

# EXHIBIT A

## BOARD OF SUPERVISORS APPEAL HEARING JUNE 25, 2024 REVISED CONDITIONS OF APPROVAL

### KJS INVESTMENT PROPERTIES & SORRENTO INC. AGRICULTURAL EROSION CONTROL PLAN #P17-004323380 & 3370 SAGE CANYON ROAD: APNs 025-270-022 & 025-270-025

1. The permittee shall strictly conform to all provisions of the approved Agricultural Erosion Control Plan (ECPA) #P17-00432-ECPA. It is the responsibility of the permittee to communicate the requirements of all conditions and mitigation measures to all designers, contractors, and professionals related to the implementation and maintenance of the ECPA to ensure compliance is achieved.
2. Mitigation Measures: The permittee shall fully comply with the Mitigation Measures contained in the adopted Mitigation Monitoring and Reporting Program dated March 2023 (Chapter 4, KJS & Sorrento Vineyard Conversion FEIR) (attached), incorporated herein by reference as required conditions of approval for the project.
3. Project Security: Pursuant to County Code Section 18.108.140(A)(2), a financial security shall be submitted to the Director within ten days of approval. The financial security shall be in a form approved by County Counsel and shall be in an amount as determined by the Director, sufficient to guarantee restoration of any site disturbance, should the County be required to do so in case of default by the permittee.
4. Preservation Area Restriction: As described in the Mitigation, Monitoring and Report Program, areas required for permanent protection, of no less than 35.2-acres, which shall be situated on developable lands (i.e., on land with slopes less than 30% and located outside of aquatic resource setbacks pursuant to NCC Sections 18.108.025 and 18.108.026, shall be identified as such in a conservation easement with an organization accredited by the Land Trust Accreditation Commission as the grantee, or other equivalent means of permanent protection as approved by the Director of PBES. Areas placed in protection shall be restricted from development and other uses that would degrade the quality of the habitat (including, but not limited to conversion to other land uses such as agriculture or residential development, and excessive off-road vehicle use that increases erosion) and should be otherwise restricted by the existing goals and policies of Napa County. Upon County Counsel's review and approval as to the form of the conservation easement, the applicant shall record the conservation easement prior to any ground disturbing activities, grading, or vegetation removal or within 12 months of project approval, whichever occurs first.
5. The owner/Permittee shall obtain any and all other required Local, State and Federal permits necessary to implement and operate this Project, and provide any necessary notifications, including but not limited to the Fish and Game Code and the Clean Water Act,

prior to commencement of Vegetation Removal and Earth-Disturbing Activities associated with such permits, in addition to the following:

- a. The project owner/permittee shall construct rocked water crossings first, before conducting other vegetation removal, earth-disturbing, or construction activities that require the transport of construction equipment across streams. Before the construction and installation of stream crossings associated with #P17-00432-ECPA, and development of vineyard blocks reliant on those crossings, the owner/permittee shall obtain and demonstrate to the County that all required authorizations and/or permits from agencies with jurisdiction over waters of the United States or the state, such as:
    - i. Water Quality Certification (Section 401 permit) from the Regional Water Board
    - ii. Section 1602 Lake and Streambed Alteration Agreement) from the California Department of Fish and Wildlife
    - iii. Section 404 Nationwide Permit from the U.S. Army Corps of Engineers.
  - b. Issuance of an approved grading permit application by Napa County PBES prior to the start of any construction associated with the water storage reservoir located in Vineyard Block 24A.
6. Pre-construction meeting: The owner/permittee shall schedule an on-site pre-construction meeting that shall include the project planner, owner or owner's agent, vineyard manager, and any other parties deemed necessary by Planning Division staff, such as but is not limited to: County Engineering Division staff, the project biologist, or representatives of any affected responsible or trustee agency. Napa County staff shall be provided a minimum of two weeks' notice for the meeting to provide adequate time to schedule. The purpose of this meeting will be to review the development and operation requirements of #P17-00432-ECPA including but not limited to: implementation and compliance with project specific conditions of approval, preconstruction surveys, timing of development activities and winterization of the site, the details of the approved plan, and the ECPA modification process. All required/necessary protective buffers, including buffer fencing/delineation, shall be installed prior to the pre-construction meeting for inspection by Engineering and Planning Division staff. Development activities associated with #P17-00432-ECPA shall not commence until the owner/permittee has received written clearance from the Engineering and Planning Division indicating that all applicable conditions have been satisfied.
7. Adhering throughout the duration of the project to the Oversight and Operation regulations specified in County Code Section 18.108.135 enclosed, which deal with among other things installation oversight, erosion control measure maintenance, monitoring, failure response, and non-compliance. Prior to the first winter rains after construction begins and each year thereafter until the project has received a final inspection from the county or its agent and been found complete, a qualified professional shall inspect the site and certify in writing to the Director that all of the erosion control measures required at that stage of development have been installed in conformance with the plan and related specifications. The report shall

be provided to the Director of Planning, Building, and Environmental Services (“Director”) within 7 days from the inspection.

8. The permittee shall implement the following measures to avoid inadvertent encroachment into specified creek setbacks and special status plant populations:
  - i. The location of all creek setbacks and special status plant populations shall be clearly demarcated in the field with temporary construction fencing or flagging, which shall be placed at the outermost edge of required setbacks shown on the project plans and as outlined in the applicable mitigation measures. Temporary fencing or flagging shall be installed prior to any earthmoving activities. The precise locations of said fences or flagging shall be inspected and approved by the Engineering and Conservation Division prior to any earthmoving and/or development activities. No disturbance, including grading, placement of fill material, storage of equipment, etc. shall occur within the designated areas for the duration of erosion control plan installation and vineyard installation. The protection fencing or flagging shall remain in place during the duration of project implementation and until wildlife exclusion fencing is installed as shown on the approved plans.
  - ii. All construction and related traffic shall remain on the inside (vineyard block side) of the protective fencing to ensure that the creek, buffer zones, and associated riparian habitat and/or woodland remain undisturbed.
  - iii. In accordance with County Code Section 18.108.100 (Erosion hazard areas – Vegetation preservation and replacement), trees that are inadvertently removed which are not within the boundary of the project and/or not identified for removal as part of P17-00432-ECPA shall be replaced on-site with fifteen-gallon trees at a ratio of 2:1 at locations approved by the PBES Director.
  - iv. **Water Quality:** The owner/permittee shall refrain from disposing of debris, storage of materials, or constructing/operating the vineyard, including vineyard avenues, outside the boundaries of the approved plan, or within required setbacks pursuant to Napa County Code Section 18.108.025 (General Provisions – Intermittent/perennial streams). Furthermore, consistent with the standard conditions identified in standard Condition of Approval #10 (Hazards and Hazardous Materials), all operational activities that include the use or handling of hazardous materials, such as but not limited to agricultural chemical storage and washing, portable restrooms, vehicular and equipment refueling/maintenance and storage areas, soil amendment storage and the like, shall occur at least 100 feet from groundwater wells, watercourses, streams and any other water resource to avoid the potential risk of surface and groundwater contamination, whether or not such activities have occurred within these areas prior to this ECPA approval, unless previous authorized under other entitlement and the site has a County Hazardous Materials Business Plan (HMBP) or adequate equivalent.
9. **Tree/woodland protection:** The owner/permittee shall implement the following measures to protect trees, woodland and associated vegetation cover canopy:

- a. Prior to any earthmoving activities temporary fencing, or other means of project limit demarcation acceptable to the County, shall be placed at the edge of the dripline of trees to be retained that are located adjacent to the project area (typically within approximately 50-feet of the project area). The precise locations of said fences and/or demarcation shall be inspected and approved by the Planning Division prior to the commencement of any earthmoving activities. No disturbance, including grading, placement of fill material, storage of equipment, etc. shall occur within the designated protection areas for the duration of erosion control plan and vineyard installation.
- b. The owner/permittee shall refrain from severely trimming the trees (typically no more than 1/3<sup>rd</sup> of the canopy) and vegetation to be retained adjacent to the vineyard conversion area.
- c. In accordance with County Code Section 18.108.100 (Erosion hazard areas – Vegetation preservation and replacement) trees that are inadvertently removed that are not within the boundary of the project and/or not identified for removal as part of #P17-00432-ECPA shall be replaced on-site with fifteen-gallon trees at a ratio of 2:1 at locations approved by the planning director. A replacement plan shall be prepared for county review and approval that includes at a minimum, the locations where replacement trees will be planted, success criteria of at least 80%, and monitoring activities for the replacement trees. The replacement plan shall be implemented before vineyard planting activities. Any replaced trees shall be monitored for at least three years to ensure an 80% survival rate. Replacement trees shall be installed and documented that they are in good health prior to completion and finalization of the erosion control plan.

**10. Implementation of the following Hazardous Materials Best Management Practices during vineyard maintenance and operations:**

- a. The owner/permittee shall implement the Hazardous Materials Business Plan on file (DHD Permit #2920: CERS ID #1017225: DHD Establishment #1125) with the Napa County Division of Environmental Health documenting all proposed hazardous materials to be used onsite during construction and operation. If storage amounts or the use of hazardous materials change during project operation, the owner/permittee shall update the Hazardous Materials Business Plan, as necessary. The Napa County Division of Environmental Health will review the plan and may conduct inspections to ensure that the Hazardous Materials Business Plan is being followed during project operations. Updates to the Hazardous Materials Business Plan, if warranted, will be made through the California Environmental Reporting System.
- b. The owner/permittee shall refrain from disposing of debris, storing materials, or constructing and operating the vineyard (including vineyard avenues) outside the boundaries of the approved plan, or within required setbacks pursuant to Napa County Code Section 18.108.025 (General Provisions–Intermittent/Perennial Streams). Furthermore, consistent with best management practices for hazardous materials, and to avoid the risk of contaminating surface water or groundwater, all operational activities that include the use or handling of hazardous materials (e.g., storing and washing agricultural chemicals; using portable restrooms; refueling, maintaining, and storing

vehicles and equipment; and storing soil amendments) shall occur at least 100 feet from groundwater wells, watercourses, streams, and any other water resources. This requirement shall apply whether or not such activities occurred in these areas before this ECPA.

- c. During construction and operation, best management practices consistent with recommendations from the Napa County Division of Environmental Health shall be used to reduce hazardous material contamination of surface water and groundwater. Best management practices may include but are not limited to:
  - i. Workers shall follow manufacturers' recommendations on the use, storage, and disposal of chemical products.
  - ii. Workers shall avoid overtopping fuel gas tanks and shall use automatic shutoff nozzles where available.
  - iii. During routine maintenance of equipment, grease and oils shall be properly contained and removed.
  - iv. Discarded containers of fuel and other chemicals shall be disposed of properly.
  - v. Spill containment features shall be installed at the project site wherever chemicals are stored overnight.
  - vi. All refueling, maintenance of vehicles and other equipment, handling of hazardous materials, and project staging areas shall occur at least 100 feet from watercourses, the existing groundwater well, and any other water resource to avoid the risk of surface water or groundwater contamination.
  - vii. To prevent the accidental discharge of fuel or other fluids from vehicles and other equipment, all workers shall be informed of the importance of preventing spills and of the appropriate measures to take should a spill occur.

**11. Erosion and Runoff Control (i.e. Hydromodification) Installation and Operation):** The following conditions, including the recommendations from Gilpin Geosciences' Engineering Geologic Investigation, shall be incorporated by reference into #P17-00432-ECPA pursuant to NCC Chapter 18.108 (Conservation Regulations):

- a. Vineyard blocks proposed for the hillsides of the project site shall avoid introducing concentrated surface runoff at drainages presently showing excessive erosion.
- b. The vineyard blocks proposed for sidehill bench and ridgeline/knoll top areas shall control runoff with consideration for the abrupt change in the slope incline downslope of these features.
- c. Surface runoff shall not be concentrated and shall be directed to an outlet outside of the mapped landslide, where it shall flow onto erosion-resistant surfaces.
- d. No grading shall be attempted on the landslide deposits.
- e. Ripping of the vineyard blocks within the landslide deposits shall be limited to a depth of 24 inches.
- f. Permanent Erosion and Runoff Control Measures: Pursuant to Napa County Code Section 18.108.070(L), installation of runoff and sediment attenuation devices and hydromodification facilities, including but not limited to straw wattles and permanent no-till cover, shall be installed no later than September 15 during the same year that

initial vineyard development occurs. This requirement shall be clearly stated on the final Erosion Control Plan. Additionally, pursuant to Napa County Code Section 18.108.135, "Oversight and Operation," the qualified professional who has prepared the erosion control plan (#P17-00432-ECPA) shall oversee its implementation throughout the duration of the project, and confirm that the erosion control measures, sediment retention devices, and hydromodification facilities specified for the vineyard have been installed and are functioning correctly. Prior to the first winter rains after construction begins, and each year thereafter until the project has received a final inspection from the County or its agent and been found complete, the qualified professional shall inspect the site. The professional shall then certify in writing to the planning director, through an inspection report or formal letter of completion, that all erosion control measures, sediment retention devices, and hydromodification facilities required at that stage of development have been installed in conformance with the plan and related specifications and are functioning correctly.

- g. Cover Crop Management/Practice: The permanent vineyard cover crop shall not be tilled (i.e., shall be managed as a no-till cover crop) for the life of the vineyard and the owner/permittee shall maintain a plant residue density of between 75 and 90 percent within the vineyard and vineyard avenues, consistent with the Erosion Control Plan. The cover crop may be strip sprayed in designated vineyard blocks as outlined in the Erosion Control Plan, with a strip no wider than 0.8 to 1.5 feet (9.6 to 18 inches) wide at the base of vines (see the Erosion Control Plan for details), using post-emergent herbicides; no pre-emergent sprays shall be used. Should the permanent no-till cover crop need to be replanted/renewed during the life of the vineyard, cover crop renewal efforts shall follow the County's "Protocol for Replanting/Renewal of Approved Non-Tilled Vineyard Cover Crops" dated July 19, 2004, or as amended.
- h. Temporary and permanent erosion control measures and devices shall be free of plastic monofilament netting and should generally be composed of biodegradable or compostable materials, and/or utilize biodegradable or compostable materials in their construction, so that reptiles, amphibians, or animals do not become entangled within them.

12. Vineyard Irrigation:

- a. Before the start of any vegetation removal or earthmoving activities associated with development areas located outside of the current authorized place of use, or any portions thereof, the owner/permittee shall provide documentation to Napa County showing or otherwise demonstrating that all portions of this development area are located within the place of use prescribed in Water Right License 9125 and Permit 18459. Development of those areas located outside of the prescribed place of use shall not begin or occur until evidence has been provided to Napa County that the place of use has been changed with the State Water Resources Control Board, Division of Water Rights, to cover said development areas, or until a modification of #P17-00432-ECPA has been processed to evaluate an alternate water supply pursuant to the California Environmental Quality Act and County policies.

- b. Before development of the offstream reservoir, the owner/permittee shall also provide documentation to the County showing or otherwise demonstrating that: i) the offstream location under Permit 18459 has been changed with the State Water Resources Control Board, Division of Water Rights, from an onstream location to the offstream location; ii) that Permit 18459 has been modified to not exceed 48 acre-feet per year by storage collected from December 15 of each year to March 31 of the succeeding year; iii) that Diversions under Permit 18459 would not occur unless the February median bypass flows of 0.6 cfs at Point of Diversion 1 on Elder Creek and 0.9 cfs at Point of Diversion 2 at Matheson Reservoir were met; and iv) that the maximum rate of diversion to offstream storage would not exceed 0.29 cfs at Point of Diversion 1 or 0.41 cfs at Point of Diversion.
  - c. No new or existing on-site or off-site water sources, other than the surface water evaluated as part of the proposed project (i.e., existing water right License 9125 and Permit 18459) shall be used for irrigation of the proposed vineyard. Any other proposed irrigation source, including but not limited to wells, imported water, new or existing ponds/reservoir(s) or other surface water impoundments, to serve the vineyard, shall not be allowed without additional environmental review, if necessary, and may be subject to modification to this ECPA. Before the start of vegetation clearing and earth-disturbing activities for Phase 1 of ECPA development, the owner/permittee shall demonstrate that a minimum of 28 acre-feet of surface water is in storage on the project site. Before the start of vegetation clearing and earth-disturbing activities for Phase 2 of ECPA development, the owner/permittee shall demonstrate that a minimum of 28 acre-feet of surface water is in storage in addition to the amount necessary to irrigate Phase 1 plantings.
13. Water Quality Monitoring: The owner/permittee shall grant access to the City and County to defined access points to the waterways upstream and downstream of the development area to conduct water quality monitoring in accordance with the City and County's 2019 Memorandum of Understanding and 2022 Amendment No. 1 (and any subsequent amendments or extensions thereto) and its associated Hydrology and Water Quality Monitoring Plan. Sample analyses shall be conducted after rain events when the creeks are flowing. Should runoff water exhibit the presence of increased nutrients or any synthetic/manufactured man-made constituents, the City and County will work with the owner/permittee to ensure that BMPs are adjusted to protect water quality.
14. Groundwater Management:
- The owner/permittee shall be required (at the permittee's expense) to record well monitoring data on all on-site wells (specifically, static water level no less than quarterly, and the volume of water no less than monthly). Such data will be provided to the County, if requested by the PBES Director.
- To support the County's groundwater monitoring program, well monitoring data as discussed above will be provided to the County if the PBES Director determines that such data could be useful in supporting the County's groundwater monitoring program. The

property well(s) will be made available for inclusion in the groundwater monitoring network if the PBES Director determines that the well(s) could be useful in supporting the program.

15. Open Burning: The owner/permittee shall conduct open burning of cleared vegetation in accordance with BAAQMD Regulation 5, which allows open burning only during specified burn periods. Prior notification shall be submitted to BAAQMD and documentation of compliance shall be submitted to Napa County.
16. The disposal of debris, storage of materials, or construction/operation of vineyard avenues outside the boundaries of the approved plan is prohibited. The property owner shall prepare and submit a Hazardous Business Plan to the County and California Environmental Reporting System prior to development.
17. Wildlife exclusion fencing shall be installed and maintained as specified in approved Erosion Control Plan #P17-00432-ECPA.
18. All persons working on-site shall be educated and trained on the EAP (Emergency Action Plan) (Final EIR Appendix A), so that safety measures will be appropriately implemented during emergency incidents, including evacuation plan and communication and reporting protocols/procedures with management and emergency officials.
19. All persons working on-site shall be bound by contract and instructed in the field to adhere to all provisions and restrictions specified above.
20. Monitoring Costs: All staff costs associated with monitoring compliance with the above conditions shall be borne by the Permittee and/or property Owner. The Permittee shall make an initial deposit of \$5,000 within 30 days of the effective date of this approval to fund staff monitoring. Costs associated with conditions and mitigation measures that require monitoring, including investigation of complaints, other than those costs related to investigation of complaints of non-compliance that are determined to be unfounded, shall be charged at the rate in effect at the time monitoring occurs. Violations of conditions of approval or mitigations measures caused by the Permittee's contractors, employees, and guests are the responsibility of the Permittee.
21. The owner and/or the owner's contractor shall keep the approved plans, or a copy thereof, available on-site at all times while site improvement and vineyard installation work is taking place. Said work includes, but is not limited to, ground clearing, grading, vine planting, and installation and maintenance of erosion control measures. Furthermore, prior to commencement of work you must acquire any/all other required Local, State and Federal permits necessary to implement this project.

22. No grading, earthmoving activities, or soil disturbance of any kind can take place between September 15<sup>th</sup> and April 1<sup>st</sup> of the following year pursuant to Sections 18.108.027(c) and 18.108.070(L) of the Napa County Conservation Regulations. The property owner may submit a request to extend this deadline by filing a written request and applicable fee total to the Planning, Building, and Environmental Services Department a minimum of ten days prior to the required winterization deadline. Such a request is subject to review and approval by the Director.

23. Compliance with those additional conditions resulting from a private settlement as set forth in Exhibit A-1, attached, and incorporated here by reference. In the event of a conflict between the conditions in Exhibit A and Exhibit A-1, the conditions of Exhibit A-1 shall control.

## EXHIBIT A-1

### **KJS Investment Properties & Sorrento Inc., Vineyard Conversion, Agricultural Erosion Control Plan Application File No. P17-00432-ECPA 3380 and 3370 Sage Canyon Road, APNs 025-270-022 and 025-270-025**

#### **Jointly Requested Additional Conditions of Approval**

HYPERION VINEYARD HOLDINGS, LLC AND HYPERION INVESTMENTS, LLC (“KJS”) and CENTER FOR BIOLOGICAL DIVERSITY ("Center") jointly request that the approval of the Erosion Control Plan include the following exhibits as additional or replacement attachments to the Application and proposed Additional Conditions of Approval:

1. **Replacement Site Plan for Reduced Vineyard Acreage and Revised Project:** Replace the KJS Somerston Site Plan for the Revised ECP with the KJS Investment Properties and Sorrento, Inc. Deed Restriction and Donation Areas dated April 29, 2024, as part of the Revised ECP for the Somerston Vineyards Project (**Exhibit A-2**).

2. **Additional Condition of Approval- Revised Site Plan:** KJS shall remove vineyard blocks 1, 2, 3, 4, 5, 7 and 9 (A, B, C, D, F, G) in the southern parcel, parcel 025-270-025, from the Project footprint, as shown in **Exhibit A-2**. KJS shall submit the Revised ECP with the reduced vineyard planting acreage shown in **Exhibit A-2** for the County’s Records within 30 days of Board action occurring on June 25, 2024. Except for the changes identified in Condition 1, the Revised ECP shall remain substantially identical to the ECP approved by the PBES Director on November 3, 2023. KJS shall have the right to continue planting its existing vineyards that were not a subject of the Revised ECP and to plant blocks 12 and 13B in the southern parcel, and all vineyard blocks in the northern parcel, parcel 025-270-022 as part of the Revised Project Approvals.












3. **Additional Condition of Approval - Deed Restricted Property.** Within 30 days after the County has approved the Revised ECP for the Revised Project, KJS shall record with the County a deed restriction on the land in the southern parcel 025-270-025 previously proposed for development as vineyard blocks 1, 2, 3, 4, 5, 7 and 9 (“Deed Restricted Property”), as shown in **Exhibit A-2**. The deed restriction shall prohibit any future vineyard development or agricultural use of the Deed Restricted Property.

4. **Additional Condition of Approval - Donation of Land in Fee Title Interest.** KJS will be required to apply for and receive a lot line adjustment or such other subdivision approval (“LLA”) necessary to create a legal parcel for donation to the Land Trust of Napa County (“Napa Land Trust”) prior to commencement of grading. Within 30 days after the County’s approval and recordation of the LLA, and prior to grading on the Project site, KJS shall convey 62.8 acres of land in the northern part of parcel 025-270-022, as shown more particularly in **Exhibit A-2** (the “Donated Land”), in fee title interest and free of any restriction, lien, or encumbrance, to the Napa Land Trust. In the event that the County approves a smaller vineyard development area as part of the Revised Project, the Donated Land shall be proportionately reduced. The Donated Land shall be contiguous to land currently owned by the Napa Land Trust to the west of the Property boundary. In the event that Napa County does not approve the Revised Project, KJS shall not be required to donate any land to the Napa Land Trust and this obligation shall be null and void.

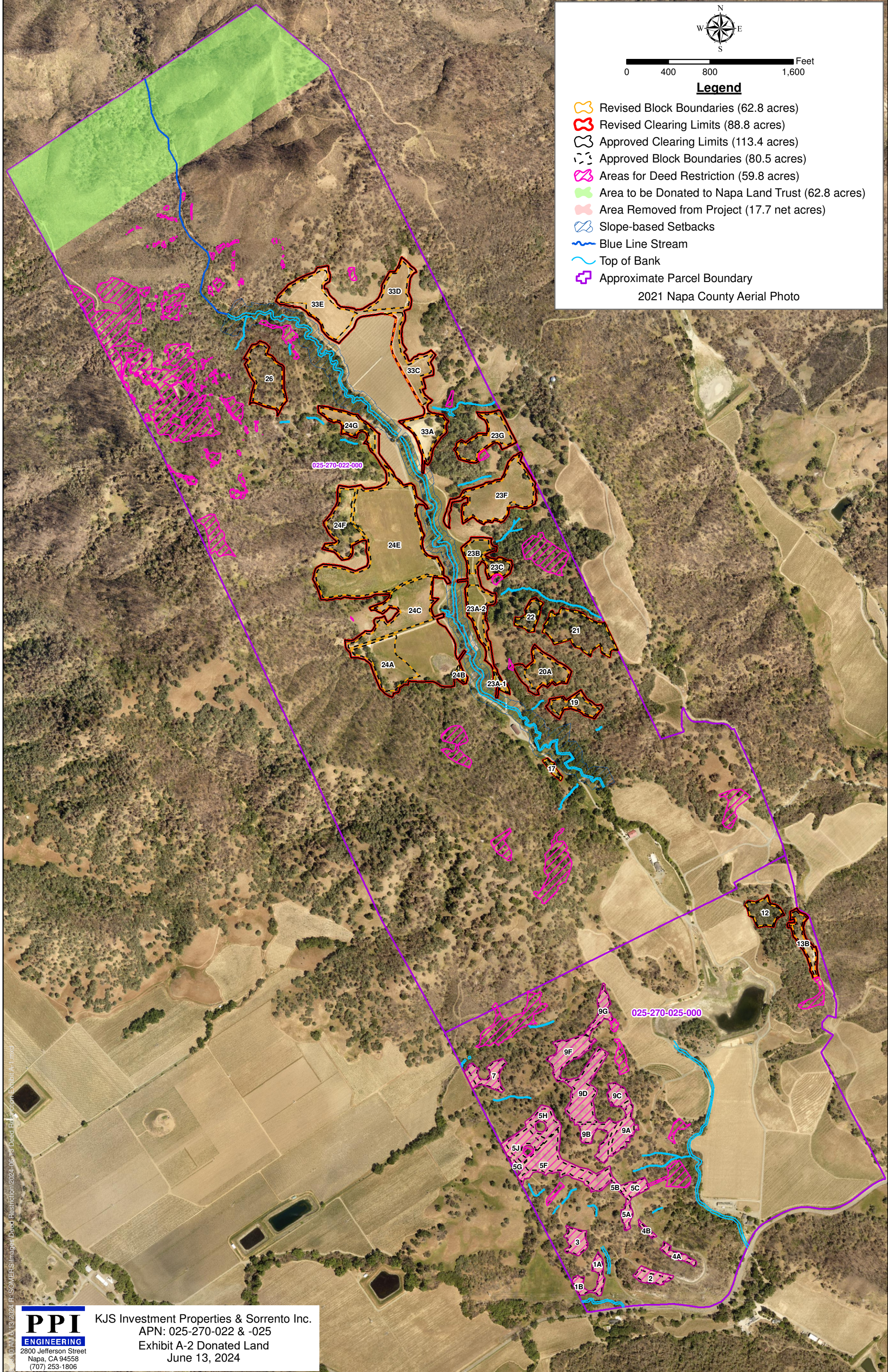


0 400 800 1,600 Feet

**Legend**

-  Revised Block Boundaries (62.8 acres)
-  Revised Clearing Limits (88.8 acres)
-  Approved Clearing Limits (113.4 acres)
-  Approved Block Boundaries (80.5 acres)
-  Areas for Deed Restriction (59.8 acres)
-  Area to be Donated to Napa Land Trust (62.8 acres)
-  Area Removed from Project (17.7 net acres)
-  Slope-based Setbacks
-  Blue Line Stream
-  Top of Bank
-  Approximate Parcel Boundary

2021 Napa County Aerial Photo



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