or sell any mountain lion or any part or product thereof.” (*Id.* § 4800(b)(1).)

In Appendix M, biologists catalogued wildlife species they observed “in or directly adjacent to the Walt Ranch Project Area.” (Appx. M, DEIR Appendices, at A1-1.) Biologists found mountain lion tracks and feces either in or directly adjacent to Walt Ranch. (*Id.*) The DEIR makes no mention of the mountain lion's presence in or near Walt Ranch. (*See generally DEIR.*)

By not mentioning the mountain lions present at Walt Ranch in the DEIR, the County failed to create an accurate baseline for this species, as required by CEQA. (Guidelines § 15125(a) & (e).) Mountain lion taking is illegal, and it is feasible that the Proposed Project will either directly or indirectly take a mountain lion. The DEIR should have discussed significant impacts to and suggested mitigation for this species. CEQA's requirements help ensure that the public and decision-makers that are reviewing and deciding on the Project know the full scope of the project and its impacts. Environmental review that fails to provide these details undermines the fundamental requirement of public disclosure in CEQA. (*County of Inyo, supra*, 71 Cal.App.3d 185.)

Examples of impacts the County should have considered are: (1) the effects of rodenticides on mountain lions, (2) the potential destruction of mountain lion habitat and corridors, (3) the threat fencing poses to mountain lions, and (4) the potential for increased vehicle strikes.

Mountain lions prefer to avoid being near humans, and increased human presence can cause these cougars to avoid large portions of their previous habitat. (See Fred G. Van Dyke et al., *Reactions of Mountain Lions to Logging and Human Activity*, 50 J. WILDLIFE MANAGEMENT 95 (1986).) Because these big cats are “shy,” converting large portions of Walt Ranch to agricultural uses can have a large impact on the mountain lion that will be felt well beyond the acres devoted to vineyards. (*Id.*) Cougars do not tend to travel through or use agricultural habitat as part of their home range, so commitment of so many acres to vineyard will heavily degrade mountain lion habitat. (Brett G. Dickson & Paul Beier, *Home-Range and Habitat Selection by Adult Cougars in Southern California*, 66 J. WILDLIFE MANAGEMENT 1235, 1240 (2002).)

Furthermore, the DEIR should have discussed the effects of rodenticide bioaccumulation and prohibited its use at Walt Ranch. Research has shown that mountain lions can be poisoned or bleed out after directly ingesting or eating smaller mammals that have been poisoned with rodenticides. (Seth D. Riley et al., *Anticoagulant Exposure and Notoedric Mange in Bobcats and Mountain Lions in Urban Southern California*, 71 Wildlife Management 1874 (2007); Mourad W. Gabriel et al., *Anticoagulant Rodenticides on Our Public and Community Lands: Spatial Distribution of Exposure and Poisoning of a Rare Forest Carnivore*, 7 PLoS ONE 1 (2012).)

Because mountain lions prefer chaparral habitat, the next draft of the EIR should also discuss the impact to mountain lions of lost chaparral habitat and increased human activity near this habitat. (Fred G. Van Dyke et al., *supra*; Brett G. Dickson & Beier, *supra*.)

J. Inadequate mitigation for lost old-growth oak trees

The Oak Woodlands Conservation Act was enacted to prevent or mitigate “conversion of oak woodlands that will have a significant effect on the environment.” (Cal. Pub. Res. C. § 21083.4(b).) Where a project will have a significant effect on the environment, the Oak Woodlands Conservation Act requires mitigation and replanting. (*Id.*) Napa Policy CON-24 also requires projects to “maintain and improve oak woodland habitat to provide for slope stabilization, soil protection, species diversity, and wildlife habitat” (Napa County General Plan, at CON-31 (discussing Napa Policy CON-24).) Policy CON-24 requires projects to avoid or mitigate harm to oak trees whenever feasible. (*Id.*)

The DEIR recognizes that an important “aspect of woodland biodiversity includes old-growth trees.” (DEIR 4.2-123.) The County identified “two large areas of notable trees [with an average trunk width of over 24 inches] and over 100 large structure specimen trees [with a trunk width of 36 inches or greater].” (*Id.*) The County approved the cutting of one-third of the 108 “specimen” oak trees with trunks larger than 36 inches. (*Id.*, at 4.2-124.) For each large old-growth tree cut, the County has proposed a 5:1 mitigation—“5 replanted seeds or saplings per every 1 specimen tree removed.” (*Id.*, at 4.2-124.) The County concluded that, after mitigation, “[oak tree] canopy cover should be preserved at a 1:1 ratio on the property.” (*Id.*)

Canopy ratio is a poor indicator of oak value. The larger “old-growth” oak trees at Walt Ranch may represent a climax ecosystem, which is the highest-value habitat at for many species. (D.A. Tirmenstein, *Quercus Alba*, U.S. DEP’T OF AGRICULTURE, (1991), *available at* <http://www.fs.fed.us/database/feis/plants/tree/quealb/all.html> (discussing the cover value of established oak stands for various species).) We appreciate that the Applicant is willing to mitigate for each old-growth oak lost at a 5:1 ratio. However, each old growth tree lost is

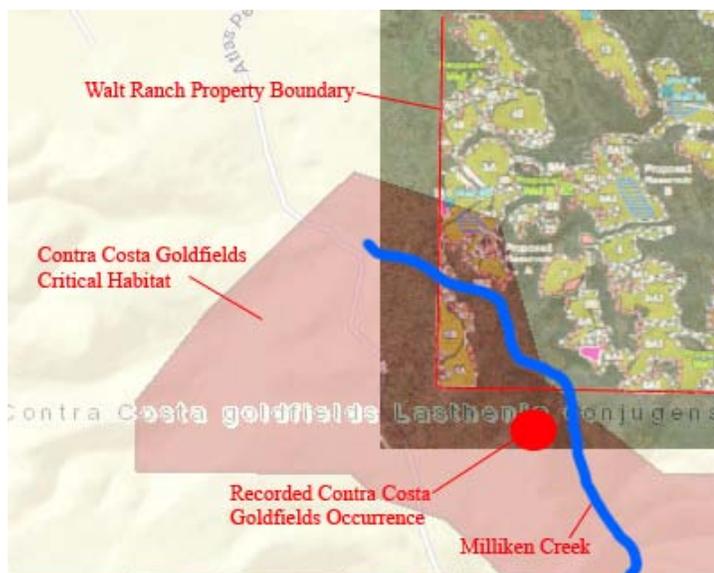
ecosystem value lost for species dependent upon larger oak trees for survival, and saplings cannot truly mitigate the lost ecosystem value to these species. It may take over one-hundred years before the oak saplings are large enough to truly offset the lost oak trees. Also, depending on sapling spacing, the Applicant's 5:1 mitigation may result in a crowded oak stand that may have to be thinned. If oak saplings are not given adequate space, after ten years, the 5:1 sapling-to-specimen-tree planting ratio may be thinned down, ultimately representing a 1:1 mitigation or less. The conservation groups request that the County requires avoidance of all "specimen" trees, as well as the stands in which they are found.

K. The DEIR fails to discuss impacts to Contra Costa goldfields

Contra Costa goldfields are a flowering plant listed as federally endangered under the Endangered Species Act. (*California Natural Diversity Database Species Search*, Appx. I, DEIR Appendices, at 1.) The DEIR has determined that there are no goldfields present at Walt Ranch, and that the nearest goldfields occurrence was three miles southeast of Walt Ranch. (DEIR 4.2-31, 4.2-47.) From this, the DEIR concludes that mitigation was unnecessary and made no further mention of goldfields in its DEIR. (*Id.*)

In its Species Search report, USFWS determined that goldfields and its critical habitat were present near Walt Ranch. (*USFWS Species Search*, Appx. I, DEIR Appendices, at 1.) An additional special status plant species search found Contra Costa goldfields immediately adjacent to the southwest corner of the Walt Ranch property. (*Biological Resources Assessment Figures*, Appx. M, DEIR Appendices, fig. 6.) The approximate location of the goldfields occurrence is labeled in Figure 2, below. A search using USFWS's Critical Habitat Mapper shows goldfields critical habitat present within and surrounding the southwest corner of Walt Ranch, including locations where the County has approved vineyard development. (*Critical Habitat Mapper*, USFWS, available at <http://ecos.fws.gov/crithab/> (last accessed Oct. 20, 2014).) Overlaying a map of Walt Ranch onto the goldfields' critical habitat shows that several dozen acres of Walt Ranch contain Contra Costa goldfields critical habitat. (*Id.*; *see below*, Fig. 2 (overlaying goldfields' critical habitat map with a map of the Proposed Project from DEIR, figure 3-4.)

Figure 2: Contra Costa goldfields habitat overlaid with a map of Walt Ranch



The DEIR recognizes that goldfields habitat was present at Walt Ranch, but fails to mention goldfields critical habitat either within or surrounding Walt Ranch. (See DEIR 4.2-31, 4.2-47.) The DEIR also does not address the recorded goldfields present immediately South of Walt Ranch. (*Id.*; Fig. 2, *supra.*) Milliken Creek runs through Walt Ranch and then continues directly into the goldfields' critical habitat and through the area where goldfields have been located. (See Fig. 2, *supra.*)

To set an acceptable baseline against which to measure the Project's impacts, Napa County needs to discuss the goldfields' critical habitat both on and near Walt Ranch. (CEQA Guidelines § 15125(a).) Because the County has failed to provide an adequate baseline, its nonexistent discussion of impact significance also fails the standards set by CEQA. (*Woodward Park Homeowners Assn, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 687; CEQA Guidelines § 15125(a) & (e).) In the next draft of the EIR, the County should discuss potential impacts to on-site goldfields critical habitat and the potential for negative downstream effects of continued vineyard operations at Walt Ranch. The County should also mandate mitigation for these effects so that they are below a significant level. (CEQA Guidelines §§ 15126, 15126.6.) Specifically, we request that all proposed vineyard plots within or near the goldfields' critical habitat not be developed, and that all potential goldfields habitat on-site be improved and set aside for conservation. Also, the County should prohibit all herbicide use that may wash or drift into Milliken Creek or other parts of the goldfields' critical habitat. The next draft of the EIR should also discuss any additional federal permits the Applicant needs to develop on the goldfield's critical habitat, such as a federal ITP. The County should also discuss whether Section 7 ESA consultation is required for the County to approve the Applicant's erosion control permit.

L. The County should require the Applicant to avoid narrow-anthered California brodiaea habitat

Narrow-anthered brodiaea occurs in the southwest quadrant of the Proposed Project and continues south along Milliken Creek. (*Biological Resources Assessment Figures*, Appx. M, DEIR Appendices, fig. 6.) The DEIR states that “approximately 60,000 individuals of narrow-anthered brodiaea were observed on approximately 41.8 acres in the southwest third of . . . Walt Ranch.” (*Id.*, at 4.2-106.) The DEIR went on to claim that “[t]his is by far the largest area of [narrow anthered brodiaea] recorded in the [California Natural Diversity Database].” (*Id.*) The County has proposed to set aside 33.2 of these 41.8 acres, allowing the Applicant to develop on 8.63 acres of narrow-anthered brodiaea habitat. (*Id.* at 4.2-107.)

We agree with the County that the narrow-anthered brodiaea habitat at Walt Ranch is exceptional. (*Id.* at 4.2-106.) However, the conservation groups request that all narrow-anthered brodiaea habitat be avoided. CEQA requires the County to require all feasible mitigation measures. (Pub. Res. Code §§21002, 21081(a); CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15091(a)(1).) In its DEIR, the County failed to justify why a 100-percent avoidance mitigation measure would be infeasible. (*See id.* at 4.2-105-4.2-110.) Avoidance of all brodiaea habitat at Walt Ranch is feasible, and this mitigation should be reflected in the next draft of the EIR. Additionally, the County should prohibit herbicide use that may run or drift onto brodiaea habitat.

M. The County does not provide adequate conservation of native grasslands

Napa Policy CON-17 requires the County to “[p]reserve and protect native grasslands, serpentine grasslands, mixed serpentine chaparral, and other sensitive biotic communities and habitats of limited distribution.” (DEIR 4.2-73.) This policy aims to “[p]revent removal or disturbance of sensitive natural plant communities that contain special-status plant species or provide critical habitat to special-status animal species.” (*Id.*) If the County determines that avoidance, restoration, or replacement of native grassland habitat is infeasible, Policy CON-17 requires the County to “preserve like habitat at a 2:1 ratio or greater within Napa County to avoid significant cumulative loss of valuable habitats.” (*Id.*)

The DEIR found 166.8 acres of California grasslands on-site, over 50 percent of which will be converted to vineyard. (*Id.*, at 4.2-81.) When discussing impacts to grasslands, the County ignored the majority of these grasslands. (*Id.*) The County only proposes mitigation for grasslands it defined as having greater than ten percent native grasses present, which limited the County’s consideration to less than ten acres of grasslands located at Walt Ranch. (*Id.*, at 2-9.) The DEIR determines that 1.15 acres of these native grasslands occurred within vineyard plots and required 2:1 mitigation for the proposed destruction of these grasslands. (*Id.* at 4.2-86.) The DEIR admits that members of sensitive grass species were present on the remaining 157 acres it did not consider for mitigation—it artificially chose to ignore these grasslands as not meeting its ten-percent native-grassland “threshold.” (*Id.*)

The County has not cited to any policy that supports its choice to only mitigate impacts to grasslands with densities of over ten percent native grasses. (*Id.* at 4.2-81.) The County cryptically cites to the entirety of the California Native Plant Society’s *Manual of California Vegetation* to support its definition of which grassland plots it has deemed worthy of salvation.

(*Id.*) After reviewing the *Manual of California Vegetation*, we have failed to locate the page or section the County has cited in favor of what otherwise appears to be an arbitrary and unsupported decision. (*Manual of California Vegetation*, CAL. NATIVE PLANT SOC'Y (last updated Feb. 2000), available at <http://davisherb.ucdavis.edu/cnpsActiveServer/index.html>.) The conservation groups request that the County quote the exact language in the *Manual of California Vegetation* it used to support its policy to not mitigate impacts to the majority of the grasslands on Walt Ranch. The County should base its decision on firmer policy grounds than a plant identification manual that was never intended for use as a CEQA mitigation policy tool. The DEIR presumably does not cite to Napa's Policy CON-17 because this policy does not limit community-level preservation to plots with native grasses above a certain density threshold. (*See* DEIR 4.2-73.) The County should consider implementing a more inclusive definition of "sensitive biotic community," that would provide for greater protection of larger areas of native grasses. Most of the grassland acres the Proposed Project proposes to destroy would provide excellent habitat for native grasses. Native grasses could repopulate these grasslands if non-native grasslands were improved by removing invasive species and planting native grasses. Accordingly, the County should require grassland improvement on all grasslands. The County should also require 2:1 mitigation for all impacted grasslands regardless of native species density.

The conservation groups are especially concerned that the majority of special-status grasses in the southwest third of Walt Ranch did not qualify for protection under the County's overly narrow definition of "native grassland." (Appx. M, DEIR Appendices, fig. 7.) Large portions of the southwest third of Walt Ranch contain special status plant species that will either be destroyed or impacted by vineyard development and operation. (*Id.*) The conservation groups request greater protection of these special status species, including habitat improvement and avoidance, as well as identification of these grasslands for protection under Napa CON-17.

The County should also prohibit the use of potentially harmful herbicides that could run or drift onto native grassland habitat. Also, the County should discuss the potential for incidental impact from invasive species that may increase as a result of increased vineyard acreage.

II. The DEIR's Alternative & Mitigation Analysis is Flawed and Inadequate Under CEQA

The DEIR does not adequately evaluate the existing alternatives to the proposed project. The DEIR also fails to provide an alternative that would have constructively maximize wildlife movement across Walt Ranch. Additionally, the DEIR impermissibly defers several mitigation decisions until after the conclusion of the environmental review process.

A. Napa County Must Consider Feasible Alternatives to the Proposed Project

CEQA requires the County to look at "alternatives to proposed actions affecting the environment" in its EIR. (Cal. Pub. Res. Code §§ 21001(g); 21100(b)(4).) The purpose of discussing alternatives is to assess whether less environmentally damaging options exist and to "foster informed decisionmaking and public participation." (CEQA Guidelines § 15126.6(a) & (b).) The EIR must include a "range of [reasonable] alternatives to the project [that] include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen . . . significant effects, even if these alternatives would impede to some

degree the attainment of the project objectives, or would be more costly.”³ (*Id.* § 15126.6(a) & (c).) “Alternatives considered must include those that offer substantial environmental advantages over the proposed project and may be feasibly accomplished in a successful manner considering economic, environmental, social, technological, and legal factors.” (DEIR 5-1.) Along with its range of alternatives, the EIR must “evaluate the comparative merits of the alternatives,” and the County must “explain the reasons underlying [its] determination” to choose the proposed alternative. (*Id.* § 15126.6(a) & (c).)

B. The Walt Ranch DEIR’s Discussion of Alternatives

In its DEIR, NAPA stated some of the objectives of the Proposed Project as follows:

- Develop up to 356 acres of vineyards within approximately a 507 acre cleared area on those portions of the site that are suitable for the cultivation of high-quality wine grapes, while ensuring the economic viability of the project;
- Design the vineyard to minimize the reduction of wildlife movement to the maximum extent feasible, in accordance with General Plan Policy CON-18(e);
- Minimize impacts on rare, endangered, and candidate plant and animal species to the extent feasible, while providing for avoidance, preservation, and replacement in accordance with accepted protocols, including but not limited to the Napa County General Plan. (DEIR 3-6, 5-2.)

The DEIR names vineyard development as the “central project objective.” (*Id.* at 5-13—5-14.)

After listing these objectives, the DEIR lists three alternatives to the Proposed Project: the No Project Alternative, the Reduced Intensity Alternative, and the Multiple Resource Protection Alternative. (*Id.* at 5-3, 5-8.)

The DEIR concludes the No Project alternative “would not achieve the objectives of [the erosion control permit], including the installation and operation of a vineyard.” (*Id.* at 5-3.) The DEIR does not state whether the Reduced Intensity or the Multiple Resource Protection alternatives meet all of the objectives. (*Id.* at 5-3—5-10.) However, both of these alternatives facially seem to meet the project objectives. (*Id.* at 5-2.)

The DEIR determines that the Reduced Intensity alternative would:

preserve additional areas containing special status species and associated habitat; preserve individual trees identified to be specimen or notable trees; enhance high value biological resources, including sensitive biotic communities . . . ; enhance riparian protection; enhance wildlife movement on the site; and avoid areas containing one or more constraints . . . that are located along edges of development boundaries. (*Id.*, at 5-5.)

With the Reduced Intensity alternative, the Applicant would develop 100 fewer acres at Walt Ranch. (*Id.*) The DEIR concludes that this would lessen impacts to biological resources as compared to the Proposed Project. (*Id.*) Additionally, because the Applicant would cultivate fewer acres, “this would reduce the potential for impacts to offsite wells and . . . to base flows in Capell and Milliken Creeks.” (*Id.*) The DEIR determines that

³ For definitions of “reasonable alternatives” and feasibility, see CEQA Guidelines, section 15126.6(f).

impacts to air quality, cultural resources, soils, hazardous materials, hydrology, traffic, noise, and greenhouse gases in the Reduced Intensity alternative would be “similar” to impacts from the Proposed Project. (*Id.* at 5-13.) Although the Reduced Intensity alternative would devote 100 fewer acres to vineyard operation, the DEIR left most all of the deer fencing in the Proposed Project alternative in place. (*Id.* at fig. 5-1.) This alternative did not consider the potential benefits of consolidating vineyard acres in one section of Walt Ranch to reduce impacts to species movement and corridors throughout the rest of the ranch. (*Id.*)

The Multiple Resource Protection alternative is nearly identical to the Reduced Intensity alternative. As with the Reduced Intensity alternative, “the objectives of the Multiple Resource Protection Alternative are to further reduce impacts [to biological resources] beyond the [Proposed Project].” (*Id.* at 5-8.) However, the Multiple Resource Protection alternative would remove 82 acres from vineyard production, compared to 100 acres with the Reduced Intensity alternative. (*Id.* at 5-9.) Coincident with this alternative exclusively focusing on reducing impacts to biological resources, the DEIR concluded that the only impacts lessened compared to the Proposed Project were those to biological resources. (*Id.* at 5-13.) As with the Reduced Intensity alternative, the Multiple Resource Protection alternative would maintain the vast majority of the fencing proposed in the Proposed Project. (*Id.* fig. 5-2.) This alternative does not consider reconfiguring vineyards so that they would not sprawl haphazardly across all 2,300 acres of the Walt Ranch property. (*Id.*)

1. The DEIR’s Comparison of Alternatives Is Inadequate

The DEIR downplays the benefits of the Reduced Intensity and Multiple Resource Protection Alternatives compared to the Proposed Project. For the Reduced Intensity alternative, the DEIR provides that “impacts in all other impact areas would be similar to the Proposed Project.” (*Id.* at 5-5.) For example, in its analysis of the Reduced Intensity alternative, the DEIR asserts that “[t]he Reduced Intensity Alternative would require the use, storage, and disposal of hazardous materials, similar to the Proposed Project.” (*Id.* at 5-8.) The DEIR makes analogous assertions when it compared impacts between the two alternatives in most other impact areas. (*Id.* at 5-7, 5-8.)

The County has understated the differences in intensity between the Proposed Projects and the other alternatives it discussed. Although the DEIR concludes there would be similar impacts in most impact areas, a project which uses 25 percent less land will likely have proportionate decreases in most impacts during the construction and operation phases of the project. (*Id.*) If there are a quarter fewer acres devoted to vineyards, this should comparably reduce greenhouse gas emissions, hazardous waste, traffic, and air quality impacts that arise from the project. Additionally, 25 percent fewer developed acres should mean there is a 25 percent lower risk of impacting unknown cultural resources. By claiming most impacts between the Proposed, Reduced Intensity, and Multiple Resource Protection alternatives are “similar,” the DEIR has masked the holistic benefits of any alternative that would devote fewer acres to development. Furthermore, the DEIR provides no workable rubric to judge when impacts would be lesser or greater under a given alternative. Under the County’s reasoning, impacts in

most impact areas would be “similar” to the Proposed Project’s regardless of whether the Applicant developed two or two thousand acres, because all it takes for an impact to be “similar” is for there to be any impact at all. Because the DEIR does not meaningfully “evaluate the comparative merits of the alternatives,” its discussion of the alternatives is inadequate. (*Id.* § 15126.6(a).) Accordingly, it has not fulfilled the purpose of the Alternatives section to “foster informed decisionmaking and public participation.” (*Id.*)

2. The DEIR Does Not Consider an Alternative that Would Further Reduce Impacts to Species Movement

The DEIR should have considered an alternative that eliminated or reduced fencing and consolidated vineyard acreage. CEQA Guidelines require the County to consider reasonable, feasible alternatives to the Proposed Project. (CEQA Guidelines § 15126.6(a).) The DEIR must be consistent with Napa Policy CON-18 to “minimize the reduction of wildlife movement *to the maximum extent feasible*.” (Napa County General Plan, *supra*, at CON-28 – CON-29 (discussing Napa Policy CON-18) (emphasis added).) Where fencing would reduce movement, “the County may require the applicant to relocate or remove existing perimeter fencing.” (*Id.*)

Yet the DEIR fails to include an alternative that would have provided improved species movement across Walt Ranch. As it is Napa County’s policy to facilitate species movement *to the maximum extent feasible*, the DEIR should have considered a no- or reduced-fencing alternative. (*Id.*) As discussed in the biological resources section of these comments, fencing poses a lethal threat to species. (*See* C. PAIGE, *supra*, at 2.) As discussed above the proposed extensive fencing on Walt Ranch *will severely reduce wildlife movement*, and no corridor the County has proposed in its DEIR will do anything to seriously mitigate this impact. (*See* DEIR, at 4.2-24.) To exacerbate the impact to species movement, all alternatives the DEIR discusses would allow haphazard, scattered placement of vineyard plots across all 2,300 acres of the Walt Ranch property. (*See, e.g.*, figs. 5-1, 5-2.) Thus, under all alternatives, wildlife attempting to move through Walt Ranch would be faced with an incoherent maze of fencing, and they would be confined to corridors on streams and slopes greater than 5 percent. (*Id.*) This cannot be the only feasible, reasonable alternative to address species movement impacts. (CEQA Guidelines § 15126.6(a).)

Napa’s Policy CON-18 creates a presumption of feasibility and reasonableness in favor of alternatives that would promote species movement and reduce fencing. (*Id.*; Napa County General Plan: Conservation Section, *supra*, at CON-28 – CON-29 (discussing Napa Policy CON-18).) Thus, the County should have considered an alternative that would have reduced the Proposed Project’s impacts to species movement. Such an alternative should consider reducing and consolidating vineyard acreage and limiting or removing vineyard fencing.

In any event, Napa has already determined that the Reduced Intensity alternative would “enhance wildlife movement [at Walt Ranch].” (DEIR 5-5.) Napa also determined that this reduced impact is facially feasible. (*See id.* (stating that the Reduced Intensity alternative is feasible, unless “the Applicant is unable to demonstrate the infeasibility of avoiding [impacts to biological] resources”).) Because the County has a

duty to maximize species movement to “to the maximum extent feasible,” the County should have advanced the Reduced Intensity alternative as the preferred alternative. (Napa County General Plan, *supra*, at CON-28—CON 29 (discussing Napa Policy CON-18).)

3. The “Central” Project Objective Would Likely Be Met Even with a Small Vineyard

Even a much smaller vineyard would likely meet the “central” project objective of (1) developing vineyard plots (2) “that are suitable for the cultivation of high-quality wine grapes,” (3) while ensuring the economic viability of the project. (DEIR 5-2, 5-13.) The Applicant likely does not need hundreds of acres of vineyards to ensure economic viability or to cultivate high-quality grapes, yet each alternative discussed in the DEIR would allow development of over 400 acres. (*Id.* at 5-4, 5-9.)

The first project objective may be easily met even on a heavily scaled back vineyard acreage, the County should not use Walt Ranch’s vineyards’ economic viability as an excuse not to fulfill the other project objectives, such as protecting biological resources.

While discussing the Reduced Intensity alternative, the County stated that this alternative made “[n]o effort . . . to retain farmable blocks.” (DEIR 5-5.) Landowners can and have grown vineyards on plots smaller than a quarter of an acre in size. (*See* Weber et al. (2014) (discussing cultivation of a vineyard smaller than an acre in size.) As it is possible for the Applicant to farm even smaller, fragmented vineyard plots, the size of each vineyard plot should not be an issue in meeting the first project objective of developing a vineyard. (DEIR 5-2.)

C. The DEIR Impermissibly Defers Mitigation

CEQA guidelines do not allow the County to defer mitigation. The guidelines state that “[f]ormulation of mitigation measures should not be deferred until some future time.” (CEQA Guidelines § 15126.4(a)(1)(B), (a)(2) (“Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments.”) “Impermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR.” (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 236.)

In its Reduced Intensity alternative, the County wrote:

The focus of this alternative is to avoid those resources identified in General Plan Policies CON-17, CON-18(e), and CON-27. The aim is to provide an alternative that would be consistent with these General Plan policies, *in the event the Applicant is unable to demonstrate the infeasibility of avoiding these resources.* (DEIR 5-5.)

As shown above, the County has presumed the additional measures in the Reduced Intensity alternative to be feasible. (*Id.*) The DEIR implies that, in the absence of proof of infeasibility, the County will implement the measures in the Reduced

Mitigation alternative. (*Id.*) Additionally, the County reasons that the Reduced Intensity alternative facially meets all the project alternatives, while decreasing impacts to biological resources compared to the Proposed Project. (*Id.* at 5-4, 5-5.)

It is not the *Applicant's* duty to prove the feasibility of any mitigation; that duty rests solely on the County. (*See* CEQA Guidelines § 15126.6(f)(1).) As the Applicant has strong profit-based incentives to maximize vineyard acreage at the cost of other project objectives, it would be unwise for the County to rely on the Applicant's feasibility determinations. Instead, the County should openly analyze feasibility in its EIR in order to adequately inform the public and decisionmakers.

Conservation groups are concerned that the County's conversations with the Applicant "demonstrat[ing] the infeasibility of avoiding [biological] resources" are poised to occur after the conclusion of all comment periods and with no further input from interested members of the public. (DEIR 5-5; Cal. Pub. Res. Code § 21003.1(a).) This approach would fail to inform members of the public about the County's ultimate decision regarding the conservation of biological resources at Walt Ranch. (Cal. Pub. Res. Code § 21003.1(b).) Additionally, this approach is impermissible to the extent that it defers its mitigation analysis and decisions until after the conclusion of the EIR process. (CEQA Guidelines § 15126.4(a)(2); *Clover Valley Foundation, supra*, 197 Cal.App.4th., at 236.)

III. The DEIR Establishes an Improper Baseline in its Transportation and Traffic Impacts Section

The conservation groups appreciate the County's and the Applicant's consideration and proposed mitigation of some traffic and transportation-related issues in the DEIR. However, the DEIR sets an incorrect baseline for traffic into and out of the Circle Oaks community, and it does not consider or require mitigation for all phases of the Proposed Project. Walt Ranch is situated outside of Circle Oaks, a community roughly one mile long by one-third of a mile wide. (DEIR 4.7-4.) Circle Oaks has two main north-south-running roads—Circle Oaks Drive and Country Club Lane. These roads join at the north and south ends of Circle Oaks to form a loop. Vehicles traveling to and from Walt Ranch plan to access the nearest non-residential road, State Route (SR) 121, using Circle Oaks Drive and Country Club Lane. (*Id.* at 4.7-4.)

For its traffic baseline, the DEIR estimates pre-project traffic flows on nearby highways and within the Circle Oaks community. (*Id.*) The DEIR estimates SR 121 daily traffic volume to be 4,000 trips. (*Id.* at 4.7-1.) With a population of 150, The DEIR calculated Circle Oaks' "peak hour" trips to be 152. (*Id.* at 4.7-4.) The County then multiplied this value by eight to conclude that there are "an average of 1,216 existing daily trips during an eight-hour timeframe." (*Id.*) The DEIR predicts construction traffic would add an additional 75 trips onto SR 121 and Circle Oaks Drive and Country Club Lane. (*Id.*) The DEIR further estimates that vineyard operation would create an additional 168 one-way trips to and from the vineyard. (*Id.* at 4.7-5.)

The DEIR concludes that the increase in construction and vineyard operation traffic was insignificant. (*Id.* at 2-42—2-43.) It based its determination on an estimated 1.8 percent increase in SR 121 traffic (4075 trips during construction versus 4000 trips pre-construction) and a 5.8 percent increase in Circle Oaks traffic (1,291 trips versus 1,216 trips). (*Id.* at 4.7-4.) During

vineyard operation, the DEIR provides the SR 121 and Circle Oaks traffic increases to be 4 and 12.1 percent, respectively. (*Id.* at 4.7-5.) Although the DEIR finds that traffic impacts would be less than significant, it still requested the Applicant to mitigate its impact by “scheduling worker trips outside of the peak AM and PM hours.” (*Id.* at 2-42, 2-43, 4.7-5.)

The DEIR recognizes that Circle Oaks’ residential roads are not graded to support heavy construction equipment and loads, and that construction and project operation could damage these road surfaces. (*Id.* at 4.7-6.) To mitigate this effect, the County requested the Applicant to hire an independent inspector to inspect the roads before and after construction. (*Id.* at 4.7-7.) If the road inspector determines construction traffic has damaged the roads, the County proposes to require the Applicant to “pay to have the roadway resurfaced to restore the pavement to at least pre-construction condition.” (*Id.*)

The DEIR’s baseline as to the number of trips that occur on Circle Oaks roads overstates the traffic volume on these roads. For its analysis, the DEIR does not recognize that the traffic baseline differs depending on a resident’s location in Circle Oaks. The County measures baseline traffic volume at an imaginary residence where the traffic would be the greatest—right at the intersection of Circle Oaks Drive and SR 121. (*Id.* at 4.7-4.) However, 200 feet after the entrance into Circle Oaks, the road splits into Circle Oaks Drive and Country Club Lane. At any given time on a normal, pre-construction day, only a fraction of the pre-construction traffic would take the Applicant’s proposed construction and operation route. And houses in the far north end of Circle Oaks—where the Applicant proposes to ferry supplies into and out of its property—only see a few cars pass by their porches in a normal day. Thus, residents unlucky enough to be nearest to Walt Ranch may see a 1,500 percent increase in traffic during construction (from five trips per day to 80 trips during construction) and a 3,400 percent increase during normal vineyard operation (from five trips per day to 172 trips). Increases of this magnitude are significant to residents in the northern portion of Circle Oaks.

Additionally, the DEIR mentions 75 and 168 *one-way* trips during construction and vineyard operation respectively. (*Id.* at 4.7-5.) However, it is unclear whether this only represents half of the traffic going into and out of the Walt Ranch property. When Circle Oaks residents pressed the Project Proponent on this issue, Walt Ranch owners did not refute this representation. (*See Walt Ranch Information: Responses to Circle Oaks Concerns*, WALT RANCH 13-14 (Aug. 26, 2014), *available at* http://www.waltranch.com/assets/Response_to_Circle_Oaks_neighbors_-_with_tree_removal_and_Calfire_-_8-26-2014.pdf.) More trips would naturally equate to more congestion, greenhouse gas emissions, noise, and road damage. If the number of trips is twice the amount indicated in the DEIR, the County should clarify this and reassess the traffic and transportation impacts to the Circle Oaks community accordingly.

The DEIR arrives at its baseline of 1,216 trips into and out of the Circle Oaks community number by taking the *peak hour* traffic volume and multiplying this value for each hour in the day. (*Id.* at 4.7-4.) However, the Institute of Transportation Engineers, the organization who designed the “Trip Generation” traffic volume calculation on which the County relies, defines “peak hour” as “the *one-hour period* observed or forecasted to have the *highest traffic volume* during all or parts of a day.” (Glossary, INSTITUTE OF TRANSPORTATION ENGINEERS, <http://community.ite.org/glossary/WGAlphabeticalTab> (last accessed Nov. 5, 2014) (emphasis

added); *see also* Napa County General Plan – Circulation, NAPA COUNTY CIR-8 (2008) (“Peak hour” refers to the times of day at which traffic is heaviest—usually the morning or evening ‘rush hour.’”).) In the DEIR, the County erroneously assumes that traffic during *every hour* in the day would be the same as the amount of traffic during the peak hour. (DEIR 4.7-4.) However, outside of the peak hour (e.g. when residents are going to work), traffic should be several magnitudes calmer. During several hours of the day, the number of trips will likely be as low as five to twenty per hour. Because the County’s baseline misrepresents traffic conditions at Circle Oaks, its subsequent impacts analysis is flawed. (CEQA Guidelines § 15125(a) & (e); (*See Woodward Park Homeowners Assn, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 687.)

The method the DEIR used to determine traffic volume at Circle Oaks—a modeling method called “Trip Generation”—is better suited to measure volume at an intersection than it is to measure volume within a residential community, such as Circle Oaks. Trip Generation may reliably predict traffic volumes at an intersection or a road that is expected to see equal traffic volume occurring throughout its relevant length. For that reason, a road like SR 121 or the SR 121-Circle Oaks Drive intersection would be good modeling candidates for Trip Generation. However, outside of these few circumstances, the assumptions underlying Trip Generation’s model collapse. As discussed earlier, Trip Generation’s modeling would distribute all 152 of Circle Oaks’ peak-hour trips evenly across all residents—in other words, it assumes that, much like houses lining a highway, each house within the Circle Oaks community would see the same number of cars passing by its doorstep. Thus, Trip Generation (and the County) would assume a house at the SR 121-Circle Oaks Drive intersection would see the same number of cars (152 per hour) passing by its door as would a resident in the northern reaches of the community. However, contrary to Trip Generation’s assumption, one would expect to see different baseline traffic volumes depending on the location of the resident’s property. Generally, there should be a traffic volume gradient that decreases the further north one lives within the Circle Oaks community. In contrast to this, once development and operation begins at Walt Ranch, all resident housing lining the relevant portions of Circle Oaks Drive and Country Club Lane *will* see a persistent increase in the number of Walt Ranch vehicles passing by their homes. This increased traffic will fundamentally change the character of this community and its residential roads. Because Circle Oaks residents are the ones who stand to suffer the greatest impact by far from increased Walt Ranch traffic, these differences matter a great deal to these residents. Accordingly, the conservation groups request that the County reevaluate its use of Trip Generation to determine its baseline at the Circle Oaks-community level.

If the Applicant has an alternative road with which it can access its property for construction and operation that will not increase the project’s impact on project safety, or any wildlife and habitat, the Applicant should primarily use that road to access its property. The County did not analyze the feasibility of the Applicant using another road into and out of Walt Ranch. The County should also analyze the feasibility of a lower-impact route into and out of Walt Ranch in the next iteration of its DEIR. For instance, there appears to be a dirt road that enters into the Walt Ranch property from SR 121. The County should explore the feasibility of using that road and the risk to worker safety and environmental resources before it approves the Applicant’s chosen access route into Walt Ranch.

Assuming the Applicant will primarily use Circle Oaks Drive and Country Club Lane to access its property, the DEIR only requires the Applicant to evaluate and repair damage to

residential roads before and after construction. (DEIR 4.7-7.) The DEIR does nothing to address the long-term impact of the Applicant's commercial operation of the Proposed Project on these roads. Some portions of Country Club Lane, especially where the conservation groups believe the Applicant plans to regularly commute, are already in poor condition. (*See fig. 1*, below.) Circle Oaks roads are not designed for increased traffic, or to carry the weight of heavy machinery or loads carrying tons of construction waste or materials, such as dead oak trunks or cement.

Although we expect there will be road damage during construction, this will only be a fraction of the damage the Proposed Project will cause to roads during its lifetime. The regular increased heavy vehicle traffic on these residential roads during normal vineyard operation will constantly deteriorate these roads for decades to come. The County should require the Applicant to submit annual or bi-annual road assessments over the duration of vineyard operations. If an independent consultant determines that Walt Ranch operations have degraded any of Circle Oaks' roads, the Applicant should repair these roads.

CEQA requires the EIR to consider "all phases" of the proposed Project, including "planning, acquisition, development, and *operation*." (Cal. Pub. Res. Code § 15126 (emphasis added).) The DEIR's failure to assess the impacts of the increased industrial traffic on Circle Oaks' roads during vineyard operation invalidates this portion of the DEIR. (*Id.*) The County should analyze the impacts of the operation of the Proposed Project as required by CEQA Guidelines. Once it has analyzed these impacts, the conservation groups request that the County require the Applicant to submit annual or bi-annual road assessments over the duration of vineyard operation. If an independent consultant determines that Walt Ranch operations have degraded any of Circle Oaks' roads, the County should require Walt Ranch to repair these roads.

Additionally, the DEIR only requires the Applicant to inspect and repair any damage to Circle Oaks Drive. (*See DEIR 4.7-7.*) Since the Applicant plans to use Country Club Lane in addition to Circle Oaks Drive, the County should require the Applicant to inspect and repair any road Walt Ranch traffic uses during all phases of the project. The County also currently does not require the Applicant to inspect or repair any subsurface utility damage the added trips to and from Walt Ranch may cause. (*See id.*) The County should require this as part of the Applicant's mitigation as well.

Figure 1: Country Club Lane near the entrance into Walt Ranch



(source: Image of 591 Country Club Lane, Google Maps, maps.google.com (last accessed Nov. 6, 2014))

IV. The DEIR Analysis of Surface Water Resources is Flawed

The conversion of the project site to a vineyard will result in the removal of existing grasslands and woodlands including 28,616 trees, soil ripping to a depth of two to six feet, and earthmoving on 507 acres. (DEIR 1-3, 3-28, 4.6-32.) The DEIR concludes that the conversion and other developments of the Project will alter existing drainage patterns on the Project site, which would result in potentially significant impacts on flooding hazards and water quality under Impact 4.6-1. (DEIR 2-39; 4.6-31.) Yet, the DEIR also concludes that the development of Project will have less than significant impacts on water quality under Impact 4.6-2. (DEIR 2-40.) The inconsistent conclusions regarding water quality is confusing and should be clarified in the final EIR. The validity of these conclusions on impact significance are also questionable since the DEIR contains an inadequate and conflicting description of Project impacts regarding runoff and sedimentation, fails to include required water quality standards in evaluating the significance of sedimentation for the Napa River watershed, and fails to provide sufficient mitigation measures to alleviate sedimentation impacts for both the Napa and Capell Creek.

A. The DEIR fails to adequately address Project impacts regarding runoff and sedimentation.

The proposed Project site sites on top of dozens of tributaries of Napa River (including Milliken Creek) and Putah Creek (including Capell Creek), both of which have been identified as impaired water bodies under Section 303(d) of the Clean Water Act. (DEIR 4.6-41.) Napa River is listed for nutrients, pathogens, and sediment, while Putah Creek is listed for mercury and boron. (DEIR 4.6-8.)

In particular, excess erosion and sedimentation in the Napa River watershed that have adversely affected spawning and juvenile rearing habitat and thus decreased populations for the

federally-listed Chinook salmon and steelhead since the 1940s. (SF Bay RWQCB, 2009a, at 1, 3; DEIR, at 4.6-8.) Since Napa River has been listed as sediment-impaired according to Section 303(d) of the Clean Water Act (“CWA”), the DEIR recognizes that no net sedimentation increase shall occur within the Napa River watershed under Section 303(d). (DEIR 4.6-41.) The hydrologic analysis report also emphasizes that any increase in runoff would be detrimental. (Appendix G, at 32.)

More than half of the fine sediment delivered to Napa River between 1994 and 2004 was associated with land use activities, including roads, human-caused channel incision, vineyards, livestock grazing, and stormwater runoff. (*Id.* at 5.) Accordingly, in 2009 the SF Bay Regional Water Quality Control Board (“SF Bay RWQCB”) adopted a Total Maximum Daily Load (“TMDL”) for sedimentation in the Napa River watershed that requires sediment from nonpoint sources including vineyards be reduced by 51%. (*Id.* at 6; SF Bay RWQCB, 2009b.)

B. The DEIR developed a flawed threshold of significance for water quality impacts that does not comply with Total Daily Maximum Load requirements for the Napa River watershed.

As mentioned above the DEIR concludes that no net increase in sediment yield shall result from the Project, (DEIR 4.6-41), and uses this standard in developing its significance threshold regarding water quality impacts from the Project. (DEIR 4.6-31.) The DEIR also cites the 2009 SF Bay RWQCB technical report proposing TMDL standards for the Napa River. (DEIR 4.6-8.) However, it has failed to include mandatory sediment discharge TMDL already adopted by the SF Bay RWQCB in developing significant thresholds for impact to hydrology and water quality. (SF Bay RWQCB, 2009b.) In failing to include or comply with the established TMDL for Napa River the Project is inconsistent with Napa County General Plan conservation policy 47 that mandates compliance with existing TMDL standards. (DEIR 4.6-24.)

C. The DEIR provides conflicting and inadequate information regarding runoff and sedimentation impacts.

The DEIR provides confusing and conflicting conclusions on whether the Project will increase or decrease the volume of runoff and runoff rate for the Project site over all as well as for specific portions of the site. The DEIR repeatedly states that the Project will reduce the volume of runoff and peak runoff rate for the entire Project area. (e.g., DEIR, at 4.6-38, 4.6-39, 4.2-122.) However, the above sweeping statement is misleading because it is only potentially applicable to the Milliken portion of the Project site. This conclusion is not applicable to the Capell creek side of the property, where the DEIR has determined that the Project will result in a small increase in peak drainage and volume of runoff for the Capell Creek portions that will have significant impacts to downstream bank erosion. (DEIR 4.6-48 to 6-49; Appendix G, at 30).

Elsewhere in the DEIR, the County that the Project will reduce peak runoff rate and total runoff volume for only the Milliken portion of the Project. (DEIR 2-38, 2-41.) However, the validity of these statements are highly uncertain, since the DEIR also admits that estimates for decreases in runoff in the Milliken may be overstatements because “it is expected that most of the increased infiltration would be returned to the streams a short time following a precipitation event because bedrock and the harder Sonoma Volcanics are located close to the soil surface

over large areas of the Project site.” (DEIR 4.6-37.) Indeed, the hydrologic analysis report that the DEIR relies on (Appendix G) provides that 90% of additional infiltration due to ripping--one of two major methods the Project is implementing to increase infiltration--is likely to resurface as “quick return flow.” (DEIR, Appendix G, at 29.) This acknowledgment demonstrates the DEIR’s uncertainty and likely underestimation of the Project’s impact on runoff rates and volume in even the Milliken portion of the Project.

Moreover, the DEIR fails to disclose that at least two blocks in the Milliken portion of the project will experience modest increases in runoff, where gravel berms have been recommended. (DEIR, Appendix G, at 31.) Thus, the DEIR provides a false overstatement that the Project will result in less runoff within the Milliken watershed by omitting important information regarding where runoff will increase in violation of public disclosure requirements under CEQA. (Cal. Pub. Res. Code § 21002, 21003.)

D. The DEIR provides insufficient mitigation measures to alleviate runoff and sedimentation impacts.

The DEIR provides an inadequate description of mitigation measures for alleviating significant sedimentation impacts as a result of both construction as well as implementation of the Project. The DEIR also fails to demonstrate that these mitigation measures would be effective in reducing impacts to less than significant.

For instance, the DEIR proposes in order to minimize sediment loading into waterways during the construction phase of the Project is to prohibit any construction equipment from crossing 21 stream crossing until they are upgraded to rocked water crossings. (Mitigation Measure 4.6-2) (DEIR 4.6-40 to 4.6-42.) However, the DEIR does not explain whether rocked crossings would alleviate sedimentation and does not discuss other impacts of this measure. In fact, it is very likely that the rocked crossings would impact biological resources including reducing endangered salmon and steelhead populations. The SF Bay RWQCB has found that poor access to and from potential spawning and rearing habitat due to man-made structures built in channels (e.g., dams, road crossings, weirs, etc.) and human water uses have reduced the size of the steelhead run in the Napa River watershed. (SF Bay RWQCB 2009a, at 2.) Furthermore, there are more than 58 stream crossings within the entire Project area. (DEIR 3-27 to 3-28.) Moreover, the DEIR is silent regarding the need to upgrade or use of the remaining 37 crossings that were not included in the measure.

The DEIR fails to and must implement additional mitigation measures to reduce sedimentation to less than 51% in order to comply with the sediment TMDL for the Napa River watershed. (SF Bay RWQCB, 2009b.) Although the DEIR provides that erosion control measures would result in a 54.6% decrease in the amount of erosion from vineyard blocks within the Milliken watershed (which covers tributaries to the Napa River), it has not provided citation support for this erosion reduction. In fact, the geology and soils section of the DEIR calculates that the Project would potentially only reduce soil loss by 43.61%. (DEIR 4.4-19.) Additionally, the DEIR has not assessed whether or how the reduction in soil erosion would reduce sedimentation runoff from the vineyard blocks into tributaries of the Napa River. (DEIR 4.6-41.) Thus the DEIR’s discussion regarding erosion and sedimentation reduction into Milliken Creek is inadequate and confusing. The DEIR has also failed to address how the Project would meet the mandatory sediment TMDL of 51% for Napa River watershed.

The DEIR's discussion regarding erosion and sedimentation reductions in Capell Creek is similarly inadequate and confusing. The DEIR provides that sedimentation will decrease by 29.2% in the Capell Creek watershed in one section, yet calculates a 13.11% reduction in soil loss in another section. (DEIR 4.6-41, 4.4-20.) Additionally, the DEIR has not explained whether or how the reduction in soil erosion would reduce sedimentation runoff from the vineyard blocks into tributaries of Capell/Putah Creek.

The DEIR provides that potential for bank erosion in Capell Creek drainages will be reduced to less than significant with Mitigation Measure 4.6-1, which discusses installing small detention structures and/or gravel berms to reduce predicted increases in runoff in portions of the project area. (DEIR 4.6-39.) However, the DEIR does not include or consider additional mitigation measures to reduce runoff in the Capell subwatershed as recommended by the hydrologic report. These recommendations are 1) expanding/improving existing brushy areas since that land use condition shows one of the lowest runoff potential, and 2) removing/reducing the size of vineyard blocks that have the highest runoff increases. (Appendix G, at 34.) The final EIR must take into account these mitigation measures to reduce runoff impacts for all areas of the Project.

Thus, the DEIR casts a blanket statement that mitigation measures will reduce peak runoff and total runoff volume for the entire project that is overbroad and misleading, does not provide decision-makers the ability to assess whether mitigation measures that will result in net sedimentation reductions in compliance with existing law, and leaves out essential information like recommended mitigation measures to reduce environmental impacts. The DEIR is contrary to CEQA requirements of full disclosure and intelligent decision-making. (Cal. Pub. Res. Code § 21002, 21003.)

E. The DEIR provides an inadequate impact analysis and mitigation regarding nutrients and other pollutant impacts due to the Project.

The proposed Project could result in significant nutrient loading into waterways. (DEIR 4.6-40, 4.6-41.) Yet the DEIR appears to state that because the Project may reduce the volume of runoff that impacts from the increased loading of nutrients due the construction and operation of the project will be less than significant. However, this rationale is not runoff volume is reduced the project's implementation will only increase the concentration of nutrients and chemicals with runoff. (DEIR 4.6-41.)

Furthermore, the DEIR provides that a combination of setbacks from drainage features and hazardous material management measures would minimize the potential for pesticides to enter the many waterways on the project site. (DEIR 4.6-42.) However, the DEIR fails to provide further details on the hazardous materials business plan, including specific mitigation measures and the enforceability of the measures, which would be controlling for how hazardous materials and potential spills will be managed on the Project site. (DEIR 2-36, 4.5-8.) Instead, the DEIR defers this mitigation measure, an error that must be corrected in the final EIR.

V. The DEIR's Analysis of Groundwater Resources is Incomplete and in Violation of CEQA's Mandates

A. The DEIR provides an inadequate and conflicting analysis of Project impacts underlying groundwater resources

The DEIR provides that operation of the Project will depend entirely on groundwater resources for irrigation and frost protection, and estimates a demand of 213.5 acre-feet (AF) of groundwater over 179 days per year. (DEIR 4.6-44.) The DEIR concludes that since this extraction rate is 5% of the estimated 4,301 AF of extractable groundwater resources underlying the Walt Ranch property it will have less than significant impact on the aquifer. (DEIR 4.6-47). However, the DEIR provides conflicting conclusions regarding impact significance. A 96-hour pumping test report (Appendix D) suggests that the Project's proposal to install and use three new wells in addition to the three existing wells is not sustainable. In particular, Appendix D points out that the operational pumping rate for WR-3 may be decreased once new wells are installed in the project area. (Appendix D, at 46.) Furthermore, the DEIR provides conflicting conclusions in stating that the project's proposed extraction is a less than significant impact and will have no impact to off-site wells, (DEIR 4.6-43), while concluding in another portion that on-site pumping (especially during irrigation season) could result in drawdown of lower groundwater levels in offsite neighboring wells. (DEIR 4.6-44, 4.6-50, and 4.6-51.) The final EIR must clarify and minimize these impacts and ensure that groundwater resources will be conserved and enhanced so that "sufficient amounts of water will be available for uses . . . for the natural environment, and for future generations" to be consistent with conservation goal 10 of the General Plan. (DEIR 4.6-22 to 4.6-23.)

The DEIR also fails to take into account of important factors that should have been considered to determine impacts on groundwater resources, including the recharge rate of the aquifer and therefore the impact of groundwater extraction by Walt Ranch and other nearby developments. The DEIR estimates that the actual recharge rate of the underlying aquifer is lower than the extraction rate of 213.5 AFY, 161 or 207 AFY, based on two studies that indicates recharge in similar basins to be 7 and 9 percent, respectively. (DEIR 4.6-47.) It is clear from the DEIR that proponents of the Project not only have not conducted studies regarding actual groundwater, they do not even have any certainty regarding the applicability of the two studies it cites to estimate recharge rates. In particular, the DEIR states that "it is unknown if the nine percent recharge rate is applicable to the recharge site. If this estimate of nine percent was applicable to the Walt Ranch property, then the annual recharge of the aquifer would be only 6.5 AF per year less than the demand of the Proposed Project." (DEIR 4.6-48 (emphasis added.)) By failing to articulate a baseline groundwater recharge rate, the Project fails to demonstrate the availability of an adequate supply of water as required by conservation policy 53 of the Napa County General Plan. The final EIR must also be able to satisfy the question of recharge in order to provide an adequate description of existing conditions under CEQA.

Despite the fact that groundwater extraction will exceed recharge by an unknown amount, the DEIR concludes that the proposed extraction rate will not have long-term impacts to groundwater storage. (DEIR 4.6-48.) The DEIR justifies its conclusion by merely stating that the "large amount of available water under the property and the small amount of water that

would be extracted annually for irrigation.” (*Id.*) The DEIR’s conclusion on groundwater impacts is therefore not supported by any fact or evidence.

More importantly, the DEIR itself states that a substantial depletion of groundwater supplies where there would be net deficit in aquifer volume or lowering of the local groundwater table constitutes a significant impact. (DEIR 4.6-31.) Therefore, the proposed groundwater demand would result in a significant impact by default and the final EIR must provide concrete demand reduction and mitigation measures to prevent a net deficit in the volume of the Walt Ranch property’s underlying groundwater resources, as discussed in more detail below.

B. The DEIR fails to adequately analyze the cumulative impacts of the Project on groundwater resources

Furthermore, the DEIR does not adequately address the cumulative impacts of existing off-site wells as well as foreseeable future off-site on groundwater resources in the vicinity of the project. The DEIR takes into account estimated water use of Circle S Ranch and the Project, which would add up to approximately 465.2 AF, in concluding that overall cumulative effects of past, present, and reasonably foreseeable future projects is not considerable. (DEIR 6-28.) However, the DEIR cannot accurately determine cumulative impacts of groundwater resources without knowing the baseline recharge rate underneath Circle S and Walt Ranch properties, as discussed above.

The DEIR also has not provided any analysis regarding potential and extent of cumulative drawdown impacts from the Project, Circle S Ranch, and other nearby groundwater users including the Circle Oaks County Water District. (DEIR 4.6-18.) The DEIR is therefore missing key groundwater extraction data and does not allow intelligent, informed decision-making regarding the cumulative impacts of the Project on underlying groundwater resources.

C. The DEIR fails to adequately analyze impacts on other groundwater basins

The DEIR provides that given the different geology and 2.5-mile distance between the Project site and the Milliken-Sarco-Tulocay (“MST”) basin that groundwater extraction by the Project will not impact the MST, which is in the state of long-term over-draft and under restrictive use standards. (DEIR 4.6-11; 4.6-14.) The DEIR also concludes that there is no apparent hydraulic connection between the MST and the Project site by copying verbatim from the Circle S Ranch Erosion Control Plan, which itself does not provide any support regarding its conclusion regarding the lack of groundwater hydraulic connections between the MST basin and Circle S. (DEIR 4.6-14.) Therefore, the applicant needs to conduct on-site scientific studies to provide adequate support for this assertion.

D. The DEIR fails to address potential impacts of groundwater extraction on groundwater-dependent riparian ecosystems

The DEIR does not assess the potential impacts of groundwater extraction on groundwater-connected streams and aquatic species. These include the federally listed chinook salmon and steelhead for which critical habitat has been designated on the Project site, as discussed above. The DEIR should analyze how groundwater pumping will affect these sensitive species, and mitigate any effects this project has on these and other aquatic species.

E. The DEIR's mitigation measures for Project impacts on groundwater resources are inadequate

The DEIR does not propose adequate mitigation measures to prevent over-draft of Walt Ranch's groundwater resources. The main mitigation measure the DEIR provides regarding groundwater is requiring the applicant to conduct well monitoring for existing and future wells to help provide quantified data during each phase of the project. (DEIR 4.6-50, 6-28.) However, this requirement would only monitor the and not actually minimize or mitigate impacts that could result from the Project. Therefore, the final EIR must establish quantifiable drawdown limits or monitoring criteria through which it will track extraction and drawdown impacts. The DEIR provides only one sentence that the project will minimize water use by using "best available control technology and best management conservation practices," without providing any further detail regarding what these measures are or how they would be implemented to minimize water use. (DEIR 4.6-50.)

It is positive that DEIR provides the Director of Environmental Management "shall be authorized to require additional reasonable conditions on the Applicant, or revocation of the groundwater permit, as necessary to meet the requirements of the Napa County Groundwater Ordinance and protect public health, safety and welfare." (DEIR 4.6-50.) However, the authority for the Director to impose additional mitigation is entirely discretionary and does not provide concrete mitigation measures that are enforceable within this EIR.

In order to ensure that groundwater uses are sustainable the Project must first verify the actual recharge rate of groundwater resources, conduct monitoring of direct and indirect impacts including unsustainable drawdown of groundwater resources, and impacts on biological resources, water quality, and other impacts. The Project should also minimize water usage and drawdown by establishing quantifiable water reduction criteria, as well as mitigate unsustainable drawdown impacts on on-site and off-site wells, water quality, biological resources, etc.

VII. The DEIR's Analysis of the Project's Greenhouse Gas Emissions and Potential Mitigation Measures is Flawed and Incomplete

The Project's GHG emission impacts analysis relies on a legally impermissible comparison to make its significance determination rather than using existing environmental conditions. Only by using this misleading analysis was the DEIR able to conclude that Project's anticipated 105,049 metric tons of CO₂ during construction are less than significant. (DEIR 6-17-19.) Rather than aggressively responding to these substantial emissions, the DEIR includes a meager mitigation analysis and ultimately adopts a single mitigation measure. The DEIR's GHG analysis is woefully inadequate and in violation of CEQA.

A. The DEIR Analysis of the Significance of the Project's GHG Emissions in Misleading and Violates CEQA

The DEIR relies on a significance threshold of "if a proposed project is consistent with the [Best Management Practices] of the [Climate Action Plan] and can reduce its GHG emissions by 26 percent through mitigation, it will be consistent with the adopted CAP and have a less-than-significant impact on GHG emissions." (DEIR 6-15.) The DEIR then goes on to disclose that while the Project is anticipated to emit 105,849 metric tons of CO₂ emissions, it will

preserve 248 acres of woodland that will result in an emission reduction of 27,528 metric tons. (DEIR 6-16-17.) This approach is flawed on multiple levels.

First, the DEIR's significance threshold and analysis fail to disclose all necessary information. Existing physical conditions in the project area are, with very limited exceptions, the baseline against which CEQA requires environmental effects to be measured. (CEQA Guidelines § 15125(a) [existing physical conditions "normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant"].) The California Supreme Court recently held that lead agencies may forgo a comparison with existing physical conditions, and instead rely solely on a comparison with projected future *physical conditions*, only where the existing conditions comparison would be misleading or without any informational value. (*See Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439, 445.) The DEIR here makes no such showing. Instead, the Project fails to even make clear what current GHG emission levels on the site. Without such information, the DEIR prevents informed decisionmaking and fails to ensure that actual, meaningful reductions of GHG emissions will occur through Project mitigation. (*See Save Our Peninsula Committee*, 87 Cal. App. 4th at 121 ("the impacts of the project must be measured against the 'real conditions on the ground.'").) Because CEQA requires a project's impacts should be compared to actual, existing pre-project conditions rather than to a hypothetical conditions when determining the significance of a Projects impacts, the current environmental baseline level of emissions must be disclosed in the DEIR. (*Communities for Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 322 [CBE].)

Second, after concluding that the construction of the Project could be a "potentially significant impact," the DEIR determines that by preserving 248 acres of woodland, any climate impact from the Project would be less than significant. (DEIR 6-17-18.) However, the DEIR fails to make clear whether the cutting down of those 248 acres was ever anticipated in the Project design and could even be developed into vineyards. The Fully Development Alternative proposed clearing of 538 acres and 397 acres of new vineyard but was ultimately not considered because 41 acres of potential development were removed to minimize impacts of the project. (DEIR 5-11.) The current proposed project includes 507 acres with 356 acres of vineyards. (DEIR 3-6.) This suggests that the current form of the Project works to maximize the potential land available for development on Walt Ranch and is leaving land as undeveloped not in response to the Project's environmental impacts but simply because it cannot use the land for vineyards. It appears then 248 acres of land being "preserved" as mitigation for the Project could likely never have been a part of the Project. If true, then the Project is relying on a hypothetical version of the Project when making its significance determination, an approach that violates CEQA Guidelines and case law. (*See Communities for Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 322; *Sunnyvale West Neighborhood Assn. v. City of Sunnyvale* (2010) 190 Cal.App.4th 1351, 1373; Guidelines § 15125(a).)

This approach also raises concerns as to the actual amount of mitigation occurring on the Project site. If the 248 acres of woodland, or even a portion, were never anticipated to be developed into vineyards, it is disingenuous for the County to claim mitigation credit for protecting it. The County cannot claim mitigation credit when no credit is due. Without further information on these 248 acres, in particular where on the property these acres are and whether

the land is already being protected,⁴ it is impossible to know whether the preservation serves as an adequate mitigation measures for the over 100,000 metric tons of GHG emissions resulting from Project construction.

Third, while the significance threshold and analysis may have been based in part of existing thresholds, compliance with the law is not enough to make a finding of less than significant under CEQA. (*See Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1107.) Instead “the EIR’s discussion of impacts must “provide[] sufficient information and analysis to allow the public to discern the basis for the agency’s impact findings. Thus the EIR should set forth specific data, as needed to meaningfully assess whether the proposed activities would result in significant impacts.” (*Sierra Club v. Tahoe Reg’l Planning Agency* (2013) 916 F. Supp. 2d 1098, 1146-1147.) The DEIR fails to meet this CEQA requirement and instead leaves the public and decisionmakers uncertain on the Project’s true environmental impacts and steps that will be taken to reduce those impacts.

The DEIR simply fails to provide an evidentiary basis—grounded in actual physical conditions—for its conclusion that the DEIR will reduce greenhouse gas emissions to a less than significant level. The goal of AB 32 is to reduce California greenhouse gas emissions to 1990 levels by 2020. Health & Saf. Code § 38550. Recent science, however, indicates that far steeper reductions are necessary to avoid the most significant impacts of climate change. Many scientists believe that avoiding the worst impacts of climate change will require reducing the concentration of CO₂ in the atmosphere to 350 ppm or below, which will require even steeper and more rapid reductions. The DEIR must analyze the cumulative significance of the Project’s emissions in light of reductions needed to avoid contributing to these physical impacts, not just measure them against the AB 32 Scoping Plan and local plans. Troublingly, the proposed Climate Action Plan for Napa County requires a 38 percent reduction in GHG emissions for development and vineyard projects, a threshold that this Project would clearly fail to meet.

Lastly, because of the lack of detail on where the 248 acres of preserved woodland will come from, it raised questions on what exactly is the scope of the Project. An “accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” (*Cnty. of Inyo v. City of Los Angeles*, (1977) 71 Cal.App.3d 185, 193 (*Cnty. Of Inyo*)). An inaccurate or truncated project description is prejudicial error because it fails to “adequately apprise all interested parties of the true scope of the project.” (*See City of Santee v. Cnty. of San Diego*, (1989) 214 Cal.App.3d 1438, 1454-55.) Prior to moving forward with the Project, the County should provide additionally detail as part of its GHG significance analysis. In particular, what are the current emissions on the Project site, what portions of land will be used for mitigations and are the estimated emissions from the Project.

B. The Project’s GHG Mitigation Measures are Vague and Inadequate

⁴ The DEIR notes that 72.1 acres of trees are protected under Napa County Code Section 18.108.027B as part of the Milliken Reservoir, 30.80 acres of Valley Oak are under protection, and 72.78 acres of oak woodland are being preserved under a separate mitigation measure. (DEIR 6-18.) Additionally, 901.4 acres of the property cannot be developed under Napa County Code Section 18.108.060 because of the percentage of slop. (DEIR 6-18.)

Mitigation of a project's environmental impacts is one of the "most important" functions of CEQA. (*Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 41.) Therefore, it is the "policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which will avoid or substantially lessen the significant environmental effects of such projects." (Pub. Res. Code § 21002.) Here, however, the DEIR adopts only one mitigation measures despite anticipating 105,021 metric tons of CO2 emissions resulting from Project construction. (DEIR 6-17.) These emissions represent a tremendous amount that should be mitigated to the extent possible.

The DEIR also site to other Project elements that may potentially reduce GHG emissions. (DEIR 6-19-20.) However, these meager steps incorporated into the Project include no enforcement mechanisms, while leaving many feasible mitigation measures out completely. Mitigation measures to reduce vehicle miles traveled, energy use, waste, water consumption and others could all lower the Project's impact on climate change. CAPCOA has identifies existing and potential mitigation measures that could be applied to projects during the CEQA process to reduce a project's GHG emissions. (CAPCOA 2010). The California Office of the Attorney General also has developed a list of reduction mechanisms to be incorporated through the CEQA process. (Attorney General 2010). There have also been numerous scientific and academic articles discussing measures agriculture can take to reduce GHG emissions and be more energy efficient. (*See* Comargo "Energy Use and Greenhouse Gas Emissions from Crop Production" (2013); Smith "Greenhouse Gas Mitigation in Agriculture" (2008); Haden "Use of Local Greenhouse Gas Inventories" (2013).)

These resources provide a rich and varied array of mitigation measures to be incorporated into the Project. Examples of potential mitigation measures include the alternative construction materials, onsite energy generation and additional on site mitigation of tree loss. The DEIR, however, includes no analysis of the availability and feasibility of adopting such measures despite acknowledging the Project's large carbon foot print. The DEIR simply fails to evaluate the many available mitigation measures for development projects and refuses to analyze or adopt any mitigation measures other than agreeing to preserve a small portion of the site. This failure is a violation of CEQA and contradicts established state policy. It is the "policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which will avoid or substantially lessen the significant environmental effects of such projects." (Pub. Res. Code § 21002.)

As noted above, it is also unclear effective the one mitigation measure adopted by the DEIR will actually have. The DEIR fails to make clear whether these trees would have otherwise been cut down, the specific location of the preserved trees, through what means the area will be protected and assurances that the trees will be protected in perpetuity. This violates CEQA, which requires mitigation measures be "fully enforceable through permit conditions, agreements, or other measures" so "that feasible mitigation measures will actually be implemented as a condition of development." (*Federation of Hillside & Canyon Ass'ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.) In the end, the DEIR approach to GHG emission analysis is misleading and grossly inadequate, leaving the public and decision makers unaware of enormity of the Project's climate change impact and available measures to reduce that impact.

VIII. The Air Quality Analysis in the DEIR is Inadequate

The DEIR's air quality impacts analysis is flawed because it underestimates the air quality impacts likely resulting from the Project and fails to adopt all feasible mitigation measures. Californians experience the worst air quality in the nation, with annual health and economic impacts estimated at 8,800 deaths and \$71 billion per year. (ALA 2013.) The Project will further degrade the region's air quality by generating considerable emissions from the construction phase through ongoing operations.

As noted in the DEIR, one potential source of significant air quality impacts is mobile emissions. (DEIR 4.1-17.) The DEIR concludes that the Project's anticipated mobile emissions will not be significant and therefore adopts no mitigation measures. However, as noted above, the DEIR traffic analysis was flawed and used an improper baseline when analyzing the Project's likely impacts. Because impacts from traffic are linked to air quality, the County should redo their air quality impact analysis in light of the concerns raised by conservation groups in this letter. If the Project does violate the significance thresholds for air quality, the County should consider and adopt all feasible mitigation measures. (*Napa Citizens for Honest Gov't v. Napa County Bd. Of Supervisors* (2001) 91 Cal.App.4th 342, 360.) Potential mitigation measures can be found in reports by the California Air Pollution Control Officer's Association and California Office of the Attorney General to reduce greenhouse gas emissions, which also facilitate the reduction of criteria pollutants. (Attorney General 2010, CAPCOA 2010, CAPCOA 2008). Those mitigation measures, as well as others, should be analyzed as a means to reduce the significant air quality impacts and fully adopted if feasible.

Conclusion

Thank you for the opportunity to submit comments on this proposed Project. We look forward to working to ensure that the Project and environmental review conforms to the requirements of state law and to make certain that all significant impacts to the environment are fully analyzed, mitigated or avoided. In light of many significant, unavoidable environmental impacts that will result from the Project, we strongly urge the Project not be approved in its current form. Please do not hesitate to contact the Center with any questions at the number listed below. We look forward to reviewing the County's responses to these comments in the Final EIR for this Project once it has been completed.

Sincerely,



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A handwritten signature in cursive script that reads "Marc Pandone".

Marc Pandone
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