

**Attachment B**  
**Staff Responses to the Appeal**

## **GROUNDS OF APPEAL:**

The following outlines the basis of the Appeal as contained in Appellant’s Appeal dated July 18, 2023. (See **Attachment A**) For convenience, Staff has provided a summary below, but recommends the Board review the actual Appeal for details.

**Appeal Ground No. 1:** Appellant asserts that there was not a fair and impartial hearing in that there was no inquiry into the potential injury to public trust.

**Staff Response:** Appellant is mistaken. The record reveals the Commission considered alleged harm to public trust resources and imposed feasible measures to reduce any alleged harm. Appellant’s disagreement over how the County considered and discharged its duty does not invalidate the County’s determinations.

The County does not dispute that under public trust doctrine (the Doctrine), it has an affirmative duty to take the public trust into account in the planning and allocation of trust resources, and to protect public trust uses whenever feasible. The Doctrine applies if extraction of groundwater adversely impacts a navigable waterway to which the public trust doctrine applies. In Napa County, the Napa River is the navigable waterway protected by the public trust doctrine. An analysis of impacts to trust resources is triggered by whether the groundwater extraction is hydraulically connected to a navigable waterway or non-navigable tributaries of those waters.

To comply with longstanding California Supreme Court and Court of Appeal holdings, Napa County has determined that projects extracting water from wells within 1,500 feet of defined “Significant Streams” must submit a Tier 3 or equivalent analysis for the County to discharge its legal duties under public trust doctrine, whether the proposed project is proposing to extract more or less groundwater or remain at status quo (e.g., no net increase). The Doctrine is only implicated by groundwater use if the groundwater in question is hydraulically interconnected to the Napa River. A public trust analysis begins and ends with whether the project allegedly harms a navigable waterway.<sup>1</sup> The Doctrine applies only if the project approval “will result in extraction of groundwater adversely affecting the public’s right to use [a navigable waterway] for trust purposes, [then] the County must take the public trust into consideration and protect public trust uses when feasible.”<sup>2</sup> The County’s obligation is to consider and give due regard, but not necessarily to prohibit uses or to fully mitigate impacts as required by the California Environmental Quality Act (CEQA).

A Tier 3 analysis considers groundwater and surface water interaction if the groundwater comes from a well within 1,500 feet of a Significant Stream which the County has determined has a high probability of being hydraulically connected to the Napa River, a “navigable waterway” for public trust purposes. A Tier 3 review is the County’s adopted method for complying with its duties under the Doctrine. Alternatively, applicants may forego a Tier 3 analysis under the 2015

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<sup>1</sup> Environmental Law Foundation, 26 Cal.App.5th at 859.

<sup>2</sup> (Id. at 85 1, 853-54.)

WAA Guidance Document by assuming hydraulic connectivity and proposing modifications to the project well(s) to reduce impacts (hereafter referred to as an equivalent analysis).

Here, the Water Availability Analysis prepared for the Project proposed a reduction in groundwater use and opined that it was unlikely the Project well was hydraulically connected to the Napa River, Conn Creek, and the unnamed tributary, which is a Significant Stream that flows through the subject parcel. Furthermore, the Planning Commission adopted conditions of approval that feasibly mitigate any alleged harm. See Staff Response to Appeal Ground No. 2 incorporated here by reference for further details.

**Appeal Ground No. 2:** Appellant contends that the Negative Declaration is not supported by the evidence. Specifically, Water Audit California (WAC) asserts that: the projected water demand for the Project is greater than the groundwater recharge from the site and the proposed Project will consume more water than the existing facility.

**Staff Response:** The record contains substantial evidence in support of the Initial Study/Negative Declaration and the Planning Commission's findings, that existing groundwater use will be reduced as a result of the Project and that impacts to public trust resources have been considered and given due regard.

The Napa County Board of Supervisors adopted resolutions on March 28, 2022, August 9, 2022, and November 8, 2022, proclaiming a continued state of Local Emergency due to the 2021-2022 drought. On June 7, 2022, the Napa County Board of Supervisors provided direction and accepted Staff's interim procedures to implement Executive Order N-7-22 for issuance of new, altered, or replacement well permits and discretionary projects that would increase groundwater use during the declared drought emergency.

As a result of these various drought proclamations and the Executive Order, when the application for the Project was being processed, the County direction at that time limited a parcel's groundwater allocation depending on the location of a project well. For parcels located outside of the Groundwater Sustainability Area (GSA) Subbasin (i.e., generally located in the hillsides), a parcel-specific Water Availability Analysis would suffice to assess potential impacts on groundwater supplies. For wells located in the GSA Subbasin a parcel's groundwater allocation for existing wells proposing new, altered or increased ground water use, is 0.3 acre-feet per acre per year, or no net increase in groundwater use if that threshold is exceeded already. On May 30, 2023, the Board adopted a Resolution terminating the state of Local Emergency due to drought conditions but continued the reduced water use criteria (e.g., 0.3 acre-feet per acre per year or no net increase) allocation for wells in the GSA Subbasin.

The Project parcel is partially located within the GSA Subbasin and the 0.3 acre feet calculation was utilized. According to the Water Availability Analysis prepared by Summit Engineering (dated November 1, 2022) (hereafter Summit WAA), the 17.37-acre parcel would have a groundwater allocation of 5.2 acre-feet per year based on the 0.3 acre-feet allocation.

The Summit WAA calculated groundwater use based on 1) the permitted entitlements on the property, 2) the existing conditions based on 2019 winery operations (the winery is in the Use Permit Compliance Program so this calculation included those components of operations that are out of compliance with permitted uses), and 3) the proposed (new) water demand. The water use associated with the permitted entitlements, including the winery, vineyard, and a single-family residence, was calculated at 14.4 acre-feet per year. Since the existing groundwater use at Rutherford Ranch is 14.4 acre-feet per year, which is greater than the 5.2 acre-feet per year recharge threshold, the Project was subject to a no net increase limitation. The existing 2019 levels were based on actual well records associated with the production activities and irrigation and an estimate on employee and visitor water use based on the County's Water Availability Analysis Guidelines (WAA Guidelines). The existing groundwater use levels included the visitation and employee levels that were out of compliance with the entitlements and the discontinued use of the residence. This existing groundwater use calculation constitutes the baseline level used for the Initial Study/Negative Declaration prepared for the environment review under the California Environmental Quality Act (CEQA).

The Summit WAA further calculated the proposed (new) water use beyond baseline levels would actually result in a reduction from 14.4 to 14.1 acre-feet per year due to various operational changes anticipated to be implemented by the winery. The proposed amount of water for winery domestic uses would increase with the additional employees, visitors, and marketing events by approximately one (1) acre-foot per year. No increase in permitted production levels was requested, however the Project proposed multiple water reduction measures to existing production operations. These reduction measures include conversion of the cooling system tower from water-cooled to air-cooled; conversion of the bottle line filler bowl sanitizing method from hot water to steam; and conversion of barrel soaking to steam use, all of which according to the Summit WAA would result in an estimated reduction in groundwater use of approximately 1.2 acre-feet per year. (Initial Study/Negative Declaration, Section X. Hydrology and Water Quality, and the June 21, 2023, Planning Commission Staff Report (Staff Report). This would result in an overall reduction in groundwater use from 14.4 to 14.1 acre-feet per year.

During the hearing, Project Engineer Gina Giacone, explained to the Commission that estimated groundwater reductions were based on the known operations of the types of equipment at the winery, "...yes, the ultimate water demand projections take into account the reduction for conversion of water cooled, air cooled, chiller, and then the steam use for barrel cleaning and bottling operations. And so those are calculations based on what we know about the mechanics of those pieces of equipment and that was used in the ultimate water projections." (Planning Commission Meeting of June 21, 2023, Certified Transcript [Transcript], Page 22:8-13)

Although a formal Tier 3 analysis was not required by the County at the time due to the Project's anticipated reduction in groundwater use, the Summit WAA in fact provided a Tier 3 analysis and opined that "due to the distance from the active well to the nearest creek, as well as the elevation difference between the two water sources, it is unlikely that hydraulic interaction

between the two sources will occur.” The Summit WAA conclusions are based on their evaluation of geology, the well construction and elevation data. Specifically, the Well Completion Report (WCR) and the geologic setting of the Project well is shown to be drilled in volcanic mudflow deposits and extends, approximately 300 feet, deep within the volcanic layer. The uppermost perforations on the Project well are at 91 feet below ground surface (bgs) and extend to 391 feet bgs; based on the lithology of the WCR the well perforations are located entirely within the volcanic stratum. The annual seal was placed in the upper 52 feet of the well, which extends through the upper most soil layer, into the underlying volcanics. The Significant Steams within proximity to the Project well, and unnamed tributary and Conn Creek, are within a younger alluvial deposit. In the valley floor, the volcanics are generally overlaid by alluvium. These alluvial deposits are assumed to be shallow and are supported by WCR No. 119689 from the Summit WAA.

The Summit WAA further relies on data regarding the well construction and elevation. In particular, the well is constructed at an approximate ground surface elevation of 206 feet and extends below ground surface (bgs) 391 feet to an approximate elevation of -181 feet. The uppermost screening on the Project well is 91 feet bgs at an elevation of 115 feet. Static water levels on July 5, 2000, were measured at 81 feet bgs at an elevation of 129 feet. The elevation of the bottom of the tributary within the interior of the parcel and Conn Creek located at the southern boundary of the parcel, the two (2) Significant Streams within proximity to the Project well, are at approximately 190 feet and 175 feet respectively. The uppermost screening of the Project well ranges from approximately 60 feet to 75 feet below the bottom elevation of the two (2) significant streams. The static water level elevation is also below the stream bottom elevations ranging from 46 feet to 61 feet.

The professional conclusions in the Summit WAA that the Project well is unlikely to be hydraulically connected to the two (2) Significant Streams are based on substantial evidence and satisfy the County’s duty to consider and give due regard to whether any alleged harm would occur to public trust resources.

The Doctrine is only implicated by groundwater use if the groundwater in question is hydraulically connected to the Napa River and its tributaries. A public trust analysis begins and ends with whether the project allegedly harms a navigable waterway.<sup>3</sup> Here, the record reveals that contrary to Appellant’s assertions, the County satisfied its public trust duty and any alleged harm to Conn Creek and/or the unnamed tributary resulting from the Rutherford Ranch’s groundwater extraction was considered and reduced. Applicant’s Project Engineer testified at the hearing that the Project was designed to reduce groundwater use. Furthermore, the Commission imposed conditions of approval on the Project that feasibly address any alleged harm to trust resources. These conditions include a limitation on the volume of groundwater that may be extracted (where no limitation previously existed), imposed metering on wells, monitoring and reporting of

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<sup>3</sup> Environmental Law Foundation, 26 Cal.App.5th at 859.

groundwater use, and the County's ability to recommend additional measures or revoke the use permit in the future if substantial evidence exists that the Project substantially affects the groundwater basin (See COA Nos. 4.20.a. and 6.15.a.). Because the Project proposed to use less groundwater and because the Summit WAA opined that connectivity was unlikely, any alleged harm to public trust resources has been considered and feasibly mitigated.

Nevertheless, to provide even greater protection and further reduce any alleged harm, staff recommends that the conditions of approval be revised to limit groundwater use to 14.1 acre-feet per year which reflects Rutherford Ranch's commitment to lower groundwater use through modifications to the operational design of the Project. In addition to reducing annual groundwater extraction by approximately 2-percent, from 14.4 acre-feet per year to 14.1 acre-feet per year, in order to achieve the reduced groundwater extraction, staff recommends that the Project well reduce the planned pumping rate proportionately, approximately 2-percent, from the existing rate of 75 gpm to 73.5 gpm, while maintaining or not exceeding the current duration of pumping.

**Appeal Ground No. 3:** Appellant claims that impermissible intrusions into the riparian way have improperly been allowed to persist.

**Staff Response:** It is unclear which intrusions into the riparian way Appellant claims have improperly been allowed to persist. NCC Section 18.108.025 establishes a 45-foot setback from the top-of-bank of the stream based on the associated topography of between zero (0) and five (5) percent slopes. An unnamed stream runs through the northern side of the property, directly adjacent to the existing winery outdoor work area, winery building, and residential development (proposed to be converted to winery uses). A number of winery improvements and equipment are located directly adjacent to the stream within the 45-foot setback.

Staff identified a total of 24 improvements located within the stream setback area. The Applicant submitted a Use Permit Exception to the Conservation Regulations application requesting the Planning Commission recognize and approve seven (7) structures located within the stream setback and voluntarily proposed to remove nine (9) structures. Staff recommended to the Planning Commission the removal of six (6) additional structures, which was supported by Applicant and the Planning Commission.

The Planning Commission approved the removal of a total of 15 improvements from within the 45-foot stream setback. The 15 improvements to be removed included those items nine (9) proposed by Applicant and the additional six (6) recommended by Staff. The Commission also required restoration and revegetation where improvements are removed within the stream setback. See Staff Report Attachment F - Planning Commission Adopted Conditions of Approval (COA) Nos. 6.15.e. and 6.15.f.

Based on County records, information provided by the property owner, and review of aerial photos, eight (8) improvements were permitted and/or developed prior to the adoption of the Conservation Regulations on June 25, 1991, and therefore may continue to exist and be used in

their current configuration and size. Since the improvements are already entitled or otherwise legally established, they were not subject to the Use Permit Exception request and were not before the Commission for action. These improvements were memorialized for record keeping purposes in Attachment C-1 of the Staff Report and included with the approval letter.

The following table lists the Applicant’s proposal for the existing improvements, and the Planning Commission approval on what was required to be removed (and the area restored), those that were allowed to remain, and those recognized as legally established. Attachment E depicts the Planning Commission approval.

COMPONENTS NECESSARY TO REMEDY EXISTING CONSERVATION REGULATIONS VIOLATIONS			
Item		Applicant Proposal	PC Approval
1	Water tank #1	Remove	Remove
2	Water tank #2	Remove	Remove
3	Water tank #3 (to be relocated)	Remove	Remove
4	Water tank #4 (to be relocated)	Remove	Remove
5	Pergola	Remove	Remove
6	Greenhouse	Remove	Remove
7	Concrete pad - Partial (east side near parking area)	Remove	Remove
8	Tool Shed	Remove	Remove
9	Insulated container	Remove	Remove
10	Pump house	Keep	Keep
11	Surge tank	Keep	Remove
12	Wastewater transfer pump house	Keep	Remove
13	Concrete pad and retaining wall – south side of stream	Keep	Remove
14	Paved access drive to parking area	Keep	Remove
15	Fence (portion within setback)	Keep	Remove
16	Northern Parking area (portion within setback)	Keep	Remove
NEW PROPOSED WORK IN THE STREAM SETBACK			
17	Relocate water tanks (#3 and #4)	Relocate	Relocate
18	Remove unpermitted structures # 1-9 above	Remove	Remove
19	Restoration Plan	Proposed	Approve
20	Staff recommended removal of items #11-16 and restoration	Agreed to Staff’s Recommendation	Remove items
ITEMS LEGALLY ESTABLISHED OR PRIOR TO CONSERVATION REGULATIONS			
	Outdoor work area north of the winery building		No PC Action

Transformer located north of the outdoor work area	No PC Action
Two (2) fire protection water storage tanks on the north side of the stream	No PC Action
Fire protection storage pipes	No PC Action
Residence (to be converted to winery offices)	No PC Action
Outdoor patios between the winery building and residence	No PC Action
Parking areas in front of the winery building and north of the lawn adjacent to the residence	No PC Action

The Commission approved Applicant’s request to retain and continue use of the unpermitted pump house on the north side of the stream, approximately 22 feet from the top of bank and to relocate two (2) water tanks within the setback. Maintaining the well pump house and relocating the water tanks allows the water system and fire suppression system to continue to function without interruption. No new work in the setback was required to retain the structure in place.

The two (2) water tanks approved to be relocated were irrigation water tanks, currently located approximately 1.5 feet from the top of bank. The tanks would be relocated behind the existing, permitted water storage tanks on the northern side of the stream. The proposed location currently contains a rectangular water storage tank that will be removed. The relocated tanks would be approximately 42 feet from the top of bank, encroaching approximately three (3) feet into the setback. The tanks will be separated from the stream by two (2) permitted water tanks, which pre-date the regulations, and the well pump house. Although a small portion of the tanks would remain in the setback, the location greatly increases their distance from the stream. Because the tanks are going in the approximate footprint of an existing tank, no vegetation will be removed during the relocation, and ground disturbance will be minimal. With implementation of a stormwater management plan, there will be no increase in soil loss and/or runoff. Based on substantial evidence in the record, the Planning Commission made the required findings under NCC Section 18.108.040.

All existing improvements identified in the stream setback have been addressed as appropriate.

**Appeal Ground No. 4:** Appellant contends that the proposed sole source of potable water has not been approved or reviewed by the Napa County Division of Environmental Health or the California Department of Drinking Water.

**Staff Response:** Appellant is incorrect. Through a delegation agreement per California Health & Safety Code Section 116330, the Napa County Division of Environmental Health (County EH) has been delegated authority as the local primary agency for review and approval of changes to small public water systems. Applications are submitted directly to County EH for review and approval. The current small public water system, PWS ID CA-28-01035, is served by well CA2801035\_002\_002, referred to in the Summit Engineering WAA as Well 002 or “Well Y2K”. The well was approved for use by County EH. The well completion report is included as Enclosure B of the Summit Engineering WAA.

**Appeal Ground No. 5:** Appellant asserts that the project poses a potential adverse effect on wildlife resources and that the Commission failed to comply with a term of mitigation as



required by the California Department of Fish and Wildlife (CDFW). Appellant claims that CDFW concluded that a Mitigated Negative Declaration (MND) is more appropriate.

**Staff Response:** Staff received and provided to the Commission as part of the agenda materials, a letter from the CDFW dated June 14, 2023, (CDWF Letter), which included comments and recommendations on two topics: 1. Stream Alteration and 2. Swainson's Hawk. The CDFW Letter states that "... a Mitigated Negative Declaration is more appropriate for the Project" and that "recommended mitigation measures should be implemented" (Page 3; CDFW Letter,). As noted in the Staff Report (Page 23), Staff reviewed the CDFW Letter and determined that CDFW's general comments were addressed by a site-specific biological report prepared for the Project and through the recommended conditions of approval. Appellant inaccurately asserts that the letter from CDFW required implementation of the recommended mitigation measures. As discussed in the Staff Report and during the PC hearing, Staff considered the recommendations, determining that the Project, as proposed and conditioned, would not result in significant impacts and the addition of the recommended mitigation measure was not necessary. Further responses to the CDFW Letter are detailed below.

CDFW Comment 1: CDFW commented that project activities would likely trigger a Lake and Streambed Alteration (LSA) Notification and recommended as a mitigation measure that the Applicant consult with CDFW to determine if an LSA Notification is required and comply with the LSA Agreement if required.

The Initial Study/Negative Declaration Section IV. Biological Resources discusses the proposed removal of items within the setback and the subsequent restoration of this area. The Applicant submitted A Voluntary Stream Setback Compliance, dated March 22, 2019, prepared by Kjeldsen Biological Consulting (Biological Report), which reviewed the site in preparation of the proposed restoration plan. The Biological Report identified existing conditions, potential plant and animal species on site, and potential impacts from both removal of the improvements and installation a restoration plan. The Biological Report opined that the location of the existing improvements that would be removed and the proposed restoration area, the Project does not propose work within the stream or within the bed and/or bank of the stream. As such, the Project would not be subject to certain additional permits including LSA Notification.

While the NCC has specific requirements and permitted uses which can be allowed or permitted (upon the granting of use permit) within a stream setback, the County does not have jurisdiction within the actual stream or streambed (blue-line stream). Any proposed work located within a stream or streambed is still subject to necessary permits and approvals by agencies outside of Planning, Building and Environmental Services (PBES), such as CDFW, Regional Water Quality Control Board (RWCQB), or the US Army Corps of Engineers (USACE), as applicable. Obtaining these permits is processed directly through the agency with jurisdiction. The County is not responsible for the issuance or implementation of these permits However, in the event that some of the proposed work were to occur within the bed and/or bank of the stream, the Initial

Study/Negative Declaration explained that the permittee would be required to obtain any other required authorizations and/or permits from agencies with jurisdiction over Waters of the U.S. or the State including, but not limited to, the possible need for a Section 404 Nationwide Permit from the USACE, or a Section 1602 Lake and Streambed Alteration Agreement (LSAA) from CDFW (Page 12; Initial Study/Negative Declaration).

The requirement that the Applicant obtain outside agency permits prior to any construction activity, was also included in COA No. 6.15.g. which requires the permittee to provide evidence that any required authorizations and/or permits from agencies with jurisdiction over Waters of the U.S. or the State, have been issued or are not required. The condition, listed below in full, specifically included the LSAA as recommended in the CDFW Letter. This was also discussed in the Staff Report (Page 15).

#### 6.15 OTHER CONDITIONS APPLICABLE TO THE PROJECT PERMITTING PROCESS

g. In conjunction with the building or grading permit application submittal, and prior to initiation of the removal work and restoration plan, the permittee shall provide evidence that any required authorizations and/or permits from agencies with jurisdiction over Waters of the U.S. or the State, have been issued or are not required. Permits include, but may not be limited to, a Section 404 Nationwide Permit from the US Army Corps of Engineers (USACE), or a Section 1602 Lake and Streambed Alteration Agreement (LSAA) from the California Department of Fish and Wildlife (CDFW).

Staff concludes that the intent of the CDFW recommended Mitigation Measure was achieved through the adopted condition of approval that was imposed on the Project.

Comment 2: CDFW commented that although the Project footprint includes developed and disturbed areas, the Project has the potential to impact nesting Swainson's hawk through potential auditory or visual disturbances above ambient levels associated with Project activities, and recommended as mitigation that pre-construction surveys for Swainson's hawk be conducted.

The Biological Report identified existing conditions and the potential plant and animal species that may occur on site. A summary of the relevant details and conclusions of the Biological Report were included in the Initial Study/Negative Declaration and the entire Biological Report was made available for public review as an attachment to the Staff Report (Staff Report; Attachment F) and uploaded to the State Clearinghouse (SCH) website (SCH Number 2023050520).

The conclusions contained in the Biological Report were based on "... records in the most recent version of the Department of Fish and Wildlife California Natural Diversity Data Base (CDFW CNDDDB Rare Find-3) and the California Native Plant Society (CNPS) Electronic Inventory of

Rare and Endangered Plants... also a function of our familiarity with the local flora and fauna as well as previous projects on other properties in the area” (Page 3; Biological Report).

The Biological Report describes their field techniques consisting of surveying the area with binoculars and walking the perimeter of the Project site, with animals identified in the field by their sight, sign, or call. Existing site conditions were used to identify habitat, which could potentially support special-status animal species. Trees were surveyed to determine whether occupied raptor nests were present within the proximity of the Project site (i.e., within a minimum 500 feet of the areas to be disturbed). Surveys consisted of scanning the trees on the property (500 ft+) with binoculars searching for nest or bird activity. The search was conducted from the property and by walking under existing trees looking for droppings or nest scatter from nests that may be present that were not observable by binoculars. Aerial photos were reviewed to look at the habitat surrounding the site and the potential for wildlife movement, or wildlife corridors from adjoining properties onto or through the site. Based on this information, the Biological Report concluded that no raptors were observed on site and habitat was limited.

Although the CDFW CNDDDB does not show any listed species for the Project site, the Biological Report included a summary table (Table II), providing a list of animal species that are known to occur within the larger region of the proposed Project and an analysis of habitat on-site, in order to note presence or absence (Page 12; Biological Report).

The Biological Report notes that no habitat for listed animals or critical habitat was identified within the footprint of the proposed study area, and based on the associated habitat present it is unlikely that there was an impact to any listed special-status plants or animal species known for the Quadrangle or the region. The present conditions of the Project sites and historic use are such that there is little reason to expect the occurrence of any special-status animal species on the property or within the footprint of the Project. The Project site conditions are such that there is no reason to expect any impacts to other special-status species off-site provided standard best management practices are utilized during removal of improvements and the revegetation is implemented.

The Biological Report contained detail on Swainson’s hawk, including observations and analysis specific to the species. Table II confirms no observations occurred on the site during the field survey. Table II notes that there is a lack of nesting habitat on site, and although species may fly over the site, based on the lack of habitat, it is unlikely the species would nest on the site. Because the Biological Report concluded that Swainson’s hawk habitat was limited and no raptors were observed on site, Swainson’s hawk was not specifically discussed in the Initial Study/Negative Declaration.

The Biological Report demonstrates that the biologist researched the same CNDDDB data referenced by CDFW and reviewed aerial photos of the habitat surrounding the site. The Project biologist also completed an on-site inspection to directly review the existing conditions and potential plant and animal species that may occur on site. Due to the limited physical

improvements and construction associated with this permit, staff reasonably and appropriately concluded that there would be no significant impacts and the recommended mitigation measure was not necessary.

**Appeal Ground No. 6:** Appellant WAC asserts that the Planning Commission failed to properly address the issue of parking. According to Appellant, County Department of Public Works has stated that “5. All roadway, access drive and parking area improvements shall be completed prior to execution of any new entitlement approved under the Use Permit Modification” and “9. The parking areas located within the vineyards to the north and east of the driveway are not considered existing or approved parking areas. Plans shall be submitted for improvements to this area in accordance with #5.

**Staff Response:** Staff disagrees with Appellant’s assertions. Information on the existing and proposed parking was included in the Initial Study/Negative Declaration, explained in the Staff Report, and addressed during Staff’s presentation at the hearing. Additionally, the Commissioners, Staff, and Applicant spent considerable time discussing parking during the hearing.

The Staff Report identifies the existing parking conditions along with the additional parking spaces requested (Page 19; Staff Report). The winery is approved for 25 parking spaces, but currently has a total of 34 paved spaces. The winery also uses a gravel area on the northeastern side of the stream for approximately 14 employee parking spaces. Applicant’s proposal would result in a total of 81 parking spaces. Included in the Staff Report graphics packet, sheet 2 shows that the proposed parking included 41 new spaces along the eastern side of the existing driveway and formalizing the 14 spaces in the northern parking area (Attachment K; Staff Report).

Applicant’s Engineer Jasper Lewis-Gehring stated that “The plan is to use existing spaces that are utilized on site...” (Transcript, Page 47:15-16). Staff did not recognize the parking areas on the northern and eastern sides of the property as existing, approved parking areas, which is why they were included as part of the Project request. Recommended Condition of Approval Project Scope Item 1.2.c includes modifying the use permit to allow an increase in “Parking spaces from 34 (existing conditions requested to be recognized via the County’s Code Compliance program) to 81 spaces.” (Attachment B; Staff Report).

In order to address questions raised by Planning Commissioners Whitmer, Brunzell, and Phillips, and to facilitate discussion of the areas that staff considered approved parking, existing, unpermitted parking to be recognized, and newly proposed parking, staff put the graphics packet on display two additional times; see Attachment K.

Staff reviewed the plan, first describing the proposed parking adjacent to the vineyards, to the east of the driveway. Staff stated “When you come in the driveway there is a line of parking proposed along this side of the driveway. And those were new.” (Transcript, Page 48:23-25). Commissioner Brunzell noted that based on her site visit “the parking area adjacent to the

vineyard, which is at the east edge if we're going by the cardinal directions, that is not currently gravel. That's a, like, dirt and grass area, so I don't, you know, I'm not sure if it's going to be just utilized as it is with dirt or if they are going to need to gravel it." (Transcript, Page 51:21-26). In response, Staff explained that "if those parking spots are approved, there are 34 over there. They would be subject to the Conditions from the Engineering Division, which requires them to be surfaced in compliance with the Roads and Street Standards" (Transcript, Page 53:27-28; Page 54:1-2).

Second, Staff discussed the northern parking area of which portions are within the stream setback, resulting in the staff recommendation that parking located within the stream setback be removed. During the hearing Project Planner Emily Hedge reiterated this recommendation, "There was also the recognition of this area, which we've discussed, Staff is not supportive of parking that would be in the setback..." (Transcript, Page 48:25-27). The adopted COA No. 1.1.b. requires "Removal of...portions of the northern parking area (dirt and gravel) within the setback".

Further, Staff included a discussion of the possibility for Applicant to redesign the northern area to permit parking, while keeping parking spaces and drive aisles out of the required stream setback. Supervising Planner Charlene Gallina noted "...parking spaces that are going to be located in the creek setback that--based on their plan that we're saying take it out of the creek setback, put it somewhere else. So if they could fit it somewhere else, then that's fine" (Transcript, Page 47:21-25).

Chair Whitmer summarized his understanding of the issue with the northern parking area, saying "And what we're trying to do is remove everything that's within that stream setback. If we made a line there where that setback is, we're essentially saying, you know, in the permitting process, figure out how to allocate the parking spaces within that area that's outside of the stream setback..." (Transcript, Page 52:4-9).

In response Project Planner Emily Hedge referred to the graphic showing the area within the stream setback as hatched, "...I think this is sort of the line that Chair Whitmer is referring to and there wouldn't be any parking allowed within the hatched area. If they did want to design some parking up there, that would be--we would look at that and again would be subject to the Roads and Street Standards..." and concluded that parking spaces in the northern area could be designed as long as they were located outside of the stream setback (Transcript, Page 54:4-8).

Regarding the two conditions referred to by Appellant staff responds as follows:

The conditions were from the memorandum prepared by the Engineering Division, dated June 12, 2023, not the Department of Public Works as incorrectly referenced by Appellant.

COA No. 4 (Appellant erroneously listed as COA No. 5) is standard language requiring necessary site improvements be completed before new entitlements are executed. This condition

does not preclude approval of the Project but states a requirement following approval of the Project. This condition ensures that necessary infrastructure is available to support new operations or changes to existing operations.

COA No. 9 identifies the two proposed parking areas that are included in the Project scope. The reference to preparation of plans (Condition No. 5) is standard language requiring Applicant to submit detailed plans, prepared by a registered civil engineer, showing all proposed on-site civil improvements. The plans are reviewed and approved by the Engineering Division prior to the commencement of any on-site land preparation or construction. This condition does not preclude approval of the Project but states a requirement following approval of the Project.

**Appeal Ground No. 7:** Appellant contends that the Project does not comply with the Winery Definition Ordinance (WDO) because it seeks to rely upon increasing importation of grapes. Appellant claims that the adoption of the WDO in January 1990 allowed a baseline exemption for the Applicant's 144,000-gallon production that was authorized in 1983, but it does not exempt from compliance the proposed 1,366,000 gallons of additional production.

**Staff Response:** The Winery is a pre-Winery Definition Ordinance (WDO) winery. Pursuant to NCC Section 18.104.250.C, pre-WDO wineries are subject to the local grape sourcing requirement, known as the 75% percent rule, if there is a change in the winery development area, as defined in NCC Section 18.104.210.B, associated with an increase in production capacity. Major Modification #U-90-33 and Major Modification #95307-MOD, which increased production, did not change the winery development area and therefore, the 75% rule was not applied. Prior approvals of increases in production were consistent with the WDO.

The Project does not include a request for changes to the approved production, does not alter the total production quantity or make changes related to the importation of grapes, and does not change the winery development area. As such, the Project is not subject to the 75% rule.

**Appeal Ground No. 8:** Appellant asserts that the Project does not comply with a number of sections within County Code Title 16 and Title 18 related to regulations of riparian areas and stream setbacks.

**Staff Response:** The Project was approved by the Planning Commission based on the Commission making all of the required Findings (Attachment A; Staff Report). Appellant references and quotes excerpts from a number of code sections, questioning the ability of the Project to comply with County code. Staff has responded to the various NCC sections and excerpts raised by WAC below.

#### NCC Section 16.04– Floodplain and Riparian Zone Management

Riparian area preservation objectives and development restrictions outlined in Title 16 of NCC apply to Special Flood Hazard Areas (SFHA) along certain watercourses in Napa County. Conn Creek, a major USGS blue line stream situated to the east and southeast of the winery, falls

under the Napa County jurisdictional limits for SFHAs. Contrary to WAC's assertions, there are no activities associated with the Project that occur in this area, therefore riparian vegetation along this watercourse will not be affected as part of the proposed Project. The portion of the unnamed stream that runs north-south through the site, considered under the Use Permit Exception to the Conservation Regulations, is not a SFHA. Therefore, the Title 16 code sections listed by the Appellant are not applicable to the Project.

NCC Section 18.108.050 Conservation Regulations – Exemptions.

Appellant correctly states that none of the exemptions listed in NCC Section 18.108.050 Conservation Regulations – Exemptions, apply to the Project. The Project was processed under NCC Section 18.108.040 - Exceptions in the form of a use permit and the Commission made the required Findings to approve the project.

NCC Section 18.108.025 - General provisions—Intermittent/perennial streams.

NCC section 18.108.025(E)(12) allows installation of stream crossings, recreational roads, and equestrian and nonmotorized trails as follows:

E.12. Installation of stream crossings, recreational roads, and equestrian and nonmotorized trails in accordance with appropriate permits from other state, federal and local use permit requirements when it can be determined by the director that the least environmentally damaging alternative has been selected as a part of an approved project.

This section is not applicable to the Project.

NCC Section 18.112.160 –Violation - Penalty.

NCC section 18.112.160, listed in full below concerns road setbacks. Per NCC Section 18.112.090, the road setback for Rutherford Hill Road is 28 feet from the centerline of the right-of-way. The physical improvements included in the Project are outside of the road setback. This section is not applicable to distances between the stream and the existing improvements.

C. Any building set up, erected, built, moved or maintained and/or any use of property contrary to the provisions of this chapter shall be and the same is declared to be unlawful and a public nuisance, and the county may immediately commence action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof in the manner provided by law and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate and remove such building or use and restrain and enjoin any persons, firm or corporation from setting up, erecting, building, moving or maintaining any such building or using any property contrary to the provisions of this chapter.

NCC Section 18.144.030 – Enforcement

NCC Section 18.144.030 concerns enforcement of County Code.

18.144.030 - Duty of officials to enforce. It shall be the duty of the director, or his deputy, and other county officials herein or otherwise charged by law with the enforcement of this title, to enforce this title and all its provisions.

As discussed in the Staff Report (Background and Discussion), the Application was submitted to participate in the County's Code Compliance Program described in Resolution No. 2018-164. The intent of the Application was to correct violations and bring the winery into compliance with provisions of the County Code.

Approval of the Project resolved the code compliance issues related to the Conservation Regulations and permitted the land use entitlements to allow the issuance of building permits to correct building violations. Because of the pending appeal, staff is unable to review or issue building permits to correct the remaining violations until the appeal is decided by the Board.

**Appeal Ground No. 9:** Appellant asserts that the Application failed to properly represent the proximity between the well extraction point and Conn Creek. Specifically:

- a. WAC asserts the subject parcel is served by a well located approximately 700 feet from Conn Creek. A second well is shown but not discussed in the Application.
- b. WAC questions the factual foundation that the proposed changes in bottling and visiting operations would not change water consumption.
- c. WAC contends that extraction by the Applicant lowers the groundwater, contributing to the drying of Conn Creek and to the extent Applicant's extractions diminish public trust surface water flows they require a streambed alteration agreement pursuant to Fish and Game Code §1602. WAC questions the factual and legal basis for the County not requiring a Tier 3 Water Availability Analysis.

**Staff Response:**

a. Appellant is incorrect. The Project materials include the location and a description of the two wells. As summarized in the Initial Study/Negative Declaration Section X. Hydrology and Water Quality and the Water Availability Analysis (WAA) prepared by Summit Engineering, "There are two existing wells onsite, only one of which is active. This well serves as the primary water source for the winery facility and supplies the required potable water demand for the entire site, as well as landscape, olive grove, and vineyard irrigation. Fire protection water is supplied by the onsite well." (Page 1; WAA) See Staff Response to Appeal Ground No. 4 for additional information on the Project well.

b. The Project has been designed to reduce groundwater use below existing permitted levels. As detailed in responses No. 2 and No.10, incorporated here by reference, Applicant reasonably demonstrated that by implementing various operational changes to the Winery's existing practices, groundwater extraction would be reduced as a result of the proposed Project.



c. Appellant's unsupported assertions do not rise to the level of substantial evidence. Appellant has not provided any evidence whatsoever that Rutherford's groundwater extraction lowers groundwater levels and contributes to the alleged drying of Conn Creek.

Although a formal Tier 3 analysis was not required by the County at the time due to the Project's anticipated reduction in groundwater use, the Summit WAA in fact provided a Tier 3 analysis. See Staff Response to Appeal Grounds No. 1 and No. 2 incorporated here by reference for further details.

**Appeal Ground No. 10:** Appellant asserts that Applicant's proposal to extract 4.9 acre-feet from groundwater to produce 1,560,000 gallons of wine, or 0.00000341 acre-feet (approximately 1.1 gallons of water) per gallon of wine is not credible because the industry standard, published and utilized by the County, is 0.0000215 acre-feet (approximately 7 gallons of water) per gallon of wine. Appellant cites Duckhorn Winery's recent expansion which proposed to use seven (7) gallons of water per gallon of wine as evidence that Rutherford Ranch's water use lacks credibility.

**Staff Response:** Each project is reviewed and analyzed based on its unique features and operations. Based on testimony at the hearing from the Project Engineer, the use of metered data, and the professional conclusions in the Summit Engineering WAA, substantial and credible evidence supports the Applicant's groundwater use estimates.

The estimated calculations in the WAA Guidelines represent industry standards and are often used in the preparation of a WAA, however, metered records, when available, are preferred as they provide actual data over general industry standards. The Summit Engineering WAA estimates the process wastewater (PW) generation rates based on recent records from the winery, as summarized in Table 2 (Page 2-3; WAA). During the hearing the Project Engineer Gina Giacone explained that some of the data used in the WAA was provided by Applicant, stating "...the water demand for process water, and that's based on actual metered data that the facility collected from 2017, 2022." (Transcript, Page 21:22-24)

Appellant inaccurately overstates the production capacity of the Winery as 1,560,000 gallons. The annual permitted level of production is 1,250,000 gallons, inclusive of production of 250,000 gallons and 1,000,000 gallons bulk wine received. Due to the Winery's unique production allowance of separate gallonage produced on-site and bulk wine received, the Summit Engineering WAA splits up the two permitted quantities of the production, 250,000 gallons occurring on site and 1,000,000 gallons bulk wine received, and estimates the PW rates separately. This was further explained at the Commission hearing by the Project Engineer "for this facility, there is a breakdown of so much gallonage that's produced on site and then bulk juice that's brought in. And so we segregated those two and there are different generation rates or water use based on those different processes". (Transcript, Page 21:27-28; Page 22:1-3). This discussion was, in part, a response to Commissioner Phillip's question of comparing the water use to the Duckhorn Winery.

The Summit Engineering WAA Table 2 denotes that the production occurring on-site was estimated to use approximately 5 gallons, slightly lower than the 7 gallon “norm”. Bulk juice bottled was estimated to use approximately 0.75 gallons. As testified to by the Project Engineer, “there’s a lot less water use for bulk wine that’s brought in and so that’s why overall the water demand is less.” (Transcript, Page 22:5-7)

In order to voluntarily reduce water use, the Winery intends to implement multiple water reduction measures into their existing production operations, estimating a reduction in water use of approximately 1.2 acre-feet per year. See Response to Appeal Ground No. 2 for additional detail on water reduction measures associated with the production operations.

For these reasons, the Commission found the proposed groundwater use reasonable and credible and supported by substantial evidence in the record.

**Appeal Ground No. 11:** WAC contends that according to the Application it is impossible to know whether the Applicant’s operations have an adverse effect on groundwater levels and there is no monitoring. WAC claims this is not true because the City of Napa has monitored groundwater levels proximate to the Applicant for more than two decades and that data is readily available. The County as trustee failed to monitor its trust.

**Staff Response:** Staff is unaware of a claim from Applicant stating that there is no monitoring in proximity to the Project site.

The WAA Guidelines Tier 2 well interference analysis considers wells within 500 feet of the existing or proposed project well(s). Applicant performed a Tier 2 analysis and there were no non-project wells within 500 feet. The Summit WAA noted “The closest non-project well found using the California Water Boards’ GAMA groundwater information system map application is over 500 feet away from the facility’s active groundwater well” (page 7; WAA). Staff does not require review of wells beyond that distance.

See Staff Response to Appeal Ground No. 1, incorporated here by reference, for additional details on the County’s consideration of public trust resources.

**Appeal Ground No. 12:** Appellant contends that the only reason for not performing a Tier 3 analysis is because it would reveal the Applicant is injuring the public trust.

**Staff Response:** Appellant is incorrect. As discussed in Staff Response to Appeal Ground No. 2, the Summit WAA provided a Tier 3 analysis. Staff Response to Appeal Ground No. 1, demonstrates that the record reveals the Commission considered alleged harm to public trust resources and imposed feasible measures to reduce any alleged harm. See Staff Response to Appeal Grounds No. 1 and No. 2 incorporated here by reference for further details.

**Appeal Ground No. 13:** Appellant contends that the Application is incomplete and inadequately supported by fact because the Exception for Conservation Regulations Application

(page 5) has no date or permit number. It was signed by the Applicant in 2022, but the County parcel reports states that the request was applied for in May 2023 and is not identified as a “Con Regs” application. Appellant further contends that the application for a conservation regulation exception was apparently made long after the program of forgiveness had ended. Further, 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 to the public record under either file number.

**Staff Response:** As detailed in the Staff Report (Page 10; Staff Report), in December 2018, Very Minor Modification P18-00452 was submitted. This Application requested to recognize work that had been done to remodel portions of the existing winery building converting office space to hospitality space, production space to a food preparation, and production space to office use. While undergoing review, it was determined that there were operational components that were out of compliance as well. On March 27, 2019, Applicant submitted a response to Staff comments provided on the initial submittal of P18-00452 and provided an additional Project request, which staff determined would require processing as a Major Modification. The application for Major Modification P19-00126, was added to the Code Compliance program to recognize the components of the winery operations and physical improvements that were out of compliance with previous entitlements. In addition to resolving compliance items, the application includes additional requests for expansion beyond the unpermitted levels as well as expansions to components of the winery that were operating within their entitlements.

The March 2019 submittal included information on improvements adjacent to the stream, noting those within the stream setback, and Applicant’s request to maintain those items. In order to process that request, Applicant was informed that submittal of a Use Permit Exception to the Conservation Regulations was required. Based on the information provided in March 2019, along with responses to staff comment letters on resubmittals, correspondence with Applicant team, and a follow up site visit, the request was processed concurrently with the Major Modification. The application form and further supporting detail was submitted in May 2023, and the separate permit for the Use Permit Exception to the Conservation Regulations, Use Permit P23-00145, was opened in our record system. The application form was submitted electronically and the permit number, P23-00145, was not added to the pdf. Although the application form does not include a date, as Appellant notes, the parcel report identifies the submittal date of May 15, 2023.

Appellant notes that the parcel report does not identify permit P23-00145 as a “Con Regs” application. The application type commonly known as an ‘Exception to the Conservation Regulations’ is a Use Permit as defined in NCC Section 18.108.040 Conservation Regulations, which permits “Exceptions in the form of a Use Permit” to any of the requirements of the chapter if all the findings can be made. The application is accurately identified on the parcel report as a Use Permit.

Staff Report Attachment E includes the application form and the accompanying narrative for Very Minor Modification application P18-00452. The March 2019 resubmittal included additional application sheets from the Major Modification application packet, along with updated plans and new supporting documents. These were available as attachments to the Planning Commission hearing.

**Appeal Ground No. 14:** Appellant asserts that a policy memorandum signed by Director of Planning David Morrison is fraudulent because the 2005 date of the memorandum predates Director Morrison's employment by nearly a decade and the form misrepresents the current standards adopted in 2018, prior to the subsequent Application.

**Staff Response:** An inadvertent administrative oversight on the date of an informational memorandum does not equate to fraud or misrepresentation. The memorandum referenced by Appellant, entitled "Additional Environmental Management Information", is an informational sheet that was historically included in the Use Permit application packet. The purpose of the memo is to provide general information regarding the requirements for permitting associated with a regulated water system. It appears that following David Morrison's appointment as Director, the heading of the memorandum was updated to reflect Director Morrison's position, but the contents of the memorandum were not modified.

Appellant claims the memorandum did not accurately represent the 2018 standards. While it is possible that the information from the 2005 memorandum was outdated at the time Applicant utilized the application packet in 2018, as stated above, this memorandum was included as an informational sheet. Applicant's existing water system was already approved by County EH who determined that it complied with the applicable standards.

**Appeal Ground No. 15:** Appellant asserts that the Application is incomplete because there was no stormwater plan, although photographs submitted along with the Application show a parking lot immediately adjacent to the unnamed drainage flowing into Conn Creek, and show an unpermitted bridge constructed across the watercourse, with the creek flowing under the parking structure.

**Staff Response:** All applications for construction and development in Napa County are required to comply with the County's Stormwater Ordinance (NCC Chapter 16.28). Based on the size of the proposed new or replaced impervious square footage they must submit a Stormwater Control Plan (SCP) for review and approval to the Engineering Division prior to issuance of any permits that allow earth disturbance (i.e. grading or building).

The Engineering Division reviews stormwater control measures related to new or replacement impervious surfaces associated with a proposed Project. The review is limited to the components of the current Project scope and does not extend to previously approved improvements or infrastructure.

The initial Very Minor Modification application P18-00452, did not include submittal of a SCP because the application only requested internal improvements to existing structures. The resubmittal that resulted in Major Modification application P19-00126, included new impervious surfaces. Following review of the Application, Engineering staff requested additional information on stormwater control and submittal of an SCP. Applicant's Engineer responses to staff, stated that the impervious surface area was less than 2,500 square feet, falling below the threshold for needing to prepare an SCP.

Compliance with County Code is required, regardless of whether an SCP is provided during the Planning entitlement phase. As detailed in the Engineering Division Condition of Approval memorandum, dated June 12, 2023, (Staff Report, Attachment B) Applicant is required to submit detailed civil improvements plans prepared by a registered civil engineer showing all excavation, fill, general grading, drainage, curb, gutter, surface drainage, storm drainage, and parking and drive isles. The plans will be reviewed and approved by the Engineering Division, and the determination of the need for an SCP will be confirmed. The memorandum includes two (2) conditions specific to requiring submittal of a SCP, if deemed necessary.

COA No. 7. Prior to issuance of a building or grading permit the owner shall submit the necessary documents for Erosion Control as determined by the area of disturbance of the proposed development in accordance with the Napa Countywide Stormwater Pollution Prevention Program Erosion and Sediment Control Plan Guidance for Applicant and Review Staff dated December 2014.

COA No. 13. Prior to issuance of a building or grading permit the owner shall prepare a Stormwater Control Plan (SCP) in accordance with the latest edition of the BASMAA Post-Construction Manual for review and approval by the Engineering Division in PBES. The Stormwater Control Plan shall include the water balance analysis for the use of the existing wastewater pond to handle the additional stormwater flows.

Appellant does not specify which parking area they are referring to. As discussed in Staff's Response to Appeal Ground No. 6, and shown on the site plan, there are multiple existing parking areas throughout the site and two proposed parking areas (Attachment K, Staff Report). The proposed parking included 41 new spaces along the eastern side of the existing driveway and recognition and approval of 14 spaces in the northern parking area (previously unapproved by staff). The proposed parking areas, along with other site improvements resulting in new or replacement impervious surfaces, constitute the scope of the Project under review for stormwater compliance. The existing, approved parking areas are outside of the scope of the Project and were not under review with this application.

Staff reasons that the bridge referenced by Appellant is the portion of the driveway to the back side of the existing winery building that crosses over the stream flowing through a culvert, along with the parking area directly adjacent to the east. There is also an existing culvert at the driveway entrance to the property. These were previously approved and therefore not considered under this permit. The original Use Permit No. 198384, proposed a parking area north of the residence and a driveway around the north side of the winery building, as shown on the proposed site plan included in the application materials and presented at the Planning Commission hearing for that permit. In order for the driveway to traverse around the site, a crossing over the stream

was required at the entry to the property and around the winery development. Based on the approved winery design site plan, the parking area and bridge were considered and appropriately evaluated at that time.

Due to the location of the proposed winery adjacent to the stream, the Use Permit contained Mitigation Measure No. 17 which required Applicant to “obtain an approved streambed alteration agreement (Fish and Game Code Section 1603) from the California Department of Fish and Game.” As discussed in Staff Response to Appeal Ground No. 5, it is the permittee who is responsible for and required to obtain outside agency permits through those agencies. The County is not responsible for the issuance or implementation of permits outside its jurisdiction.

The Project was adequately reviewed and evaluated under the Napa County Stormwater Ordinance. The conditions of approval provided by the Engineering Division require compliance with County Code and the County’s Stormwater Pollution Prevention program prior to issuance of building or grading permits.

**Appeal Ground No. 16:** Appellant asserts that the Application is incomplete and inadequately supported by fact because although the County requires designation of environmental risk by state and federal agencies, the Applicant makes no such showing, relying solely on a summary dismissal of the risk in the Kjeldsen biological report.

**Staff Response:** Appellant’s vague disagreement with a biological report does not make it inadequate. The County appropriately and adequately evaluated the potential for environmental impacts resulting from the Project and prepared an Initial Study/Negative Declaration because no significant impacts would result.

The conclusions in the Initial Study/Negative Declaration are supported by substantial evidence including, but not limited to, professional conclusions derived in accordance with current standards of professional practice, a review of the Napa County Environmental Resource Maps, project specific studies and reports including the Summit Engineering WAA and Kjeldsen Biological Report, the preparer’s personal knowledge of the area, and a visit to the site.

Contrary to Appellant’s assertion, State and Federal agencies were provided the opportunity to review and comment on the Project. Due to the location of the Project, the Initial Study/Negative Declaration listed the following Responsible and Trustee Agencies who may require issuance of separate permits to enact certain components of the Project: Regional Water Quality Control Board, California Department of Fish and Wildlife, and the U.S. Army Corps of Engineers. As included below, these three agencies, in addition to numerous other State agencies, were notified of the Project and given the chance to comment. As discussed in Staff Response to Appeal Ground No. 5, staff addressed the comments that were received from CDFW.

On May 19, 2023, the Project was submitted electronically to the State Clearinghouse (SCH). The Project was issued SCH Number 2023050520. The submittal included the Public Notice, Initial Study/Negative Declaration, Kjeldsen Biological Report, and the electronic submittal

form. As listed on the SCH Project Notice of Completion, the State Review Permit Started on May 22, 2023, and ended on June 20, 2023. Documents were made available to the following State Reviewing Agencies: California Air Resources Board (ARB), California Department of Forestry and Fire Protection (CAL FIRE), California Department of Parks and Recreation, California Department of Transportation, District 4 (DOT), California Department of Water Resources (DWR), California Highway Patrol (CHP), California Native American Heritage Commission (NAHC), California Natural Resources Agency, California Public Utilities Commission (CPUC), California Regional Water Quality Control Board, San Francisco Bay Region 2 (RWQCB), California State Lands Commission (SLC), Department of Toxic Substances Control, Office of Historic Preservation, State Water Resources Control Board, Division of Drinking Water, State Water Resources Control Board, Division of Water Quality, California Department of Fish and Wildlife, Bay Delta Region 3 (CDFW).

On May 19, 2023, Staff sent an email to the San Francisco Regulatory Division branch of the U.S. Army Corps of Engineers (USACE), notifying them of the Project and the availability of the Initial Study/Negative Declaration. The Public Notice was included as an attachment along with a copy of the Initial Study/Negative Declaration. Staff requested comments, should they choose to provide them, by June 20, 2023; providing them the same 30-day review period. Staff did not receive a response.

The professional opinions of the Project biologist, in addition to other environmental resources and evidence in the record, supported the Initial Study/Negative Declaration and the Planning Commission's findings for approval. The 21-page Biological Report, based on research and field studies, and resulting recommendations cannot reasonably be viewed as a "summary dismissal of the risk" as characterized by Appellant.

**Appeal Ground No. 17:** Appellant asserts that no evidence has been shown demonstrating that the improvements allowed to remain (Attachment C1) were previously permitted.

**Staff Response:** Appellant appears to disregard the permit history included in the Planning Commission Staff Report Graphics Packet (Sheet 1-01), that contained a list of the permit history on the site (Attachment K; Staff Report). Since these improvements were already entitled or predated the Conservation Regulations, they were not subject to the Use Permit Exception request and were not before the Commission for action. These improvements were memorialized for record keeping purposes in Attachment C-1 of the Planning Commission Staff Report and included with the approval letter (Attachment C-1; Staff Report).

**Appeal Ground No. 18:** Appellant asserts that the Application is incomplete because there is no statement of grape source. Appellant further claims that the Applicant's website provides an acknowledgement that one million gallons of juice, the source of two-thirds of the total proposed production, is brought to the site from hundreds of miles away by over two hundred 6,500 tanker trucks.

**Staff Response:** The submittal of the updated application under Major Modification P19-00126, included a blank version of the Initial Statement of Grape Source form. Staff provided a standard comment requesting submittal of the form. It was later determined that, because the winery is a pre-WDO winery, production is not subject to the grape sourcing requirement, generally referred to as the “75% rule”, and the Applicant is not required to submit the form. See also Staff Response to Appeal Ground No. 7 incorporated here by reference.

**Appeal Ground No. 19:** Appellant asserts that the Application is incomplete because the exchange of correspondence between Applicant and planning staff is not fully presented in the agenda packet.

**Staff Response:** Given the regulatory requirements associated with processing land use entitlements, projects frequently generate large volumes of correspondence between an applicant and staff as a project moves through the process, becomes complete, and is reviewed and conditioned by various divisions and departments. This correspondence is not typically included as an attachment to the Staff Report, unless it pertains to a particular issue for the Commission to decide.

**Appeal Ground No. 20:** Appellant asserts that the Application is incomplete and inadequate because the Applicant has not corrected the issues raised in a code enforcement action that was not disclosed or discussed in the Application.

**Staff Response:** As discussed in the Staff Report the initial application requested to recognize work that had been done to remodel portions of the existing winery building converting office space to hospitality space, production space to a food preparation, and production space to office use. The request to recognize the work resulted from Code Compliance Case CE17-00029, which originally identified the unpermitted work in the winery building. The case was opened on January 30, 2017. On August 18, 2017, Applicant submitted Building Permit No. B17-01177 to address the work completed without building permits. Upon review of the building permit application, Planning staff determined that the changes to the winery building were not previously approved through the Use Permit process. Discussions between Staff and Applicant resulted in the submittal of Very Minor Modification P18-00452 and the subsequent submittal of Major Modification P19-00126.

The intent of submitting the Major Modification to participate in the County's Code Compliance Program was to correct violations and bring the winery into compliance with provisions of the County Code. Under the Code Compliance Program, Code Enforcement Case CE19-00124 was opened for the alleged violations. The May 1, 2019, site inspection conducted by Code Compliance, Planning, Engineering, and Fire staff identified 22 items needing resolution. Although not specifically noted in the violation letter or Staff Report, the compliance items considered under this case included those originally identified in case CE17-00029.



When Code Enforcement and Planning staff began working on the Major Modification and associated 2019 Code case number, case CE17-00029 was no longer used. For clarity in the parcel permit history, Code case CE17-00029 should have been formally closed in the permit system, however it remained open, but unused. The last workflow entry was from February 2019, noting that the winery intended to submit an application under the compliance program. Because the original 2017 case items were incorporated into CE19-00124, and the case was essentially closed, staff did not include it in the Staff Report Permit History. While not referencing the 2017 case may have led to the appearance of unresolved code issues, the Staff Report clearly identified all of the necessary components to correct the outstanding violations and bring the winery into compliance.

**Appeal Ground No. 21:** Appellant asserts that under the current Water Availability Analysis standards of 0.3 acre-feet per acre per year of land, the Applicant is entitled to 5.1 acre-feet per year for the 17-acre site. Appellant contends that applying industry norms to wine production and hospitality, estimation of the likely extraction is closer to 55-acre feet per year. Appellant claims that monitoring is proposed for only one year and reporting only required on demand.

**Staff Response:** See Staff Response to Appeal Ground Nos. 2 and 10 regarding groundwater use. Appellant inaccurately describes the required groundwater monitoring. The adopted conditions regarding groundwater management require monitoring longer than the one year asserted by Appellant. For the first year, the permittee is required to record meter readings each month and report monthly. The permittee must continue to record readings each month, however, after one year, so long as the water usage is within the approved maximum acre-feet per year, the permittee may reduce reporting to twice a year, in April and October. If the water usage on the property exceeds, or is on track to exceed, the approved maximum acre-feet per year, or if the permittee fails to report, additional reviews and analysis and/or a corrective action program shall be required and shall be submitted to the PBES Director for review and action. See full text of COA Nos. 6.15 in Attachment F - Adopted Conditions of Approval.

**Appeal Ground No. 22:** Appellant asserts that the Biological Report and Restoration Plan, at PDF 225, Plate 1, Location and Site Map (“Map) is misrepresented by the Applicant to be the “USGS Rutherford Quadrangle.” Appellant contends that although the diagram might have some origin history with the USGS map, the Map does not accurately represent the original. The map shows a pink dashed line as the location of the “Project Site” and “Location of Creek.” Appellant contends that the pink dashed line represents the Applicant’s unpermitted redirection of a natural watercourse. When compared to Application Attachment I, *Summit Engineering and Wastewater Feasibility Study*, there is a blue dashed line at a markedly different location than the pink dashed line. Appellant further asserts that web hosted County Community map terrain data indicates two watercourses running through the center of the property appear to have been filled and redirected, causing the original water courses to no longer exist. According to Appellant, concerns for flood plains and wetlands considered in the original use permit have been removed

from consideration and the existing development that was not properly documented and approved, has now become the new baseline for the application.

**Staff Response:** The plan sheet referenced by Appellant, entitled “Plate I. Location and Site Map”, was prepared by the Applicant’s biologist to provide reference to the site location. It also includes an inset of a broader location map showing Napa County and the surrounding region. There is no County requirement that an applicant submit an official or original USGS map, nor does the map claim to be such. The graphic simply references that the property is within the USGS designated Rutherford Quadrangle, which is accurate.

The Biological Report notes that the USGS Rutherford Quadrangle shows that historically the unnamed tributary has been realigned. Due to the relocation of the stream, there are different versions of the map. The Quadrangle Map shows the USGS Blue Line Creek extending through what is now a vineyard. Presumably the stream was realigned for agricultural purposes. Based on limited aerial photographs prior to 1993, it is difficult to know when the stream was relocated. The current location of the stream has been in place since the original winery use permit was issued in 1983. Because the relocation occurred prior to the adoption of the Conservation Regulations, it is unlikely that the County would have had involvement in the permitting process. Permitting would most likely have occurred through State agencies such as CDFW or RWQCB, subject to the environmental regulations of those agencies at that time.

In November 2023, Staff contacted CDFW requesting records of any LSA or other permits issued by the agency for the Rutherford property. CDFW responded that they had an LSA Notification from 2006, but not a Streambed Alteration Agreement (SAA). No further information was provided by the agency.

For all permits associated with the winery development, including P19-00126 and P23-00145, the environmental analysis has been conducted based on the current location of the stream which has not changed over the last 40 years.

Staff disagrees with Appellant’s assertions that concerns for flood plains and wetlands were not considered. Both topics were addressed in the Initial Study/Negative Declaration, Section IV. Biological Resources and Section X. Hydrology and Watery Quality.

The Biological Report states that the Project site was “reviewed to determine from existing environmental conditions with a combination of vegetation, soils, and hydrologic information if seasonal wetlands were present. Wetlands were evaluated using the ACOE's three-parameter approach: Vegetation, Hydrology, and Soils.” (Biological Report; page 4). The evaluation concluded that there were no wetlands on site. This was discussed in the Initial Study/Negative Declaration Section IV. Biological Resources (Attachment D; Staff Report).

The Initial Study/Negative Declaration Section X. Hydrology and Water Quality notes that a portion of the southeast corner of the parcel is within the 100- and 500-year flood hazard boundaries. As discussed in Staff Response to Appeal Ground No. 8, Title 16 of Napa County

Code only applies to Special Flood Hazard Areas (SFHA) along certain watercourses in Napa County. Conn Creek, a major USGS blue line stream situated to the east and southeast of the winery, falls under the Napa County jurisdictional limits for SFHAs. The Winery's existing wine processing activities are outside of the SFHA boundary, and no new structural development is proposed within the boundary. The portion of the stream that runs north-south through the site and is considered under the Use Permit Exception to the Conservation Regulations, is not within the SFHA boundary. The Project would not have any impacts on floodplains.

**Appeal Ground No. 23:** Appellant asserts that Term 17 of the original use permit required the owner to obtain an approved streambed alteration agreement (Fish and Game Code Section 1603) from the California Department of Fish and Game. There is no record of such an agreement being made. Appellant contends that the Applicant ignored an express term of mitigation of the use permit, constructed an unlawful drainage, filled other drainages, has occupied riparian way for parking, and has taken commercial advantage of its malfeasance to date. The Applicant contends that these injuries were caused by previous owners.

**Staff Response:** As discussed in Staff Response to Appeal Ground Nos. 5, 15, and 22 based on the approved site plan winery design, submitted with Use Permit No. 198384, some of the development, including the culvert, driveway, and parking areas were considered and appropriately evaluated at that time. The County does not have jurisdiction within the actual stream or streambed of a blue-line stream, and any proposed work located within these areas is subject to necessary permits and approvals by outside agencies. The current location of the stream has been in place since the original winery use permit was issued in 1983.

**Appeal Ground No. 24:** Appellant asserts Staff mistakenly mischaracterized CDFW, the trustee agency for fish and wildlife comments as Public Comments and Staff failed to heed the CDFW request for inclusion of mitigation terms requiring removal of all encroachments in the riparian right of way. Appellant also notes the presence of piping, both pressure and drainage, in the "creek" drainage.

**Staff Response:** It is general practice that all comments received on a project are included together in one attachment. Correspondence from outside reviewing agencies is included with other comments provided by individuals or groups. The letter from CDFW was included as Attachment N "Public Comments" to the Staff Report.

Appellant's statement that CDFW proposed mitigation requiring removal of all encroachments in the riparian right of way is false. As discussed in Staff Response to Appeal Ground No. 5, CDFW proposed two recommended mitigations which Staff addressed.

Storage pipes extend across the stream between the fire protection pump house and fire protection water storage tanks. The pump house, water storage tanks, and storage pipes were permitted. The Project did not include any modifications to those components of the existing development.

**Appeal Ground No. 25:** Appellant asserts that there are multiple other deficiencies with the Application including:

- a) No State Clearinghouse listing for the project,
- b) No reports or certification of any report with the Department of Drinking Water for three of the last five years,
- c) No comment or waiver from the Regional Water Quality Resource Board or State Water Resources Control Board,
- d) No hazardous materials management plan,
- e) No water quality analysis,
- f) No Public Works groundwater memorandum; and
- g) The land use maps are inconsistent with the norm.

**Staff Response:** There are no deficiencies in the Application. Staff responds to each assertion as follows:

- a) State Clearinghouse (SCH) Number. On May 19, 2023, the Project was submitted electronically to the SCH. The Project was issued SCH Number 2023050520. The SCH Number was available as of that date.
- b) Department of Drinking Water reports. It is unclear on which reports and/or certifications Appellant claims are missing. The winery has a State assigned water system number: CA2801035 Round Hill Winery, and the well PS Code is CA2801035\_002\_002. According to County EH records, the winery has submitted each report and certification form for the Annual Consumer Confidence Reports to County EH for review.
- c) Regional Water Quality Resource Board and State Water Resources Control Board. It is unclear the type of comment or waiver Appellant claims is missing. As stated in Staff Response to Appeal Ground No. 16, the SCH made a copy of the ND and associated documents available to 16 State Reviewing Agencies. Agencies included California Department of Water Resources (DWR), California Regional Water Quality Control Board, San Francisco Bay Region 2 (RWQCB), State Water Resources Control Board, Division of Drinking Water, and State Water Resources Control Board, Division of Water Quality. No comments from these agencies were submitted to the SCH or received by staff.
- d) Hazardous materials management plan. The Napa County Department of Planning, Building & Environmental Services is the designated Certified Unified Program Agency (CUPA), for Napa County. As the CUPA, this Department is responsible for the implementation of the Unified Programs: Hazardous Materials Business Plan, Hazardous Waste, Above-ground Petroleum Storage, Underground Storage Tank and California Accidental Release Programs.

A business shall establish and implement a Hazardous Materials Business Plan (HMBP) if the business handles a hazardous material or a mixture containing a hazardous mate-

rial exceeding specified quantities. If it is determined that a facility is required to submit a HMBP, it is submitted electronically to the State California Environmental Reporting System (CERS). The CERS website is administered through Cal EPA. Napa County CUPA reviews all information submitted via CERS.

State law requires that a HMBP be maintained and updated to reflect revised or new information. Specifically, if any of the following conditions occur after the initial filing of a Business Plan: Change in business address, business name or ownership; 100% or more increase in the quantity of a previously disclosed material; Handling of hazardous materials or wastes in reportable quantities that had not been previously re-reported; Change in the facility's operation that would require modification to the HMBP. Environmental Health CUPA records show the winery has a current HMBP and has been certifying it in requirement with state code. The Project did not request changes to winery operations that triggered submittal of an updated plan.

- e) Water quality analysis. The Winery has an existing public water system. As described above, the Winery has submitted the necessary annual reports which include information on water quality.
- f) Public Works groundwater memorandum. Staff is unaware of the memorandum referenced by Appellant. Previously, the Public Works Department assisted the PBES Department in the review of WAAs. During that time, the Department would have issued a memorandum with their recommendation. The Public Works Department no longer assists in this review. The Planning, Engineering, and Environmental Health (Well & Onsite Wastewater Treatment) Divisions are now responsible for this review. Applicant submitted the necessary WAA document discussing groundwater use and potential impacts.
- g) Land use maps. Staff disagrees that the maps are inconsistent. Staff prepared the typical maps showing the General Plan Land Use classification and the Zoning District Designation, and included two aerials of the site. The remainder of the graphics were the plan set provided by Applicant.