Attachment J
Applicant's Supplemental Information

KATHERINE PHILIPPAKIS
kp@fbm.com
D 707.967.4000

December 29, 2023

Via E-Mail

Napa County Board of Supervisors
1195 Third Street, Suite 310
Napa, California 94559

E-Mail: laura.anderson@countyofnapa.org

Re: Applicant Rutherford Ranch Winery's Letter Brief on Appeal re Major Modification P19-00126 and Use Permit Exception to the Conservation Regulations P23-00145

Dear Chair Gallagher and Members of the Board:

Applicant Rutherford Ranch Winery ("Applicant") respectfully submits this Letter Brief on Appeal in response to appellant Water Audit California's ("Appellant") appeal of the Napa County Planning Commission's (the "Commission") Approval of Applicant's Use Permit Major Modification P19-00126 and Use Permit Exception to the Conservation Regulations P23-00145 (the "Approval"). In simplest terms, Applicant seeks to increase its employee roster, visitation, and events, which, if unmitigated, could increase Applicant's *domestic* water demand; however, Applicant proposes to offset this potential increase by modifying certain elements of its winemaking practices to reduce its *winery* water demand. As a result, the project results in ***no net increase in water demand,*** as demonstrated by extensive data based on historical meter readings from Applicant's facility. We therefore ask the Board to find the Appeal meritless.

By way of background, Applicant initially submitted its Application for Use Permit Major Modification P19-00126 on March 27, 2019 ("Use Permit Application"). Thereafter, Applicant diligently cooperated with County staff for four (4) years to facilitate the County's review of its Use Permit Application, including providing additional information and meeting onsite with County staff. Based on the County's review, Applicant submitted an application for a Use Permit Exception to the Conservation Regulations P23-00145 ("Conservation Exception Application" and, together with Use Permit Application, the "Application") on July 19, 2022. In all, the Application culminated in a record that includes an Initial Study prepared by the County, a Biological Report, a Water Availability Analysis, a Water System Feasibility Report, a Wastewater Feasibility Study, a Traffic Impact Study, and Memoranda from multiple County departments.

Now, at the eleventh hour, Appellant—armed with nothing more than rhetoric and a grab bag of unsubstantiated arguments—implores the Board of Supervisors ("Board") to believe that the Commission adopted a Negative Declaration without giving due regard to the preservation of public trust resources. This is demonstrably false. A close examination of the Record reveals that—whether by design or by accident—Appellant's submission misquotes the Record or

mischaracterizes it by selectively presenting information out of context. If Applicant seeks to reform water policy in California, its efforts should be directed toward lobbying Sacramento—not filing individual appeals across multiple jurisdictions (as Appellant has done). The Board should affirm the Commission's sound Approval. To do otherwise will create a perverse incentive whereby meritless appeals are filed in an effort to undermine the County's authority to issue discretionary permits and ultimately lay waste to County resources.[1]

1. **The Board Should Affirm The Chair's Determination That There Is No Good Cause To Consider Extrinsic Evidence.**

Appellant proffers what it purports to be "well monitoring data" from four (4) wells the City of Napa has "historically monitored" and are "proximate" to Applicant's project. According to Appellant, the well data constitutes "substantial evidence" requiring an Environmental Impact Report. (*See* Appellant's Good Cause Submission.) Not so. However—before reaching this substantive inquiry—Appellant must first establish that there is "good cause" to consider the evidence in the first instance. As the Chair aptly ruled on December 18, there is none.

A finding of "good cause" requires Appellant to demonstrate that the evidence "could not have been produced to, or was improperly withheld from, the decisionmaker." (Pre-Hearing Conf. Agenda at § IV(B).) Neither finding exists here. As the Chair found, the only evidence is well data that is *over* 10 years old and, as Appellant concedes, was produced by the City of Napa upon request. (*See also* Appeal Packet-Additional Sheets ("APAS") at 7.) Yet, Appellant does not establish that it could not obtain this evidence prior to the Hearing on June 21 or filing its Appeal on July 18.

Appellant also fails to demonstrate that this evidence was improperly withheld from the Commission. (It was not.) There is no analysis whatsoever regarding the *meaning* of the data, or its relevance to Applicant's project. (Data is not relevant just because it has to do with water.) Given that the data is over 10 years old, it begs the question as to whether the wells remain in use and subject to monitoring. Appellant ignores this issue. Even if these wells remain in use, the closest of the four wells is located *3,500 feet away* from the project (or approximately 2/3 of a mile) and at a different elevation. Per County practice, wells that are at or within 1,500 feet of a project are considered proximate and therefore of potential impact. (*See generally,*, Napa County Water Availability Analysis – Guidance Document, adopted May 2015 ("WAA").) At this distance, Appellant presents no evidence that the water draw from one well could have any impact on the other.

Setting aside procedural hurdles, the evidence does not compel an EIR to be commissioned. Even if the well data were relevant (it is not), a technical expert would need to analyze the data—the mere conjecture of an attorney is not sufficient. Further, CEQA would also require an assessment as to whether mitigations—such as those incorporated into the Final Conditions of Approval—were available to reduce the potential for any significant impact requiring an EIR. It is incorrect

[1] To facilitate the Board's review, Applicant first addresses Appellant's (untimely) "Good Cause" request, submitted in two parts on November 9 and November 13, 2023, and thereafter addresses each of Appellant's arguments in turn.

to assert that random well data compels an EIR. Thus, the Board should affirm the Chair's decision to deny Appellant's good cause submission.

2. Appellant Fails To Establish A Viable Basis For Appeal.

A. Fair & Impartial Hearing: First, Appellant contends that the Hearing was unfair because it did not "inquir[e] into potential injury to the public trust." (APAS at 2.) Appellant's assertion is unfounded. To state the obvious, the very purpose of the use permit modification process is to inquire about potential impacts on and injuries to the surrounding environment. As such, the County examined streambed encroachments, traffic, parking, noise, groundwater availability, water and wastewater systems, and greenhouse gas emissions, among other aspects of Applicant's Application. Further, the Commission held a hearing on June 14 (lasting nearly two hours) during which the Commission received public comment from multiple parties, including Appellant. Just because Appellant did not succeed in opposing the Application does not render the Hearing unfair.

B. Environmental Injury: Appellant argues that reversal is proper because "[t]here is evidence of existing environmental injury" insofar as "[i]mpermissible intrusions into the riparian way have improperly been allowed to persist." (APAS at 2.) Appellant is correct insofar as the County identified code violations within the riparian way, among others, that Applicant must correct. *See* Approval Packet ("Approval") at 9 of 17 (COA 4.20(d)). It bears noting that the only reason Applicant has been unable to start its remediation efforts is *because of* Appellant's appeal.

C. Water Demand: Next, Appellant takes issue with the projected water demand as exceeding recharge capacity. (APAS at 2.) Appellant's argument rests on a comparison to data for another project at Duckhorn Winery (which, ironically, Appellant has also appealed). As detailed in Section 4 below, Appellant's argument about Duckhorn Winery is inapposite. In any event, Applicant has amply demonstrated any potential increase in domestic water demand would be wholly offset by reductions in its winery water demand. (*See* Section 4.)

D. Potable Water: Separately, Appellant avers that the Commission's ruling should be reversed because "the proposed sole source of potable water has not been approved or reviewed by [the County] or [the State]." (APAS at 2.) This is a misstatement of the record. In fact, the Application was submitted to all County departments, including the Environmental Health Division ("EHD"), for review and comment, and EHD provided conditions of approval in a memo dated June 8, 2023. *See* Record at 54. Among other things, EHD prescribed that Applicant must maintain its potable water system in compliance with the California Safe Drinking Water Act and related laws. (Record at 74.) The Commission incorporated these conditions into its Final Conditions of Approval. (Approval at 10 of 17.)

E. CEQA Review: Appellant next claims that "[t]here has not been a full and complete review of the project as required by [CEQA]." This is a misstatement of the law. An Initial Study was properly prepared, and it analyzed water impacts and concluded that there was no potential for significant environmental effects and thus, a Negative Declaration was prepared. (Record at 104-137.) This is entirely proper.

F. CDFW: According to Appellant, "[t]he adopted Recommended Findings have failed to comply with a term of mitigation **required** by the California Department of Fish and Wildlife ('CDFW')" insofar as CDFW reported "'a Mitigated Negative Declaration is **more appropriate** for the Project." (APAS at 2 (emphasis added).) Appellant mischaracterizes the record. CDFW did not impose any ***requirements*** on the Project. At best, CDFW proffered that a Mitigated Negative Declaration would be more appropriate than a Negative Declaration and certain mitigation measures ***should*** be implemented. (Record at 419.) CDFW proposed such mitigation measures and, in response, PBES incorporated CDFW's recommendation for a Lake and Streambed Alteration permit as a Condition of Approval for the Permit. (*See* Record at 61 (COA No. 6.15(g)).) In turn, the Commission incorporated the same into its Final Conditions of Approval. (*See* Approval at 14 of 17.) To be clear, prior to initiating removal of previously unpermitted work in the creek and implementing restoration efforts, Applicant must obtain any requisite permits from CDFW (among other agencies), as is the usual procedure, and such permits also analyze biological impacts at the time of permit issuance.

G. Parking: Appellant again misstates the record, claiming: "The Planning Commission failed to properly deal with the critical issue of parking"—namely, the conditions set forth in the Engineering Services Division memo…. (APAS at 2.) Contrary to Appellant's contention, Condition of Approval 4.18(a) expressly requires Applicant to comply with the conditions set forth in the Engineering Services Division memo. (Approval at 7-8 of 17.) The issue of parking was exhaustively discussed at the Hearing, and thus it is clear the Commission gave the matter due consideration in arriving at its decision. (*See* Hearing Video at 1:23-1:43.)

H. Imported Grapes: Appellant's next assertion that the Project does not comply with the Winery Definition Ordinance because it relies upon "increasing importation of grapes" is equally as baseless as Appellant's other arguments. For the reasons detailed in Section 6(F) below, Applicant is not subject to the Grape Sourcing Rule.

I. Miscellaneous Statutory Authority: Finally, Appellant cites (seemingly at random) to various sections of California Fish & Game Code, *see* APAS at 3-4, but wholly fails to apply any of the sections to demonstrate the Hearing was not fair or impartial.

3. The Project Does Not Violate The Public Trust Doctrine.

A. Public Trust Impacts: Appellant asks the Board to believe that "[b]y simply stating that no impacts exist, Applicant has arbitrarily and wholly failed to discuss the substantial potential off-site public trust impacts of the project." (APAS at 4.) Tellingly, Appellant does not (because it cannot) cite to any such representation by Applicant in the record. Nor would there be any reason for Applicant to make any such assertion because "no impact" is not the legal threshold. Rather, a Negative Declaration stands for the proposition that a project "***could not*** have a ***significant effect*** on the environment," and the Commission correctly found that project had no such impact. (Record at 108 (emphasis added).)

B. Wells and Water Extraction: Appellant argues that the Project "is served by a well located approximately seven hundred feet from Conn Creek . . . [and] [e]xtraction by the Applicant lowers the groundwater level, contributing to the drying of Conn Creek." (APAS at 5.) According to

Appellant, a "streambed alteration agreement" is required "[t]o the extent the extractions of the Applicant diminish public trust surface water flows" and the Commission improperly accepted "at face value the assertion that the proposed substantial changes in bottling and visitation operations do not change water consumption." (APAS at 5.) Appellant's argument is unfounded: *The Project does not contemplate extracting surface water from Conn Creek.*

Further, Applicant submitted a Water Availability Analysis prepared by Summit Engineering (dated March 26, 2019 and revised October 25, 2022) demonstrating that there is ***no net increase*** from the proposed changes because any potential increased demand for domestic water will be offset by multiple water saving measures with respect to its winery water demand.[2] More specifically: **(1)** the cooling tower will be converted from a water to an air-cooled system, which will reduce Applicant's water demand by approximately 183,000 gallons of water per year (based on the last 3-year average of metered use); **(2)** a steam sanitization process, which is estimated to save 220,000 gallons per year, has already been implemented[3]; and **(3)** the drip irrigation systems for the winery, which are estimated to save 53,000 gallons of water per year, have already been converted.[4] (Record at 245-46.)

In other words, even though its proposed changes could increase its water demand, Applicant will implement specific, measurable practices to reduce its existing water demand in other areas of its business operations to offset any increase. Because there is no net increase, a Tier 3 Water Availability Analysis is not required per County policy. (*See generally* WAA at 10-13; *see also* Napa County Well Permit Standards and WAA Requirements, dated Jan. 6, 2023 ("Well Permit Stds.") at n. 5.) Tellingly, Appellant ignores the data showing that the multiple water saving measures result in a no net increase.

4. Applicant Adequately Demonstrated That There Will Be No Net Increase.

Duckhorn Winery: Appellant asks the Board to reverse the Commission's decision because Applicant's water usage calculations differ from a recent application submitted by Duckhorn Winery. (APAS at 5-6.) Setting aside that the Duckhorn Winery materials are illegible, Appellant asserts that "Duckhorn represented that it takes 2.15 acre-feet (AF) of water per 100,000 gallons of wine production, or 0.0000215 AF (approximately 7 gallons of water per gallon of wine)." (APAS at 5.) Based on this, Appellant concludes Applicant's calculations—*i.e.*, that 4.9 AF of groundwater is needed to produce "1,560,000 gallons of wine" or 0.00000341 AF (approximately

[2] The water use at Applicant's facility is extensively tracked via flowmeter recordings for various processes, including, without limitation: overall groundwater well, winery, hot and cold bottling, tasting room, cooling tower, and irrigation (winery, vineyard, and olive grove). Based on these separately tracked flowmeters, the facility has actual water use data for its existing conditions and can more accurately estimate water use savings for specific processes.

[3] In fact, the steam sanitization process has already reduced winery water by about 23% as compared to the first three quarters of 2021 and 2022 (*i.e.*, over 200,000 gallons in water savings to date). With one additional quarter remaining in the year, achieving this estimated reduction in water demand has been demonstrated as being feasible.

[4] In fact, based on water use tracking in the first three quarters of 2023, the winery irrigation water demand has already been reduced by about 31% as compared to the first three quarters of 2021 and 2022 (over 260,000 gallons in water savings) as a result of converting the irrigation systems. With one additional quarter remaining in the year, it has already been demonstrated that achieving this estimated reduction in water demand is feasible.

1.1 gallons of water per gallon of wine)—are "not credible" because it amounts to only 15% of the water used by Duckhorn and "such a remarkable assertion demands supporting facts and an explanation." (APAS at 5.) Whether by design or accident, Appellant mischaracterizes the record.

To be clear, ***there is no proposed increase in wine production***. Applicant nowhere represents that it intends to produce 1,560,000 gallons of ***wine*** per year. Rather, Applicant represents that its total ***Projected Winery Process Water Demand*** is 1,560,000 gallons per year. (Record at 244-45.) Applicant has an existing legal entitlement to produce up to 250,000 gallons per year of wine and receive up to 1,000,000 gallons per year of bulk wine—*i.e.*, a total of 1,250,000 gallons of wine per year—under its existing Use Permit. (Record at 16.) The water demand needed to produce wine from grapes crushed onsite is markedly different than the water demand needed to process bulk wine. As evidenced by Applicant's Water Availability Analysis, which is based on onsite metered water use, producing 250,000 gallons of wine (crushed onsite) per year requires approximately 5.0 gallons of process water per gallon of wine. On the other hand, producing 1,000,000 gallons of wine from bulk juice per year only requires approximately 0.75 gallon of process water per gallon of wine.[5] (Record at 242-43.) Appellant offers no explanation (let alone any evidence) demonstrating that Duckhorn's proffered calculations are relevant to a water demand analysis that involves the production of *bulk* wine. For these reasons, Appellant's argument is irrelevant.

5. The Commission Did Not "Vest" An Injury To The Public Trust.

A. <u>Public Trust Doctrine</u>: Appellant would have the Board believe that *all* water *everywhere* falls within the scope of the Public Trust Doctrine and that *Environmental Law Foundation v. State Water Resources Control Board* ("*ELF*"), 16 Cal. App. 5th 844, 858 (2018) stands for the proposition that "groundwater extractions that diminish public trust surface water flows can be enjoined as injuries to the public trust." (APAS at 6.) This mischaracterizes the law. As the *ELF* Court plainly affirmed: "The court does ***not*** hold the public trust doctrine applies to groundwater itself. Rather, the public trust doctrine applies ***if*** extraction of groundwater adversely impacts a ***navigable*** waterway to which the public trust doctrine does apply." (*ELF*, 16 Cal. App. At 859 (emphasis added).) Appellant presents no evidence whatsoever that Conn Creek qualifies as a navigable waterway or that there is any increased extraction of groundwater that impacts the creek. Simply stated, Appellant fails to demonstrate that the Public Trust Doctrine applies here.

B. <u>Monitoring Records</u>: Appellant baldly contends "[t]he Application asserts that it is impossible to know whether the Applicant's operations have an adverse effect on groundwater levels as there are no monitoring records." (APAS at 7.) Of chief importance, Applicant made no such assertion. What is more, the County only requires a Tier 3 Water Availability Analysis for wells at or within 1,500 feet of a project that results in an *increase* in water demand. (*See* Well Permit Stds. at n. 5.)

[5] The WAA outlines an estimate of 2.15 acre-feet of process water per 100,000 gallons of wine (which is equivalent to approximately 7 gallons of process water per gallon of wine). (*See* WAA at 19.) Based on the difference in Applicant's winemaking activities (*i.e.*, 250,000 gallons of grapes crushed and 1,000,000 gallons of bulk wine bottled) and the water use data collected at the facility for the past 5 years, Applicant has an average winery water use of 971,000 gallons. Based on the 1,250,000 overall gallons of wine production, this results in an average process water demand of 0.78 – 1.02 gallons of process water per gallon of wine.

Where, as here, there is a no net increase, no such analysis is required. To the extent that Appellant argues the City of Napa has monitored groundwater levels "proximate to the Applicant" for 20 years and that data is readily available upon request," *see* APAS at 7, it begs the question as to why Appellant did not provide any such data. Appellant, at best, presented well data from 2002-2012 for four wells over 3,500 feet from the project in its Good Cause submission. More to the point, the project cannot have an impact on groundwater levels if the project does not increase water use above the current baseline. Thus, the so-called evidence from the City of Napa historic records is irrelevant.

C. County Consultant: Appellant also avers that the County's hydrological consultants, Luhdorff & Scalamini Consulting Engineering, offer a "flat rate service through the Planning Department to perform a Tier 3 analysis for no more than $1,250, with no groundwater monitoring required." (APAS at 7-8.) As with most of Appellant's arguments, Appellant cherry picks information and presents it out of context. Luhdorff & Scalamini provides this service at this price point for *ministerial* well permits, *not* discretionary use permits (such as the use permit at issue). Whatever the cost may be, however, the salient point is that the project did not perform a Tier 3 analysis because no such analysis was warranted where the project did not increase water demand.

6. The Application Is Complete And Adequately Supported By Facts.

A. Conservation Regulation Application: Appellant first pleads for the Board to believe that the Application is incomplete and inadequately supported by fact because "[t]he Exception to Conservation Regulation Application page 5 has no date or permit number." (APAS at 8.) Contrary to Appellant's assertion, page 5 *is* dated. (Record at 180.) To the extent there is no permit number, it is because the *Application for Use Permit Exception to Conservation Regulations* does not contain any such field. (Record at 180.) Applicant defers to the County regarding Appellant's second argument pertaining to the date discrepancy on the Parcel Report, but notes that Appellant offers no explanation as to how any such date discrepancy is material.

B. P18-00452 / P19-00126-MOD: According to Appellant, "P18-00452 (a *very* minor modification) is the supporting application for the subject hearing of P19-00126-MOD (a major modification). Technical Information and Reports are reported to have been submitted with P18-00452 but are not available on the public record under either file number." (APAS at 8.) Appellant's argument obfuscates the record. As explained in the Staff Report, Applicant submitted P18-00452 to, among other things, recognize work that had been done to remodel portions of the existing winery building, and to convert office and production space. (Record at 16-17.) However, "[w]hile undergoing review, it was determined that there were operational components that were out of compliance as well. The applicant resubmitted the project as a Major Modification in the Code Compliance Program – P19-00126." (Record at 16-17.) In other words, the application for P19-00126 *replaced* the application for P18-00452.

C. Policy Memorandum: Appellant next claims "Agenda PDF 172 represents itself to be a policy memorandum signed by the Director …. Both the form and the contents are fraudulent." (APAS at 8.) Setting aside that the referenced Memorandum is not signed by Mr. Morrison, *see* Record at 172, Appellant fails to substantiate its hefty allegations that its contents are *fraudulent*. Applicant respectfully defers to the County to address this non-issue.

D. Parking Lot & Bridge: Appellant also claims the Application is incomplete because "[t]here is no storm water plan, although photographs submitted with the application show a parking lot immediately adjacent to the drainage flowing into Conn Creek, and show an unpermitted bridge constructed across the watercourse . . . ." (APAS at 8.) As is customary, a stormwater plan will be prepared once construction documents are prepared. In addition, the existing parking lot is ***not*** adjacent to Conn Creek—it is adjacent to a tributary draining into Conn Creek. Critically, the existed paved parking is permitted and the section of unpaved parking that was not originally permitted will be removed from the tributary setback. (Approval at 1 of 17.) Finally, the bridge was included in the architectural plans prepared in connection with Use Permit #U-198384 (approved in October 1983). These plans are available to the public through the County's online portal. Because this improvement was entitled *40 years ago—i.e.*, *before* the adoption of the Conservation Regulations—and because Applicant did not propose a change to it, it was not (and is not) before Commission or the Board for action. (Record at 23-24.)

E. Designation of Environmental Risk: Appellant contends that the Application is incomplete because "[a]lthough the County planning process requires designation of environmental risk by state or federal agencies, the Applicant makes no such showing, relying solely on a summary dismissal of the risk in the Kjeldsen biological report." (APAS at 8 (citing Record at 183).) This argument puts the cart before the horse: Applicant will have to obtain requisite permits from state agencies, including CDFW, to make improvements within the creek setback. (*See* Approval at 14 of 17 (COA 6.15(g).) Nor can it be said that Kjeldsen Biological Consulting report proffers a "summary dismissal" of the risk. The report was prepared using standard field survey methodologies, as well as evaluating wetlands, tributaries, streams, and structures. (Record at 204-06.) Based on these observations, the report recommends removal of all unpermitted, non-essential structures from the setback. (Record at 215.) The report concludes that removing unpermitted, essential structures from the setback "may potentially result in significant biological impacts by increasing sediment to the creek," as well as other impacts. (Record at 215-16.) The Commission, however, in its discretion rejected this argument and required all but one of the unpermitted structures to be removed, *see* Approval at 1 of 17; this removal will be subject to the terms of the required Streambed Alteration Agreement. Appellant's argument is therefore demonstrably false.

F. Grape Source: Appellant avers that the Application is incomplete because Applicant did not provide a grape-source statement. (APAS at 8.) Not so. The Staff Report confirms that Applicant is not subject to the 75% rule because it is a pre-WDO winery within its development area:

> The original winery use permit for 144,000 gallons per year was approved in 1983 prior to adoption of the [WDO]. Subsequent modifications increased the permitted production of wine from grapes[.] . . . Previous approvals did not subject the production quantities to the County's 75% rule since there was no increase in the winery development area at the time of the project authorization pursuant to NCC Section 18.104.250 – Wineries – Production capacity. There are no changes to the production.

(Record at 29.)[6] Consistent with this, the Commission's Final Conditions of Approval designated "Grape Source" as "Reserved"—meaning, the condition is "not applicable or relevant to this project." (*See* Approval at 1 of 17 (Preamble), 5 of 17 (COA 4.6).)

G. Correspondence: Appellant next complains that the Application is incomplete because "correspondence between Applicant and staff of the planning department is not fully presented in the agenda packet." (APAS at 8.) Applicant respectfully defers to the County to respond to this issue, but notes that such correspondence is available to the public and can be obtained by way of a Public Records Act request.

H. Corrective Actions: Appellant also claims that the Application is incomplete because "[t]he Applicant has apparently not corrected issues raised in a code enforcement action that was not disclosed or discussed in the Application." (APAS at 9.) Yet, another mischaracterization of the record. The County conducted a site visit after Applicant submitted its Use Permit Application, during which the County identified 22 apparent Code violations. However, Applicant's remediation efforts are part of the Commission's Approval that Appellant now appeals. In other words, Applicant was ready to commence remediation efforts, and in fact has already corrected 12 of the violations, but paused its efforts at the County's explicit instruction until this appeal is resolved.

I. Water Availability Analysis: Appellant next claims that the Application is incomplete because Applicant's extraction is "likely" "closer to 55 AF per year." (APAS at 9.) This is pure conjecture, and Applicant's actual water usage data demonstrates otherwise. (*See* Sections 3(B), 4 (detailing Applicant's water use).)

J. Monitoring: Next, Appellant argues that "[m]onitoring is proposed for only one year and reporting only required on demand." (APAS at 9.) Yet again, Appellant grossly misrepresents the record. The Final Conditions of Approval plainly provide, as follows:

> [For the first twelve months], the permittee **shall** read the meters at the beginning of each month and provide the data to the PBES Director monthly. If the water usage on the property exceeds, or is on track to exceed, 14.4 acre-feet per year, or if the permittee fails to report, additional reviews and analysis and/or corrective action program as the permittee's expense **shall** be required[.]
>
> [After the first twelve months], and so long as the water usage is within the maximum acre-feet per year as specified above, the permittee may begin the following meter reading schedule: On or near the first day of each month the permittee **shall** read the water meter and provide the data to the PBES Director

[6] In addition, this information was included in Applicant's November 15, 2019 response to the County: "2. An initial statement of grape source form has not been included in this resubmittal. Please note that the winery secured its original county permit on October 24, 1983, prior to adoption of the WDO. Subsequent expansions also have received county permits between 1991 and 2003. It is our understanding that sourcing restrictions in the 75% Rule do not apply because the winery was first established prior to adoption of the WDO, and subsequent approved permits did not increase the winery footprint []." (*See* previously submitted December 31, 2018 correspondence for a summary of the winery's existing entitlements by year issued and permit number.)

> during the first weeks of April and October. The PBES Director, or the Director's designated representative, has the right to access and verify the operation and readings of the meters during regular business hours.

(*See* Approval at 12-13 of 17 (COA 6.15(a)(5), (7) (emphasis added)).) In other words, Applicant must report monthly readings to the County semi-annually after the first year to ensure its continued compliance. The County should not prejudge Applicant's ability to comply with this condition.

K. Map: Whatever the merits of the two different maps being presented, it is unclear what possible legal impact this has. Appellant makes no substantive argument on this issue, and thus there is nothing for the Board to consider here.

7. The Final Conditions Of Approval Include Recommended Mitigation Efforts.

Streambed Alteration Agreement: In closing, Appellant points to a Conditional of Approval in the original use permit (#U-198384) for the property that required Applicant's predecessor to obtain an approved streambed alteration agreement pursuant to California Fish and Game Code section 1603. (APAS at 9.) According to Appellant, there is no record of any such agreement. (APAS at 9.) Appellant does not, however, establish what California Fish and Game Code section 1603 required in terms of any such agreement in 1983 or that the previous owner failed to comply with CDFW requirements at the time. Indeed, even as of June 2023, CDFW concedes that it is "unclear" if previous improvements were subject to LSA notification requirements. (Record at 419-20.) In any event, the County incorporated recommendations from CDFW into its Final Conditions of Approval, which is all that is relevant here. (Approval at 14 of 17 (COA 6.15(g)).)

***** ***** *****

As amply illustrated herein, although Appellant's arguments are many, none of them hold any water—legally or factually—and the Board should affirm the Commission's Approval.

Respectfully,

Katherine Philippakis

Katherine Philippakis

cc: Cristina A. Guido, Esq.
Rick Tooker