

**BEFORE THE BOARD OF SUPERVISORS  
OF NAPA COUNTY**

In the Matter of:

An appeal filed by Appellant Water Audit California (WAC or Appellant) concerning the Napa County Planning Commission's decision on June 21, 2023, to approve the Rutherford Ranch Winery Use Permit Major Modification No. P19-00126-MOD and Use Permit Exception to the Conservation Regulations No. P23-00145 submitted by Marko B. and Theo Zaninovich, Round Hill Cellars (Applicant or Rutherford Ranch). The Project is an existing winery on a 17.37-acre parcel, at 1680 Silverado Trail South, St. Helena, CA (APN 030-300-030). The site is zoned Agricultural Watershed (AW) and general plan designated Agriculture, Watershed and Open Space (AWOS).

**RESOLUTION NO. 2024-\_\_\_\_\_**

**FINDINGS OF FACT AND  
DECISION ON APPEAL**

WHEREAS, on or about March 27, 2019, Marko B. and Theo Zaninovich, Round Hill Cellars on behalf of Rutherford Ranch Winery (Applicant) applied for a Use Permit Major Modification and Use Permit Exception to the Conservation Regulations (Application) to the Napa County Planning, Building and Environmental Services (PBES) Department to recognize components of the winery that were out of compliance with the approved use permit and further increases in visitation and employees, along with a remodel of the existing winery building to designate tasting rooms, offices, and a commercial preparation kitchen, site improvements related to the wastewater system and driveway and to allow various encroachments in the stream setback to remain, be removed and restored, and/or relocated (the Project); and

WHEREAS, the proposed Project is an existing pre-Winery Definition Ordinance (WDO) winery on a 17.37-acre parcel, at 1680 Silverado Trail South, St. Helena, CA (APN 030-300-030) and zoned Agricultural Watershed (AW) and general plan designated Agriculture, Watershed and Open Space (AWOS) (the Property); and

WHEREAS, on May 22, 2023, the Public Notice of the Planning Commission hearing and Notice of Intent to adopt a Negative Declaration was mailed to all property owners within 1,000 feet of the Property. The County's requirements to notice all property owners within 1,000 feet far exceeds the State mandate of noticing all owners within 300 feet. Notice was

also provided to those persons on the general CEQA document notification list. The Notice was published in the Napa Valley Register on May 22, 2023; and

WHEREAS, on June 21, 2023, the Planning Commission held a public hearing to consider the Project and unanimously (5:0) voted to adopt a Negative Declaration (ND) and approve the Rutherford Ranch project; and

WHEREAS, on July 5, 2023, a timely notice of intent to appeal was filed by Appellant and a timely appeal packet was submitted on July 18, 2023 (the Appeal); and

WHEREAS, in accordance with Napa County Code (NCC) Section 2.88.080(A), a hearing on the Appeal was scheduled before the Board of Supervisors (the Board) for October 10, 2023, a date at least twenty-five but no more than ninety days from the date of submittal of the Appeal; and

WHEREAS, on October 10, 2023, the public hearing was opened and continued to November 7, 2023, to accommodate all parties' schedules. No public testimony occurred on October 10, 2023; and

WHEREAS, on November 7, 2023, the public hearing was opened and continued to February 6, 2024, to accommodate all parties' schedules. No public testimony occurred on November 7, 2023; and

WHEREAS, public notices of the Appeal hearing were mailed, emailed and provided to all parties who received notice of the DEIR and within 1,000 feet of the Property and also published in the newspaper on September 23, 2023; and

WHEREAS, on January 10, 2024, County Counsel's office issued a memorandum regarding the *Application of Public Trust Doctrine to Projects Dependent on Groundwater* (the "2024 Water Memo"), which informed the PBES Department of the County's legal obligations under the public trust doctrine (the Doctrine) and how the Tier 3 or an equivalent analysis under the County's 2015 WAA Guidance Document could be used to satisfy the County's duty; and

WHEREAS, on February 6, 2024, at a duly noticed continued public hearing on the Appeal, the Board heard and considered all evidence and testimony regarding the Appeal. The Board closed the public hearing and unanimously adopted a motion of intent to deny the Appeal in its entirety, uphold the Planning Commission's adoption of the Negative Declaration and approval of the Project subject to revised Conditions of Approval (COA); and

WHEREAS, the Board further directed County Counsel's office to prepare a resolution containing Findings of Fact and Decision on Appeal in support of its proposed decision and to present those findings to the Board for consideration at its meeting on March 26, 2024; and

WHEREAS, on March 26, 2024, a proposed resolution containing the Findings of Fact and Decision on Appeal was presented to the Board for possible adoption; and

WHEREAS, this proposed resolution containing the Findings of Fact and Decision on Appeal having been presented to the Board for possible adoption at a regular meeting of the Board on March 26, 2024, and interested persons having been given an opportunity to address the Board regarding the proposed resolution.

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

**Section 1. Recitals.**

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

**Section 2. Conduct of Appeal.**

A. NCC Section 2.88.090 (B) provides that if the appeal pertains to a decision for which a record on appeal exists, the board, in hearing the appeal, shall base its consideration of the appeal on the record on appeal and any extrinsic evidence submitted by the parties and allowed by the chair for good cause shown. "Good cause" means that the proposed evidence, in the exercise of reasonable diligence, could not have been produced to, or was improperly withheld or excluded from, the decision maker. Here, a record on appeal of the Planning Commission's decision exists and was provided to the Board.

B. To clarify the County's procedural requirements and expectations regarding land use appeals, the Board of Supervisors requires the parties attend a mandatory pre-hearing conference with a representative of the County Counsel's office and the Chair of the Board of Supervisors to discuss estimates on presentation lengths, scope of evidence, and testimony to be presented, together with witness lists. Any witness not appearing on a witness list is treated as a member of the public and allotted the usual three minutes of speaking time.

C. A pre-hearing conference was held on October 30, 2023, with Appellant, Applicant's counsel, Chair Gallagher, and a Deputy County Counsel. Appellant and Applicant agreed to various procedural matters related to the Appeal hearing including, but not limited to, exchanging witness lists, providing the Chair in advance of the hearing with any requests for "good cause" to either supplement the record with new information and/or requests to have the Appeal heard de novo (e.g., a fresh hearing), time limits for presentations and page limits for supplemental legal arguments.

D. On November 9, 2023, Appellant submitted a "good cause" request to supplement the record on appeal before the Board with well data. The Chair denied the request because the Appellant failed to identify why, in the exercise of reasonable diligence, the well data could not have been provided to the Planning Commission for consideration.

E. At the Appeal hearing, Appellant's request that the Board overrule the Chair's "good cause" determination was denied.

### **Section 3. Findings of Fact and Conclusions of Law on Appeal.**

The Board hereby makes the following findings of fact and conclusions of law in regard to each of the grounds for appeal as stated by Appellant in the Appeal<sup>1</sup>:

#### **A. First Ground of Appeal.**

**Appellant's position:** Appellant asserts that there was not a fair and impartial hearing as there was no inquiry into the public trust.

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

1) Appellant is mistaken. The Planning Commission hearing was fair and impartial, and 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.

2) The County does not dispute that under 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.

3) 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. (*Environmental Law Foundation v. State Water Resources Control Bd.*, (2018) 26 Cal.App.5th 844, 859.) 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." (Id. at 851, 853-54.) 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).

4) 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 that 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

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<sup>1</sup> This Resolution summarizes the grounds of appeal. For the complete text of the Appeal, please see the actual Appeal dated July 18, 2023.

method for complying with its duties under the Doctrine. Alternatively, applicants may forego a Tier 3 analysis under the 2015 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).

5) Here, the record includes a Water Availability Analysis (dated November 1, 2022) prepared by Summit Engineering (the Summit WAA) for the Project, which showed a reduction in groundwater use over existing use. The Summit WAA further 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 Property. This determination of connectivity is the first step in a Tier 3 analysis. No further analysis is required where, as here determined by a qualified professional, connectivity is unlikely.

6) At the Appeal hearing, the Board heard testimony from Appellant's expert, UC Davis retired Professor Emeritus in Hydrology, Dr. Graham Fogg, purporting to provide a hydrological review of the Summit WAA. Dr. Fogg testified that the Summit WAA was not persuasive and that a Tier 3 analysis was necessary in this situation. Dr. Fogg further opined that that the screening criteria for waiver of a Tier 3 had not been met and that a Tier 3 analysis was needed.

7) The Board also heard and considered testimony from the Project Engineer Gina Giacone, a licensed professional engineer, that the well is unlikely to be hydraulically connected to the Napa River, Conn Creek, and the unnamed tributary because of the elevation difference between the streams and well, the site geology, and the well construction. Project Engineer Giacone also referred to a Hydraulic Diagram to demonstrate that "the approximate surface elevations of the significant streams are lower than the ground elevation of the well" and "water does not naturally flow up hill." This testimony along with the Summit WAA satisfies the analytic requirements of a Tier 3 analysis.

8) "Substantial evidence" means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Ca.Code Regs., tit. 14, § 15384, subd. (a).) Substantial evidence "shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (Guidelines, § 15384, subd. (b).) "Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence." (Guidelines, § 15384, subd. (a).) Public controversy is not a substitute for substantial evidence.

9) Dr. Fogg failed to articulate why the Summit WAA was not persuasive or otherwise deficient. The Board finds that Dr. Fogg's testimony was unconvincing and did not rise to the level of substantial evidence. The Board further finds that the Summit WAA and testimony of Project Engineer Giacone was based on an evaluation of the geology at the site, the well construction and elevation data, and the distance of the well to the streams, all of which

constitutes substantial evidence, and which satisfies the analytic requirements of a Tier 3 analysis and the County's duty to consider and give due regard to whether any alleged harm would occur.

10) The Board further finds that the Summit WAA was considered by the Planning Commission and that conditions of approval feasibly mitigated any alleged harm. 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 groundwater use, the County's ability to initiate a compliance action for violation of the COA 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.

11) Furthermore, the Board adopted additional restrictions limiting groundwater use to 14.1 acre-feet per year and a reduction in the maximum pumping rate from 75 gpm to 73.5 gpm while maintaining or not exceeding the current duration of pumping. These limitations provide even greater protection, further reduce any alleged harm, and align with the requirements of the 2024 Water Memo. The County has satisfied its duty.

**Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the First Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

**B. Second Ground of Appeal.**

**Appellant's position:** Appellant contends that the Negative Declaration is not supported by the evidence. Specifically, 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.

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

1) The record contains substantial evidence in support of the Negative Declaration and the Planning Commission's Finding 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.

2) 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.

3) 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.

4) The Project parcel is partially located within the GSA Subbasin and the 0.3-acre feet calculation was utilized. According to the 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. Since the existing allocated groundwater use at Rutherford Ranch is 14.4 acre-feet per year, which was a combination of existing conditions and metering data under the guidelines in effect at the time. This is greater than the 5.2 acre-feet per year recharge threshold, the Project was subject to a no net increase limitation.

5) The Summit WAA calculated groundwater use based on a) the permitted entitlements on the Property, b) 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 c) 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 (2015) (County 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 Negative Declaration prepared for the environment review under the CEQA.

6) 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. This would result in an overall reduction in groundwater use from 14.4 to 14.1 acre-feet per year.

7) The Planning Commission heard and considered Project Engineer Giacone's testimony 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) At the Appeal hearing, Project Engineer Giacone reiterated that actual historical data was relied on to support the Summit WAA and the reduction in groundwater use.

8) 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 under the County's 2015 WAA Guidance Document, the Summit WAA nonetheless satisfies the analytic requirements of 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 site 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 400 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 must soil layer, into the underlying volcanics. The Significant Streams 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 overlayed by alluvium. These alluvial deposits are assumed to be shallow and are supported by WCR No. 119689 from the Summit WAA.

9) 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 -185 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 125 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 203 feet and 171 feet respectively. The uppermost screening of the Project well ranges from approximately 56 feet to 88 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 78 feet.

10) The professional conclusion in the Summit WAA that the Project well is unlikely to be hydraulically connected to the two (2) Significant Streams is based on substantial evidence and satisfies 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.

11) 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 Planning Commission and Board hearings 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. 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.

12) Nevertheless, to provide even greater protection and further reduce any alleged harm, the Board revised the conditions of approval to: a) limit groundwater use from 14.4 acre-feet per year to 14.1 acre-feet per year, which reduces annual groundwater extraction by approximately two percent (2%) and b) reduce the planned pumping rate proportionately, approximately two percent (2%), from the existing rate of 75 gpm to 73.5 gpm, while maintaining or not exceeding the current duration of pumping.

### **Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Second Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

### **C. Third Ground of Appeal.**

**Appellant's position:** Appellant claims that impermissible intrusions into the riparian way have improperly been allowed to persist.

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

1) 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 0 and 5 percent slopes. Here, 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). Multiple winery improvements and equipment are located directly adjacent to the stream within the 45-foot setback.

2) 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.

3) 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.

4) 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 Planning Commission Staff Report and included with the approval letter.

5) 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.

6) 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.

7) The Board finds that all existing improvements identified in the stream setback have been addressed as appropriate.

**Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Third Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

**D. Fourth Ground of Appeal.**

**Appellant's position:** Appellant contends that the proposed sole source of potable water has not been approved or reviewed by the Napa County Division of Environmental Health (County EH) or the California Department of Drinking Water.

**Findings and Decision:** The Board finds and determines that the Project's public supply water system is existing and meets all requirements. Through a delegation agreement per California Health & Safety Code § 116330, the County EH is the 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 WAA.

**Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Fourth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

**E. Fifth Ground of Appeal.**

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

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

1) The Project would not have a potentially adverse effect on wildlife resources.

2) Staff received and provided to the Planning 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 Planning Commission Staff Report, 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 Planning Commission hearing, Staff considered the recommendations, determined that the Project, as proposed and conditioned, would not result in significant impacts and the recommended mitigation measure was not necessary.

3) CDFW's Letter commented that project activities would likely trigger a Lake and Streambed Alteration (LSA) Notification and recommended 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 Negative Declaration (Biological Resources) analyzed the proposed removal of items within the setback and the subsequent restoration of this area. The Applicant submitted A Voluntary Stream Setback Compliance Report, 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 of a restoration plan. The Project does not propose work within the stream or within the bed and/or bank of the stream and therefore the Biological Report reasonably concluded that the Project would not be subject to certain additional permits including LSA Notification.

4) 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 the PBES Department, such as CDFW, Regional Water Quality Control Board (RWCQB), or the US Army Corps of Engineers (USACE), as applicable.

5) 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 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. 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 Board finds that the intent of the CDFW recommended mitigation measure regarding the LSA was achieved through the adopted condition of approval that was imposed on the Project.

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

7) The Biological Report identified existing conditions and the potential plant and animal species that may occur on site. The conclusions contained in the Biological Report were supported by searching records in the most recent version of the Department of Fish and Wildlife California Natural Diversity Data Base (CDFW CNDDDB Rare Find-3), surveying the area with binoculars and walking the perimeter of the Project site. 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 reasonably concluded that no raptors were observed on site and habitat was limited.

8) Although the CDFW CNDDDB does not show any listed species for the Project site, the Biological Report included a summary table, 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. The Biological Report found 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, within the footprint of the Project or off-site provided standard best management practices are utilized during removal of improvements and the revegetation is implemented.

9) The Biological Report analyzed the potential for the Project to impact Swainson's hawk and concluded that because there were no Swainson's hawks observed onsite during the field survey and because of the lack of nesting habitat on site, it is unlikely the species would nest on the site. Staff reasonably concluded the Project would not impact Swainson's hawk and therefore it was not specifically discussed in the Negative Declaration.

10) The Board finds that Staff correctly determined that CDFW's general comments were addressed by the site-specific Biological Report prepared for the Project and through the recommended conditions of approval. Nevertheless, at the Appeal hearing the Applicant voluntarily agreed to conduct pre-construction surveys for Swainson's hawk as recommended by CDFW. The COA have been revised to reflect the Applicant's commitment.

**Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Fourth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

**F. Sixth Ground of Appeal.**

**Appellant's position:** Appellant WAC asserts that the Planning Commission failed to properly address the issue of parking. According to WAC, 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."

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

1) Parking was properly considered by the Planning Commission. Information on the existing and proposed parking was included in the Negative Declaration, explained in the Planning Commission Staff Report, and addressed during Staff's presentation to the Commission. Additionally, the record reflects that the Commissioners, Staff, and Applicant spent considerable time discussing parking during the Commission hearing.

2) The Planning Commission Staff Report identifies the existing parking conditions along with the additional parking spaces requested. 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. The Planning Commission 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.

3) At the Commission hearing, 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. The Project Scope 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."

4) 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. 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).

5) 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 Commission 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).

6) Planning Commission Chair Whitmer summarized the Chair's 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).

7) Regarding the two conditions referred to by Appellant, the Board finds:

a) 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.

b) 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

c) 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.

8) The Planning Commission, Staff, and Applicant adequately addressed the issue of parking.

### **Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Sixth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

### **G. Seventh Ground of Appeal.**

**Appellant's position:** Appellant contends that the Project does not comply with the WDO because it seeks to rely upon increasing importation of grapes. Appellant claims that 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.

**Findings and Decision:** The Board finds and determines that the Rutherford Ranch Winery is a pre-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 increased production but did not change the winery development area. Therefore, the 75% rule does not apply. Prior approvals of increases in production were consistent with the WDO.

**Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Seventh Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

**H. Eighth Ground of Appeal.**

**Appellant's position:** Appellant asserts that the Project does not comply with a number of sections within the County Code Title 16 and Title 18 related to regulation of riparian areas and stream setbacks.

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

1) The Project was approved by the Planning Commission based on the Commission making all of the required Findings. 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. This section is not applicable to the Project.

NCC Section 18.112.160 –Violation - Penalty. NCC Section 18.112.160 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.

NCC Section 18.144.030 – Enforcement. NCC Section 18.144.030 concerns enforcement of County Code and the 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.

2) As discussed in the Planning Commission Staff Report, 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. The Planning Commission's 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 has been unable to review or issue building permits to correct the remaining violations until the Appeal has been finally decided by the Board.

### **Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Eighth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

### **I. Ninth Ground of Appeal.**

**Appellant's position:** Appellant asserts that the Application failed to properly represent the proximity between the well extraction point and Conn Creek. Specifically:

- 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.
- WAC questions the factual foundation that the proposed changes in bottling and visiting operations would not change water consumption.

- WAC contends that extraction by the Applicant lowers the groundwater, contributing to the drying of Conn Creek and to the extent the extractions of Applicant 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.

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

1) Appellant is incorrect. The Project materials properly include the location and a description of the two wells. Only one well is active, which serves as the primary water source for the winery facility and supplies the required potable water demand for the entire site, as well as serves the landscaping, olive grove, vineyard irrigation, and fire protection water. 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 and the well completion report is included as Enclosure B of the Summit WAA.

2) The Project has been designed to reduce groundwater use below existing permitted levels. The Board considered the Summit WAA and testimony presented at the hearing regarding the reduction of groundwater extraction as a result of the Project. The Board finds that the Applicant reasonably demonstrated that by implementing various operational changes to the Winery’s existing practices, the Project would result in an overall reduction in groundwater use from 14.4 to 14.1 acre-feet per year in the existing to permitted condition, which is an approximate two percent (2%) reduction.

3) Appellant’s assertions are unsupported by substantial evidence. Appellant has not provided any evidence whatsoever that Rutherford Ranch’s groundwater extraction lowers groundwater levels and contributes to the alleged drying of Conn Creek. The Summit WAA, supported by evidence, concluded that the Project will result in an overall reduction of groundwater use. (See also the Board’s Findings and Decision for Appeal Grounds 1 and 2, incorporated here by reference, for further detail.)

**Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision. Therefore, the Board denies the Ninth Ground of Appeal and upholds the Planning Commission’s adoption of the Negative Declaration and approval of the Project.

**J. Tenth Ground of Appeal:**

**Appellant’s position:** Appellant asserts that the Applicant’s proposal to extract 4.9 AF from groundwater to produce 1,560,000 gallons of wine, or 0.00000341 AF (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 AF (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.

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

- 1) 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 WAA, the Board finds that substantial and credible evidence supports the Applicant's groundwater use estimates.
- 2) The estimated calculations in the County's WAA Guidelines represent general 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 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 Planning Commission 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)
- 3) 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 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 estimated 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 comparing the water use to the Duckhorn Winery.
- 4) Table 2 of the Summit WAA 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 the Board's Findings and Decision for Appeal Grounds 1 and 2, incorporated here by reference, for further detail.)

**Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Tenth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

**K. Eleventh Ground of Appeal:**

**Appellant's position:** 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 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.

**Findings and Decision:** The Board finds and determines that the County 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 found there were no non-project wells within 500 feet. The Summit WAA states, "[t]he 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." (WAA prepared by Summit Engineering, p. 7.) The County does not require review of wells beyond the 500 feet distance. (See the Board's Findings and Decision for Appeal Ground 1, incorporated here by reference, for additional details on the County's consideration of public trust resources.)

**Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Eleventh Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

**L. Twelfth Ground of Appeal:**

**Appellant's position:** 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.

**Findings and Decision:** The Board finds and determines that the Summit WAA satisfied the analytic requirements of a Tier 3 analysis by demonstrating that connectivity to trust resources was unlikely and therefore any alleged harm was also unlikely. The record reveals that the Planning Commission considered alleged harm to public trust resources and imposed feasible measures to reduce any alleged harm. (See the Board's Findings and Decision for Appeal Grounds 1 and 2, incorporated here by reference, for further detail.)

**Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Twelfth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

**J. Thirteenth Ground of Appeal:**

**Appellant's position:** 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 for 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.

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

1) In December of 2018, a Very Minor Modification permit, P18-00452, was submitted. This permit 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 space for food assembly, and production space to office use. While undergoing review, it was determined that there were operational components that were out of compliance as well.

2) On March 27, 2019, Applicant responded to Staff comments on the initial submittal of P18-00452 and made an additional Project request, which Staff determined would require processing as a Major Modification. At the Appeal hearing, Applicant's counsel Katherine Philippakis confirmed that the Application was filed on March 27, 2019. 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 included additional requests for expansion beyond the unpermitted levels as well as expansions to components of the winery that were operating within their entitlements. At the time of this request, Applicant was informed that submittal of a Use Permit Exception to the Conservation regulations was required. This application was processed concurrently. In May 2023, the application form and further supporting detail as well as the separate permit for the Use Permit Exception to the Conservation Regulations (P23-00145) was opened in the county's record system. The later modification filed does not obviate the fact that the original compliance

filing was submitted prior to the March 29, 2019 deadline for participation in the Code Compliance program.

3) 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.

4) The Planning Commission Staff Report 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 all available as attachments to the Planning Commission Meeting Agenda materials and available to Appellant and the public prior to the hearing.

### **Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision. Therefore, the Board denies the Thirteenth Ground of Appeal and upholds the Planning Commission’s adoption of the Negative Declaration and approval of the Project.

### **N. Fourteenth Ground of Appeal:**

**Appellant’s position:** 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.

**Findings and Decision:** The Board finds and determines that 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. The memo was provided to the Applicant as an Informational sheet. It appears the heading of the memorandum was updated to reflect the appointment of David Morrison, but the contents of the memorandum were not modified. Applicant’s existing water system was already approved by County EH who determined that it complied with the applicable standards.

**Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Fourteenth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

**O. Fifteenth Ground of Appeal:**

**Appellant's position:** 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 drainage flowing into Conn Creek, and show an unpermitted bridge constructed across the watercourse, with the creek flowing under the parking structure.

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

- 1) 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.
- 2) The initial Very Minor Modification application P18-00452, did not include submittal of a Stormwater Control Plan (SCP) because the application only requested internal improvements to existing structures. The resubmittal, resulting 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.
- 3) The Applicant's engineer responded that the impervious surface area was less than 2,500 square feet, falling below the threshold that requires preparing 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, Applicant is required to submit detailed civil improvements plans prepared by a registered civil engineer for review and approval by the Engineering Division, showing all excavation, fill, general grading, drainage, curb, gutter, surface drainage, storm drainage, and parking and drive isles prior to determining if submittal of a SCP is required.
- 4) Appellant does not specify which parking area they are referring to. There are multiple existing parking areas throughout the site and two proposed parking areas. (See also the



Board's Findings and Decision on the Sixth Ground of Appeal incorporated here by reference.) 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 not considered under this permit. The bridge constructed across the watercourse as well as the existing culvert at the driveway entrance to the Property were previously approved and evaluated based on the approved winery and design plan, and therefore not considered under this permit.

5) Because of the location of the proposed winery adjacent to the stream, the previous project conditions include mitigation measure No. 17, which required the Applicant to obtain an approved streambed alteration agreement (Fish and Game Code Section 1603) from CDFW. (Previous Project Conditions, p. 4.) Before issuing the Use Permit for the project, the County requires submittal of the obtained permits from CDFW. (See the Board's Findings and Decision for Appeal Grounds 1 and 2, incorporated here by reference, for further detail.)

6) 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.

**Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Fifteenth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

**P. Sixteenth Ground of Appeal:**

**Appellant's position:** 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 Biological Report.

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

1) Appellant's vague disagreement with the Biological Report does not make it inadequate. The County appropriately and adequately evaluated the potential for environmental impacts resulting from the Project and prepared a Negative Declaration because no significant impacts would result.

2) The conclusions in the 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 WAA and the Biological Report, the preparer's personal knowledge of the area, and a site visit.

3) 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 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. These three agencies, in addition to numerous other State agencies, were notified of the Project and given the opportunity to comment.

4) 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, Negative Declaration, the 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).

5) 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 Negative Declaration. The Public Notice was included as an attachment along with a copy of the 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.

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

**Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Sixteenth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

**Q. Seventeenth Ground of Appeal:**

**Appellant's position:** Appellant asserts that no evidence has been shown demonstrating that the improvements allowed to remain were previously permitted.

**Findings and Decision:** The Board finds and determines that Appellant is incorrect. The Planning Commission Staff Report Graphics Packet (Sheet 1-01) lists the site's permit history. These improvements were not subject to the Use Permit Exception request and not before the Commission for action because the improvements were already entitled or pre-dated the Conservation Regulations. For record keeping purposes, these improvements were memorialized improvements in Attachment C-1 of the Planning Commission Staff Report and included with the approval letter.

**Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Seventeenth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

**R. Eighteenth Ground of Appeal:**

**Appellant's position:** Appellant asserts that the Application is incomplete because there is no statement of grape source. Appellant further asserts 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-gallon tanker trucks.

**Findings and Decision:** The Board finds and determines that 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 production is not subject to the grape sourcing requirement, generally referred to as the "75% rule," because the Winery is a pre-WDO winery. Thus, the Applicant was not required to submit the Initial Statement of Grape Source form. (See also the Board's Findings and Decision for Seventh Ground of Appeal, incorporated here by reference, for further detail.)

**Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Eighteenth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

**S. Nineteenth Ground of Appeal:**

**Appellant's position:** 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.

**Findings and Decision:** The Board finds and determines that because 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 Planning Commission Staff Report, unless it pertains to a particular issue for the Commission to decide.

**Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Nineteenth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

**T. Twentieth Ground of Appeal:**

**Appellant's position:** 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.

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

1) 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 space for food assembly, 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.

2) On August 18, 2017, Applicant submitted Building Permit No. B17-01177 to address the work completed without building permits. Because the changes to the winery building were not previously approved through the Use Permit process, discussions between Staff and the Applicant resulted in the submittal of Very Minor Modification P18-00452 and the subsequent submittal of Major Modification P19-00126.

3) The Major Modification was submitted with the intent to participate in the County's Code Compliance Program 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. The compliance items considered under this case included those originally identified in case CE17-00029.

4) When Code Enforcement and Planning Staff began working on the Major Modification and associated 2019 Code 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. The last workflow entry was from February 2019, which noted that the w\Winery's intent to submit an application under the compliance program. Staff did not include the Code case CE17-00029 in the Commission Staff Report Permit History because the original 2017 case items were incorporated into CE19-00124 and the case was essentially closed. All of the necessary components to correct the outstanding violations and bring the winery into compliance were properly disclosed and identified.

**Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Twentieth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

**U. Twenty-first Ground of Appeal:**

**Appellant's position:** Appellant asserts that under the current Water Availability Analysis standards of 0.3 acre-feet per acre 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.

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

1) The Project parcel is partially located within the GSA Subbasin and the 0.3-acre feet calculation was utilized. According to the 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. 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.

2) The Board heard testimony regarding the monitoring program which requires the Applicant to submit a Groundwater Demand Management plan to the PBES Department and monitoring for longer than one year. For the first year, the permittee is required to record meter

readings each month and report monthly. The metering and monitoring installation begins as described in the Conditions of Approval. 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.

3) If the water usage on the property exceeds, or is on track to exceed, the approved maximum 14.1 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. The COA also includes a right of access to verify the operations and readings. (See also the Board's Findings and Decision for Second Ground of Appeal and Tenth Ground of Appeal, incorporated here by reference, regarding groundwater use.)

### **Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Twenty-first Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

### **V. Twenty-second Ground of Appeal:**

**Appellant's position:** 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. Concerns for floodplains 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.

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

1) 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.

2) The Biological Report notes that the USGS Rutherford Quadrangle shows that unnamed tributary was historically 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. The current location of the stream has been in place since the original winery use permit was issued in 1983. The County was likely not involved in the permitting process because the relocation occurred prior to the adoption of the Conservation Regulations. The original winery use permit was likely subject to the environmental regulations of State agencies such as CDFW or RWQCB at that time.

3) Staff requested records of any LSA, or other permits issued by the agency for the Rutherford property from CDFW; CDFW responded with records with an LSA Notification from 2006, but not a Streambed Alteration Agreement (SAA). 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.

4) Wetlands and floodplains were considered and addressed in the Negative Declaration (Biological Resources and Hydrology and Water Quality). The Biological Report concluded that there were no wetlands on site, using the Army Corps of Engineer's three parameter approach: vegetation, soil, and hydrology. Further, 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.

### **Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Twenty-second Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

### **W. Twenty-third Ground of Appeal:**

**Appellant's position:** 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 160) 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.

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

1) The approved site plan winery design submitted with Use Permit No. 198384, demonstrates that some of the development, including the culvert, driveway, and parking areas were considered and appropriately evaluated at that time. (See also the Board's Findings and Decision for Fifth Ground of Appeal, Fifteenth Ground of Appeal, and Twenty-second Ground of Appeal, incorporated here by reference, for further detail.) 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.

2) The Board also considered testimony from the Applicant's counsel that because the improvements are pre-existing it is unknown if they are legally non-conforming or if a permit was required at the time they were constructed. Applicant contacted CDFW regarding the improvements, but CDFW did not have any record of permitting. Furthermore, there is nothing in the record that indicates that the pre-existing structures in the riparian setback required a SAA or other state permit at the time that they were installed or that they are injurious.

**Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Twenty-third Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

**X. Twenty-fourth Ground of Appeal:**

**Appellant's position:** 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.

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

1) The letter from CDFW was included in Attachment N "Public Comments" to the Planning Commission Staff Report. The County's general practice is to include all comments received on a Project from outside agencies, individuals, and groups in the "Public Comments" attachment. CDFW proposed two recommended mitigations, which Staff addressed. (See the Board's Findings and Decision for Fifth Ground of Appeal, incorporated here by reference, regarding groundwater use.)



2) 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.

**Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Twenty-fourth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

**Y. Twenty-fifth Ground of Appeal:**

**Appellant's position:** 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.

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

1) There are no deficiencies in the Application. The Board addresses each assertion as follows:

- a) The State Clearinghouse listed the Project on May 19, 2023 under SCH Number 2023050520.
- b) 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. The Winery has a State-assigned water system number: CA2801035 Round Hill Winery, and the well PS Code is CA2801035\_002\_002.
- c) The SCH made a copy of the Negative Declaration and associated documents available to 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) The Napa County PBES Department is the designated Certified Unified Program Agency (CUPA), which reviews all information submitted via the California Environmental Reporting System (CERS). State law requires that a Hazardous Materials Business Plan (HMBP) be maintained and updated to reflect revised or new information. 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) The Winery has an existing public water system. The Winery has submitted the necessary annual reports which include information on water quality.

f) Applicant submitted to the PBES Department the necessary WAA document discussing groundwater use and potential impacts to PBES, Well & Onsite Wastewater Treatment Division. Public Works no longer assists in the review, and no longer provides memorandums with recommendations.

g) The land use maps are consistent with the norm. 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.

### **Conclusion:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the Twenty-fifth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

### **Section 4. Revised Conditions of Approval.**

The Board revised the Planning Commission COA to: a) impose additional restrictions on groundwater use, including the reduction of the groundwater use limit/quantity, the installation and operation of the well pump flow restrictor or equivalent equipment, a limit to the well pumping rate, and no increase to the existing well pumping duration and frequency; b) extend the submittal date for the work plan for the removal of existing improvements and the restoration plan; c) extend the deadline for completing the removal and restoration work; d) extend the deadline to complete the outstanding items under Code Enforcement case CE19-00124 and to get a building permit for the pump house permitted to be retained; e) to require the Applicant conduct pre-construction surveys for Swainson's Hawk, per the CDFW Letter (dated June 14, 2023); and f) update various deadlines because of the Appeal. The revised COA are attached as Exhibit "A."

**Section 5. CEQA Determination.**

A. The Board has received and reviewed the Negative Declaration pursuant to the provisions of CEQA and of Napa County's Local Procedures for Implementing CEQA, and finds that:

1. The Negative Declaration is based on independent judgment exercised by the Board of Supervisors.
2. The Negative Declaration was prepared and considered in accordance with the requirements of CEQA.
3. There is no substantial evidence in the record as a whole that the Project will have a significant effect on the environment.
4. There is no evidence in the record as a whole that the proposed Project will have a potential adverse effect on wildlife resources or habitat upon which the wildlife depends.
5. The site of this proposed Project is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5 and is not within the boundaries of any airport land use plan.
6. The Clerk of the Board is the custodian of the records of the proceedings on which this decision is based. The records are located at the Napa County Planning, Building, & Environmental Services Department, 1195 Third Street, Second Floor, Napa, California.

B. The Board adopts the Negative Declaration prepared for the Project and finds that the proposed Project would not have any potentially significant effects.

**Section 6. Substantial Evidence.**

Substantial evidence supporting each and every finding made herein is contained in the record of proceedings. All of the files and records that comprise the administrative record for the Project are incorporated herein by reference.

**Section 7. Summary of Decision.**

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

- A. Denies the Appeal in its entirety;
- B. Adopts the Negative Declaration prepared for the Project;
- C. Upholds the Planning Commission's approval of the Project; and
- D. Approves Use Permit Exception to the Conservation Regulations Permit No. P23-00145 and Use Permit Major Modification No. P19-00126-MOD subject to the Revised Conditions of Approval attached as Exhibit "A."

**Section 8.**      **Effective Date.**

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

**Section 9.**      **Judicial Challenge.**

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

**THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED**  
by the Board of Supervisors of the County of Napa, State of California, at a regular meeting of said Board held on the \_\_\_\_ day of March 2024, by the following vote:

AYES:            SUPERVISORS            \_\_\_\_\_

NOES:           SUPERVISORS            \_\_\_\_\_

ABSENT:        SUPERVISORS            \_\_\_\_\_

ABSTAIN:       SUPERVISORS            \_\_\_\_\_

NAPA COUNTY, a political subdivision of  
the State of California

\_\_\_\_\_  
JOELLE GALLAGHER, Chair of the  
Board of Supervisors

|                                                                                                                                                   |                                                                                                                                  |                                                                                   |
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| APPROVED AS TO FORM<br>Office of County Counsel<br><br>By: <u>Laura J. Anderson (e-sign)</u><br>Deputy County Counsel<br><br>Date: March 18, 2024 | APPROVED BY THE NAPA<br>COUNTY<br>BOARD OF SUPERVISORS<br><br>Date: _<br>Processed By:<br><br>_____<br>Deputy Clerk of the Board | ATTEST: NEHA HOSKINS<br>Clerk of the Board of Supervisors<br><br>Date:<br><br>By: |
|---------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|

Attachment:

- Exhibit “A” – Revised COA