WATER AUDIT CALIFORNIA



A PUBLIC BENEFIT CORPORATION

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July 15, 2025

To Napa County Planning Commission

Sent via email to: meetingclerk@countyofnapa.org

RE July 16, 2025

Item 7A. JEREMY NICKEL / VINEYARD HOUSE WINERY / USE PERMIT P18-00448-UP, USE PERMIT EXCEPTION TO THE CONSERVATION REGULATIONS P21-00341-UP AND EXCEPTIONS TO THE NAPA COUNTY ROAD AND STREET STANDARDS

To whom it may concern:

Water Audit California ("Water Audit") is a public benefit corporation with a mission to protect the public trust. As result of its experience in Napa County, that mission has been expanded to a mission to ensure integrity in governmental processes that affect the environment.

Objections to Process

Water Audit recommends <u>Option 3 - Deny Applicant's Proposal</u>, on the basis that the facts support no other conclusion.

Water Audit again reminds the County Counsel that closed captions are required by law however there continues to be no closed caption during remote access of proceedings.

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Objections to the Application

A. <u>Previous code violations are not disclosed.</u>

The project parcel appears to have previously been APN 027-360-012 and 027-360-017. (Exhibit 1)

The Staff Report does not include the full historical record, in particular Code Enforcement violations. Staff represents "Code Compliance History: **There are no records of prior code violations** related to the project site." (Packet page 17)

Staff omit several code violations that have riddled the project parcel.

Not in the agenda packet but on the County Electronic Document Retrieval database are 20 Code Enforcement files. A sampling of the files reveals Planning Director Brian Bordona, in his capacity as then Supervising Planner, is personally knowledgeable of the violations, and Planner Matt Ringel is knowledgeable of the County policy prohibiting barn conversions:

CE11-00625 "unauthorized vineyard development on the subject property" with document cc: Brian Bordona Supervising Planner (Conservation). (Exhibit 2)

B12-01068 Barn Remodel red-stamped "CODE VIOLATION" with applicant disclosure statement "I make this statement under penalty of law." (Page 1/2). (Exhibit 3)

CE12-00063 Complaint for Damages re no building permits, and unsafe job site. (Exhibit 4):

"SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNT OF NAPA RONALD (RUSS) CLAWSON, JESSE WANAMAKER, AND CHRISTOPHER SMITH Plaintiffs, v. THE VINEYARD HOUSE, LLC, JEREMY NICKEL, and DOES 1 through 50. Defendant. Case No. 26-58763 COMPLAINT FOR DAMAGES:

... 15b. No Building Permits. Defendant Nickel instructed Plaintiffs and other workers to construct a building on the Vineyard Property and refused to take out any building permits form the County of Napa. The permits were needed because of the nature and extent of the repairs. One building, called a "Coop" as substantially rebuilt without permits. Today, it appears to be a finished building, but it is structurally unsound and presents a danger to all who enter it. (Page 4)

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CE15-00378 Staff letter "you have been advertising and potentially holding wine tastings and wine sales at the above address/assessor's parcel number without the benefit of a use permit and in violation of Title 18 of the Napa County Code." (Exhibit 5)

CE18-00423 Staff letter "again received information and/or observed that a Code violation exists or has occurred" (page 2). (Exhibit 6)

CE19-00627 EDR 027-360-022 2019 CE19-00627 Staff letter "Application incomplete". (Exhibit 7):

Advisory

Be advised that pursuant to Resolution No. 2010-48 (enclosed) adopted by the Board of Supervisors on May 11, 2010 "to discourage property owners form constructing residences and barns with the express intent of converting them to wineries, the County does not generally support use permit proposals seeking to convert existing buildings to winery use if the buildings have been constructed substantially modified within the last 5 to 7 years." The submitted project statement indicates that the barn was completed in 2016. (Page 2) (emphasis added)

B. The Public Trust review is nonconforming.

The Staff Report does not acknowledge three neighboring wells, and an additional existing parcel well, located on APNs 027-360-018, 027 360-001, and 027-490-021. The proximate distance from project well to neighboring wells and springs is uncertain because the Overall Site Plan limits the radius to 100 feet. According to the Interim Napa County Well Permit Standards and Water Availability Analysis ("WAA") Requirements (January 2024), the correct standards are 500 feet from a well, and 1,500 from a surface water stream. Compared with the historical record, the four wells omitted from the project's 2022 Overall Site Plan were known by the Applicant's consultant Jon Web, New Albion Surveys, Inc, per the historical record's 2015 Plans. (Exhibit 8)

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The Staff Report states that Tier 3 is not required:

"The significant streams are diverted to subsurface piping that flow through the property. Hence, the streams are isolated from and cannot interact with the alluvial deposits within the property. For these reasons, the aquifers of the project wells are not directly connected to Lincoln Creek and the unnamed ephemeral stream" (packet page 20/1) (emphasis added)

There is no evidence that the foregoing was permitted by a Fish and Game Code section 1602 application, as required by law. This injury to the public trust is evergreen and requires review.

C. Documentation and notice is incomplete.

The State Clearing House website does not demonstrate notice to surrounding cities or the NRCD, and the Location Waterways description omits the Napa River.

The Historical Report lists "2011-2016 An ancillary building (referred to as the "chicken coop") was demolished" (packet page 292.) However, there is no record of a demolition permit on the County record.

The Historical Report also claims that new sewage was constructed, footnoting two permits from the Parcel Report (packet page 292.) However, and although not in the agenda packet, the Parcel Report clearly demonstrates that the *New Install* permit expired on 4/19/2016. Assigned Staff are not named, and the chronology of permit numbers and dates don't comport (i.e. the "Plan Check" Permit E11-00459 Permit Status shows "Approved" as of 4/15/2016, which is four days before the "New Install Conventional" Permit E11-00458 shows "Expired". (Exhibit 9)

The Use Permit does not include or refer to the CDFW recommended California Aquatic Resources Inventory (CARI) map (https://ecoatlas.org/regions/;ecoregion/statewide); the CARI identifies three blueline streams that traverse the project parcel.

There is no indication the streams are diverted underground.

The Application Checklist is omitted from the application packet for both Use Permit P18-00448 and the Exception to Conservation Regulation P21-00341.

The Application omits required Checklist documents, such as the Assessor Pages used in compiling a property owners list, and a Title Insurance Company

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Certified List of All Property Owners within 1000 feet of the subject parcel specifying name, address, and parcel number. The County website highlights the importance of these required documents:

In my capacity as the elected Assessor-Recorder-Clerk I want to provide as much information to the public as possible regarding property tax, document recording and other related issues. An informed public is the key to good customer service and to ensuring that every property owner and resident receives fair and prompt treatment. Some of the duties of the department include property tax assessment and parcel map maintenance. (https://www.countyofnapa.org/149/Assessor) (emphasis added)

The Exception to Conservation Regulations Checklist requires a site location map to identify water supply, septic components and watershed features (https://www.countyofnapa.org/DocumentCenter/View/3363/Conservation-Regulations-Exception.pdf). However, the Applicant has omitted several water related items from its Overall Site Plan including a spring source and 14.7 acre feet reservoir and four underground cisterns.

Not in the agenda packet but found in County records:

1982 reporting spring water supply source and 14.7 acre-feet vineyard reservoir. (Exhibit 10)

2000 Erosion Control Plan (ECP) 00130 reporting four underground cisterns. (Exhibit 11)

2013 Lot Line Adjustment (LLA) Permit W13-00156 "existing water source reservoir" and a list of "Not Locatable Easements for the reservoir & pipeline, and creek & spring water easement". (Exhibit 12)

Omitted from the Application are (1) the spring source and distribution line; (2) the "vineyard reservoir; (3) the quantity and "source of water stored in the cisterns; (4) the beneficial use of the cistern water; and (5) "recorded" easements.

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Standards of information that is required, not included in the agenda packet, yet found on the County's website (see https://www.countyofnapa.org/DocumentCenter/View/1056/Water-Availability-Analysis-Adopted-Policy-May-12-2015-PDF):

The WAA application contains the following information:

- 2. Site map of the project parcel and adjoining parcels. The **map should include**... location of existing or proposed project well(s) and **other water sources**...
- 3. A narrative...including description of interconnecting plumbing between the various water sources...
- 4. **Tabulation** of existing water use compared to projected water use **for all land** uses current and proposed on the parcel. Should the water use extend to other parcels, the should be included in the analysis...

PBES and **Public Works (PW) staff will review** the application for completeness and reasonableness (page 5/6) (emphasis added)

The Applicant's Exception to the Conservation Regulations form has numerous anomalies (packet page 146): "Date submitted" is incomplete, "Date published" and "Date complete" are blank, "Application Fee Deposit, Receipt No., Received by, Date" all are blank (packet page 146.)

Not in the agenda packet, the Project APN 027-360-022 Parcel Report P21-00341 describes a "Development Approval", and not an Exception to the Conservation Regulation (Parcel Report page 9.) This omission is subtle, and omits the fact that a mandatory pre-application meeting was not scheduled, and therefore the Checklist is on its face incomplete:

Prior to submittal, the applicant must schedule a pre-application meeting with a representative of the Planning Division to determine whether or not the proposed project can meet the minimum standards and requirements of the Conservation Regulations. (Application form page 3 https://www.countyofnapa.org/DocumentCenter/View/3363/Conservation-Regulations-Exception) (emphasis added)

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The Parcel Report "Submittal Received" is dated 12/30/2021. Water Audit recently received a clerk email reminder detailing the winter recess December 24 through January 1. (Exhibit 13) This could appear that staff is fabricating submittal dates, if the County offices were closed on December 30, 2021, as they are more recently.

D. Objections to and insufficiency of findings and conditions of approval.

The Findings do not establish that review has been performed by the County Department of Public Works. Not in the agenda packet but found on County websites:

Natural Resources, Groundwater, Water Conservation, Watershed Information (https://www.countyofnapa.org/1646/About-Us)

Director of Public Works Steve Lederer, Deputy Director of Public Works - Flood Control & Water Resources Richard Thomasser, Water Resources & R.I.Ds Engineering Manager Water Resources - Chris Silke (https://www.countyofnapa.org/DocumentCenter/View/3244/Public-Works-Department-Organizational-Chart-PDF)

In Napa County, Watershed Management consists of: Clearing problem areas within the Napa River and its tributaries, Managing and monitoring groundwater, Overseeing adjudicated watersheds, Preparing special studies for flood protection and watershed management (https://www.countyofnapa.org/1161/Watershed-Management)

Water Audit disagrees with Use Permit Finding 23 and 24, as the Water Availability Analysis did not include all existing water sources in the water demand calculations. Omitted were the six historic spring sources, the un-sited reservoir, four underground water storage cisterns on culverted creek pipeline path, and an undisclosed vineyard off-site water source:

"USE PERMIT: The Commission has reviewed the use permit request in accordance with the requirements of Napa County Code §18.124.070 and makes the following findings:

23. The proposed winery use complies with the applicable provisions of Napa County Code and is consistent with the policies and standards of the Napa County General Plan" (packet page 80)

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Policy CON -55 requires the County to consider existing water uses during the review of new water uses:

Applicable Napa County General Plan goals and policies:

Policy CON-55: The County shall consider existing water uses during the review of new water uses associated with discretionary projects, and where hydrogeological studies have shown that the new water uses will cause significant adverse well interference or substantial reductions in groundwater discharge to surface waters that will alter critical flows to sustain riparian habitat and fisheries or exacerbate conditions of overdraft, the County shall curtail those new or expanded water uses. (Packet page 80) (emphasis added)

Because the WAA omits several water sources from the project parcel, 26 acres of vineyards and the "Harlan Well" (see below), it cannot be determined if the project, as existing, or as proposed, is not already drawing more water from the limited acre foot recharge. Finding 24 Analysis does not comply with CON-55, and misstates the policy by omitting the language "shall consider existing water uses":

24. The proposed use would not require a new water system or improvement causing significant adverse effects, either individually or cumulatively, on an affected groundwater basin in Napa County, unless that use would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Section 13.15.070 or 13.15.080 of the Napa County Code.

Analysis: The subject property is not located in a "groundwater deficient area" as identified in Section 13.15.010 of the Napa County Code, and is consistent with General Plan Conservation Policies CON-53 and CON-55 which require that applicants, who are seeking discretionary land use approvals, prove that adequate water supplies are available to serve the proposed use without causing significant negative impacts to shared groundwater resources.

The proposed project would increase water usage by 4.187 af/yr, to a total of 15.952 af/yr. (Packet page 81/2) (emphasis added)

The Conditions of Approval omits the Public Works Groundwater Memorandum.

There is no condition prohibiting trucked-water.

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The COA omits language "jointly implemented by Public Works and PBES", altogether.

4.9 GROUND WATER MANAGEMENT - WELLS [RESERVED] (page 89]

The PBES Director continues to assign data to the PBES Director, without authority, which strips authority from Public Works, and delegates it to the PBES Director's representative:

- 6.15 OTHER CONDITIONS APPLICABLE TO THE PROJECT PERMITTING PROCESS
- 1. ... permittee shall submit for review and approval by the PBES Director a groundwater demand management plan...
- 5. ... the permittee shall read the meters...at the beginning of each month and provide the data to the PBES Director monthly... if the permittee fails to report, additional reviews and analysis and/or a corrective action program at the permittee's expense shall be required to be submitted to the PBES Director for review and action...Permittee shall also provide well level data to the PBES Director." (packet page 100) (emphasis added)
- 7.i. ...permittee shall read the water meter and **provide the data to** the PBES Director...The **PBES Director**, **or the Director**'s **designated representative**" (packet page 101) (emphasis added)

There is no well monitoring data in the agenda packet. Well 1 is not equipped with a pump, there are only three Well Completion Reports, and the Domestic well sanitary seal is only 26'.

"Because they are not project wells, no Tier 2 or Tier 3 assessment of the Domestic Well or the Harlan Easement Well are required as part of the WAA analysis." (packet page 159)

"No driller's log is available for the onsite well known as the Harlan Easement Well." (Packet page 161)

"The actual amount of groundwater extracted from this Easement Well for these offsite uses is unknown due to a lack of a flow meter on this well." (packet page 192)

"To our knowledge, Well 1 has never been equipped with a permanent pump since its construction" (packet page 161)

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The pumping data is inaccurate for Well 1 and Well 2:

The geologist also measured the water levels in both of the project wells in May 2022. In Well 1, a static (non-pumping) water level depth of 126 ft below ground surface (bgs) was measured. Well 2 was being actively pumped during the site visit, and the pump was observed by the geologist to be frequently cycling on and off. During a period of non-pumping, the geologist measured a water level of 142.8 ft bgs in Well 2. This water level is not considered to be a true static level, as the well was still recovering from the recent pumping events while the measurement was taken. Hence, this water level is considered to be a "pumping water level" for the purposes of this Memorandum. (Packet page 190)

The Harlan Easement Well has no easement on record or site plan, and no pumping data worksheets:

This well was observed to be equipped with permanent pump at time of our initial site visit to this well on May 12, 2016. An initial SWL of 122.0 ft brp was measured by the RCS geologist on May 12, 2016; the reference point was measured to be approximately 1 ft ags. Additional SWL readings of 125.3 ft and 118.7 ft brp, were measured by the RCS geologist on June 15, 2016 and June 28, 2018, respectively. No totalizer flow dial device was observed to be installed at this well during any of our site visits. Reportedly, groundwater extracted from this well is used by the neighboring Harlan Estate property through an existing water well easement; the operational frequency of use of this well and/or the amount of water annually that is pumped from this well are not known to RCS. (Packet page 163/4)

There are no water level measurement worksheets. The WAA calculations are ten years old, claiming Well #2 data is 24 hours, but that data is corrupted and there are no worksheets to support the claim:

Below is a summary of the water level data collected from Well 2 (the pumping well) and from the water level observation wells (Well 1, Domestic Well, and Harlan Easement Well) during the pumping portion and subsequent water level recovery portion of the Well 2 aquifer test:

... Note that it appears the pumping rate during this test was adjusted a couple of times by the pumper, thus, causing the sudden increases/decreases in water levels that were observed in the transducer data in the early portion of the pumping test. Also, the LGS pumper reported that vineyard property staff had driven over the discharge hose connected to Well 2 and possibly caused some back pressure on the pump, thus causing water levels to increase/decrease in the well near the end of the pumping test. At the very end of

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the 24-hour pumping test period, pumping water levels appear to suddenly decrease to a depth on the order of 190 ft brp. LGS reported that the pumper likely got his electric tape sounder cable tangled with the steel wire rope that hangs the transducer downwell and inadvertently moved the transducer. Therefore, a portion of the water level data recorded by the transducer near the end of testing may be erroneously deep. (Packet page 178)

...water levels in Well 2 did not fully recover before the transducer was removed on June 28, 2016

...the Domestic Well is considered to have been impacted very slightly by the pumping of Well 2 during its aquifer test. The Domestic Well is located only 360 ft northwest of Well 2

... Harlan Easement Well – **The occasional manual water level measurement collected by the pumper in the Harlan Easement Well** showed that water levels increased by 0.1 ft (from 121.6 ft to 121.5 ft brp) during the 24-hour pumping period of Well 2. (Packet page 179) (emphasis added)

The WAA reports a seven-year-old test, February 7, 2018 Well 2 pumping test, where results were corrupted by the Domestic well daily onsite water demands during observation resulting in partial recovery level:

Also, during our site visit on February 7, 2018, Well 2 was observed to be pumping, and the SWL of 94 ft brp recorded by the RCS geologist was collected only ±15 hours after the pump had reportedly been turned off by TVH personnel. Thus, the February 2018 SWL may only be considered to be a partial recovery level. Water levels in the Domestic Well appear to have decreased by roughly 10 ft (from 148 ft brp in June 2016 to 158 ft brp in February 2018). Again, this well is used daily for onsite water demands, thus, the February 2018 SWL recorded by RCS geologist may be considered to be a partial recovery level, as well. (Packet page 183)

The WAA assumes that project parcel groundwater extractions can cover the vineyard irrigation. GW recharge volume is assumed to be sufficient for vineyard irrigation:

In the event that delivery of offsite easement water currently used at the property is disrupted or otherwise not available, the subject property owner may elect to use, if/as needed, a portion or all of the estimated groundwater recharge "surplus" of 6.2 AFY to irrigate the existing onsite vineyards. Even if groundwater is used to irrigate the onsite vineyards, the total specific annual groundwater recharge calculated above). (Packet page 186)

The WAA Groundwater Use Estimates omits existing vineyard estimated water use¹:

26 +/- acre vineyard. Water delivered from an offsite property via an existing water easement, as has been done historically. If water is unavailable from the offsite source, total annual groundwater use at the subject property will not exceed the volume of site-specific annual groundwater recharge calculated elsewhere in this WAA. (Packet page 218.) (emphasis added)

If calculating from the Allowable Groundwater Use (AFY) Total = 17.7 (packet page 186) [and not from the COA 4.20a AF limit 15.952] the claimed surplus 6.2 AF is still not sufficient to irrigate 26 acres of vineyards: $26ac \times 0.5AF^2 = 13AF$, and subtracting a presumed 6.2AF surplus, the remainder is an over extraction of 6.8AF.

The WAA omits supporting documents from public review: testing worksheets with geologist signature and date, constant rate pumping test, occasional manual water level measurements for Harlan Easement Well (note that an occasional test is not a constant rate pumping test.) There is no record that there is an easement to source water off-site to the Harlan property.

Aquifer testing, which included a step drawdown test, background water level monitoring, a constant rate pumping test, and a final water level recovery period, were performed in Wells 1 and 2 between April and June 2016. Water level measurements were automatically recorded during each constant rate test by water level pressure transducers that were installed by RCS geologists into Well 1, Well 2, and the Domestic Well; occasional manual water level measurements were also collected by the pumper in the onsite Harlan Easement Well. (Packet page pdf193)

Not in the agenda packet and not calculated in the WAA is a recorded 1982 Map reporting an off-site spring water source and storage tank servicing the project parcel. (Exhibit 14)

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Availability-Analysis-Adopted-Policy-May-12-2015-PDF?bidId=)

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¹ Water Audit reviewed the County GIS Erosion Control Plan layer and discovered that there appears to be an approximately 5-acre vineyard not assigned an ECP permit or acreage. (Exhibit 15) ² "Guidelines For Estimating Non-Residential Water Usage: Agricultural: Vineyards Irrigation Only 0.2 to 0.5 acre-feet per acre per year, Heat Protection 0.25 acre-feet per acre per year, Frost Protection 0.25 acre-feet per acre per year" (page 19 https://www.countyofnapa.org/DocumentCenter/View/1056/Water-

The WAA Figure 8 Groundwater Basin Map identifies the "Point of spring flow enters property" (packet page 212) Not shown is the source of the spring and what is the distance to the project Well No.1 and Well No. 2.

The 2019 Stormwater Control Plan is a "Draft" document. The Draft reports the project abides by all required stream setbacks:

II.A.3. Setbacks from creeks, wetlands, and riparian habitats Stream setbacks are illustrated on the plans and **the project abides by all required stream setback** provisions. (Page 358) (emphasis added)

The Draft does not reflect the revised site plan sought in the Applicant's Exception to Conservation Regulations description:

... The revised plan includes an access driveway that crosses the existing ephemeral stream - this improvement is located within the now 35' setback ... It is this encroachment that the applicant is now seeking approval of the conservation regulation exception. (Packet page 147.) (emphasis added)

E. The Public Trust.

The public trust is evergreen; every new day of injury or violation creates a new cause of action. "Public rights cannot be lost nor the public trust as to their administration and exercise be destroyed either by adverse possession or by laches or other negligence on the part of the agents of the state or municipality who may from time to time be invested with the duty of their protection and administration." (San Diego v. Cuyamaca Water Co. (1930) 209 Cal. 105, 109.) Public agencies have a ministerial duty to consider the public trust interest, and mitigate harm when feasible, when making its daily decisions to divert water, by the operations and/or permitting of well extractions that impact the Napa River. (See Envtl. Law Found. v. State Water Res. Control Bd. ("Envtl. Law Found.") (2018) 26 Cal.App.5th 844, 852.)

Once an appropriation is approved, "the public trust imposes a duty of continuing supervision over the taking and use of the appropriated water." (*Nat'l Audubon Soc'y v. Superior Court* ("*Audubon*") (1983) 33 Cal.3d 419, 424.) A public agency is "not confined by past allocation decisions that may be incorrect in light of current knowledge or inconsistent with current needs [and] accordingly has the power to reconsider allocation decisions even though those decisions were made after due consideration of their effect

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on the public trust." (*Audubon*, supra, 33 Cal.3d 419, 424; see also *Cal. Trout v. State Water Res. Control Bd.* (1989) 207 Cal.App.3d 585, 629, stating that "the rule in section 5946 pertains to a public trust interest no private right in derogation of that rule can be founded upon the running of a statute of limitations, for the same reasons that one may not acquire an interest in public lands by means of adverse possession.".)

[T]he determinative fact is the impact of the activity on the public trust resource. If the public trust doctrine applies to constrain fills which destroy navigation and other public trust uses in navigable waters, it should equally apply to constrain the extraction of water that destroys navigation and other public interests. Both actions result in the same damage to the public trust. The distinction between diversion and extraction is, therefore, irrelevant. The analysis begins and ends with whether the challenged activity harms a navigable waterway and thereby violates the public trust.

(Envtl. Law Found., supra, 26 Cal.App.5th 844.)

Tributaries to navigable waterways are also subject to the public trust doctrine. For example, see Fish and Game Code section 711.7. (a) which states in part "The fish and wildlife resources are held in trust for the people of the state ..."

The public trust doctrine imposes independent and unavoidable obligations on trustee agencies overseeing groundwater extraction. California precedent makes clear that subdivisions of the state³ have "a duty to consider the public trust interest⁴ when making decisions impacting water that is imbued with the public trust,"⁵ and merely complying with CEQA does not discharge that duty.⁶

The public trust requires reconsideration of past or ongoing water use decisions where those decisions were made "without any consideration of the impact upon the

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³ Env't L. Found. (ELF) v. State Water Res. Control Bd. (SWRCB) (2018), 26 Cal. App. 5th 844, 868 ("Although the state as sovereign is primarily responsible for administration of the trust, the county, as a subdivision of the state, shares responsibility for administering the public trust and may not approve of destructive activities without giving due regard to the preservation of those resources.") (internal quotation marks omitted).

The Napa River and its tributaries, and the fish within those water ways, are protected public trust resources.

⁵ *Id.* at 863.

⁶ Id. at 868.

public trust."⁷ Thus, compliance with public trust duties is not discretionary, it is obligatory.

As Napa County is a legal subdivision of the state, it must deal with the trust property for the beneficiary's⁸ benefit. No trustee can properly act for only some of the beneficiaries – for example the trustee must represent them all, taking into account any differing interests of the beneficiaries, or the trustee cannot properly represent any of them. (*Bowles v. Superior Court* (1955) 44 C2d 574.) This principle is in accord with the equal protection provisions of the Fourteenth Amendment to the US Constitution.

Furthermore, there can be no vested rights in water use that harm the public trust. Regardless of the nature of the water right in question, no water user in the State "owns" any water. Instead, a water right grants the holder thereof only the right to use water, a "usufructuary right". The owner of "legal title" to all water is the State in its capacity as a trustee for the benefit of the public. Both riparian and appropriative rights are usufructuary only and confer no right of private ownership in the watercourse, which belongs to the State. (*People v. Shirokow* (1980) 26 Cal.3d 301 at 307.)

If at any time the trustee determines that a use of water other than the then current use would better serve the public trust, the State has the power and the obligation to reallocate that water in accordance with the public's interest. Even if the water at issue has been put to beneficial use (and relied upon) for decades, it can be taken from one user in favor of another need or use. The public trust doctrine therefore means that no water rights in California are "vested" in the traditional sense of property rights.

Fish & Game Code, section 1600 provides:

The Legislature finds and declares that the protection and conservation of the fish and wildlife resources of this state are of utmost public interest. Fish and wildlife are the property of the people and provide a major contribution to the economy of the state, as well as providing a significant part of the people's food supply; therefore their conservation is a proper responsibility of the state.

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Nat'l Audubon Soc'y v. Superior Ct. (1983) 33 Cal. 3d 419, 426.

⁸ i.e. people of California

The California Department of Fish & Wildlife (CDFW):

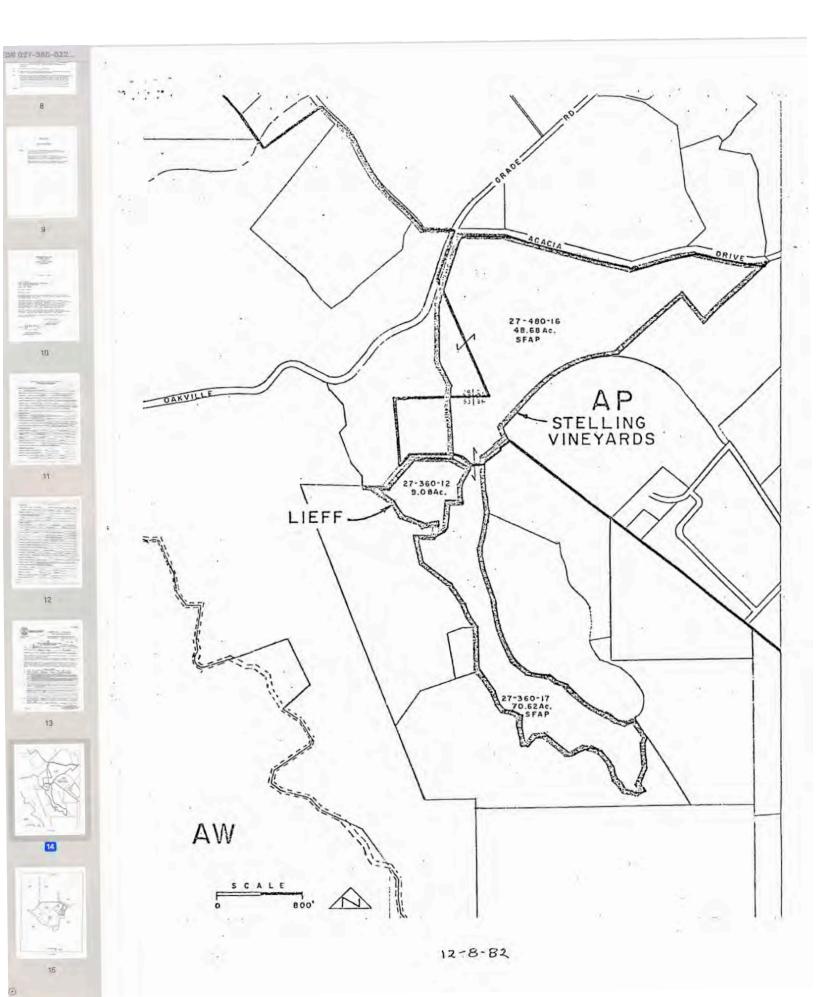
... is California's Trustee Agency for the State's fish, wildlife, and plant resources. CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitats necessary for biologically sustainable populations of those species. For the purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. (https://wildlife.ca.gov/Conservation/Environmental-Review/CEQA.)

Respectfully,

William McKinnon General Counsel

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A Tradition of Stewardship
A Commitment to Service

Conservation Development and Planning

1195 Third Street, Suite 210 Napa, CA 94559 www.co.napa.ca.us

> Main: (707) 253-4417 Fax: (707) 253-4336

> > Hillary Gitelman

NOTICE of VIOLATION

NICKEL LAND CO. c/o Jeremy J. Nickel 8177 South Harvard Avenue #903 Tulsa, OK 74137-1612 September 7, 2011

SUBJECT: LOCATION: NAPA COUNTY CODE VIOLATION 1581 OAKVILLE GRADE APN 027-360-012

Dear Mr. Nickel:

The Department of Conservation, Development and Planning believes that the following conditions and/or discrepancies exist on the property identified above in violation of **Title 18 of the Napa County Code**.

- Chapter 18.108.070B (Conservation Regulations) = Grading, earthwork and/or vegetation removal for your existing vineyard developed on slopes exceeding 5% required the prior approval of an Erosion Control Plan.
- Section 18.144.040 (Nuisance) = Any use of property contrary to the provisions of Title 18 of the County Code shall be declared to be unlawful and a public nuisance.

Approval of an Erosion Control Plan will be required for your unauthorized vineyard development on the subject property. Please contact Dan Zador in our Conservation Division @ (707) 259-8239 for any questions regarding the submittal and processing of an erosion control plan application.

Please call me at (707) 259-8226 within seven (7) days of the date of this letter to inform me of your plans to comply with the Napa County Code. Your cooperation is requested, however, failure to respond and voluntarily comply may result in the issuance of Administrative Citations and/or additional enforcement action by Napa County.

Sincerely

Edward S. Colby, Planner III Code Compliance Unit

Cc: Hillary Gitelman, Director Darrell Mayes, Chief Building Official Patrick Lowe, Deputy Planning Director Brian Bordona, Supervising Planner (Conservation) David Giudice, Code Enforcement Supervisor

27-360-012



RESIDENTIAL BUILDING PERMIT APPLICATION

Planning, Building & Environmental Services

1195 Third Street	
Second Floor	
Napa, California 94559)
707-253-4417 FAX 702	7-253-4336
www.countyofnapa.org/	building

FOR OFFI	CE USE ONLY	Code Enf Auth	Permit	2-104	8	Bin
Notes						
□New	□ Addition	Alteration	□ Replace	□ Demo	□Move	□ QP

ROPERTY/WORK DESCRIPTION	his application the result of a Code Violation?
Street Address: 1581 Oakville Grade Suite/Unit #: City: Oakville Zip: 9455 Cross Street: Hwy. #29 APN# 0 2 7 3 6 0 0 1 2 New Sq. Ft: -0 Construction Cost: 50,000.00	Work Description: Barn remodeling & upgrade, landscape lighting and misc. retaining walls

OPERTY OWN			Is this permi	it being pulled as C	wner/Bu	uilder? □ YES	XNC
Owner Name:	Nickel Land Co	. Attn: Je	eremy J. Nickel				
Mailing Address:	8177 So Hara	ad Ave.	City: Tulsa	State:	OK	Zip:74137-	1612
Phone: 415-999	9-2499	Fax:	E	_{mail:} jeremeyjn	ickel@	msn.com	

Company Name:	Bruce Tucker Construc	ction	License #: 881951	Class: B	Expires: 8/3/2014
	2260 Brown Street		Napa	State: CA	_{Zip:} 94558
, warren	gbrucetuckerconstruction	on.com	ort Person. Warren B	Sowers	Phone: 707-255-1587

IMARY CONTACT All comm	unication from our office regardi	ing your permit will b	e made to this person.
Primary Contact Name: Michael Rada			
Firm: Michael Rada Architect	License #: C	A-14,155	
Address: 1000 Brown Street #6	City: St. Helena	State: CA	Zip: 94574
Phone: 707-963-2999 Fax:	same _{Email:} m	ichael_rada@a	tt.net
I Represent : ☑Owner □ Contractor	Authorized Agent: W N	(Please provide a sign	ed Authorized Agent Form

B-APP 20120612

OWNER BUILDER DECLARATION)N ———		
(Sec. 7031.5). Business and Profession molish or repair any structure prior to it he or she is licensed pursuant to the pr 7000) of Division 3 of the Business and exemption. Any violation of Section 703 than five hundred dollars (\$500).	's issuance, also requires the covisions of the Contractors' descriptions of the Contractors' descriptions of the contractors o	e applicant for such permit t State License Law (Chapter he or she is exempt there fi	o file a signed statement that 9 (commencing with Section rom and basis for the alleged
I, AS OWNER OF THE PROPERTY, WORK, AND THE STRUCTURE IS NOT Contractors' State License Law does not such work himself or herself or through for sale. If, however, the building or improving that he or she did not build or in	INTENDED OR OFFERED F t apply to an owner of the p his or her employees, providually provement is sold within one	OR SALE. (Sec. 7044 Busine property, who builds or impeded that such improvements by year of completion, the business.	ess and Professions Code: The roves thereon, and who does are not intended or offered
I, AS OWNER OF THE PROPERTY STRUCT THE PROJECT (Sec. 7004, Bus of property who builds or improves ther	siness and Professions Code.	The Contractor's License Law	does not apply to an owner
I AM EXEMPT under section	for this reason:		
I HEREBY ATTEST UNDER PENALTY OF PERJU	JRY that I am exempt from the C	$\bigcirc \cap \cap ()$	or the above marked reason:
WORKERIS COMPENSATION	Jour.		10000
WORKER'S COMPENSATION -	1		
☐ I HAVE AND WILL MAINTAIN A (ANCE, as required by Section 3700 o which this permit is issued. My workers' (Ance)	f the Labor Code, for the p	performance of the work for	
☐ I HAVE AND WILL MAINTAIN A CE ERS' COMPENSATION, as provided for ance of the work for which this permit is	or by Section 3700 of the Lo		
person in any manner so as to become become subject to the worker's compethose provisions. WARNING: Failure to criminal penalties and civil fines up to damages as provided for in Section 37	e subject to the workers' comensation provisions of Section o secure workers' compensatione hundred thousand dollars.	npensation laws of Californi n 3700 of the Labor Code, ation coverage is unlawful, ars (\$100,000), in addition	a, and agree that if I should I shall herewith comply with and subjects an employer to
I HEREBY AFFIRM UNDER PENALTY OF	PERJURY to the above mark	ed declarations:	
	Signature: 🗵	Date	!!
DISCLOSURE STATEMENT ——			
I certify that I have read this applicational ordinances and state laws relative furthermore I hereby authorize reprinspection purposes.	ating to building construct	ion and I make this state	ment under penalty of law.
NOTICE: This permit will expire to more than 180 days. A request for ing Official within one year of iss limitation 180 days from the date	or an extension of time suance or 180 days fror	must be submitted in v	riting to the Chief Build-
I (We) agree to save, indemnify an which may in any way accrue agair	d keep harmless the Counst said County in consequ	inty of Napa against judguence of the granting of the	ments, cost, and expenses nis permit.
	Signature: 🗵 💮	my hicks Date	·· 08/22/2012
	X Owner	actor Authorized Age	ent (Must attach letter)

Contractor

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SUBJECT OF STATE OF S

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Named and advanced and balled and as may have appealed and their famous Toro is a most form were in the Course of Nana, California, Fillmolfe are officered and bettern 6. Plaintiffs are ignorant of the true taumes and our and DOES I through SC and therefore use them observant to proname. Passelfa will around this comment to other their part region on they when morround? Posseth are interest and below; and former also at such of those Emissional's execut definations in responsible for Planettin Summa 7. At all times forces presidented, built of the Delivations was the agent of legar of mails of the remaining Defendants, and was at all times brook most ny within the temps of such agency or engineerent. Placetife are joinesed and ere, and boost discress after. One buck dates No. and teach of time, were making as expense agrees, beginned agrees and their on all time that is decay the sets below, all and the nal definations and most of them, and the DAM technology, and then a return to all taxes unting within the scope III, and pureautif his more against and we with the first time-brigar, immedia, personant, appeared and mail

- 15. Over strenuous objections of all three Plaintiffs with respect to some or all of these conditions, Defendant Nickel required Plaintiffs to work in conditions in violation of law and public policy, as follows:
- a. No Workers Compensation Insurance. Defendants Nickel and TVH did not self-insure their workers for workplace injuries. Additionally, intentionally and improperly, TVH and Defendant Nickel classified them as "Independent Contractors," despite the fact that TVH and Defendant Nickel controlled all aspects of their work and regularly supervised their work. TWH and Defendant Nickel classified all Plaintiffs as Independent Contractors to avoid the costs associated with Workers' Compensation insurance benefits, and to avoid taxation. The failure to maintain Workers Compensation Insurance or to adequately self-insure were in violation of California Labor Code §3700
- b. No Building Permits. Defendant Nickel instructed Plaintiffs and other workers to construct a building on the Vineyard Property and refused to take out any building permits from the County of Napa. The permits were needed because of the nature and extent of the repairs. One building, called a "Coop," was substantially rebuilt without permits. Today, it appears to be a finished building, but it is structurally unsound and presents a danger to all who enter it. For instance:
- (1) The electrical system which was installed, does not have a breaker box with access. Nickel instructed workers to build shelves in front of the access. The voltage sent to the garage is excessive; the voltage sent to the Coop is inadequate. Because of this, there exists the possibility of an electrical fire in the garage.
- (2) The walls and floor studs were not anchored to the concrete slab, despite insistence by the workers that anchor bolts be installed.
 - (3) Walls are out of plumb.
 - (4) Windows are not flashed.
- Nickel once described Plaintiff Clawson as being "an employee" in writing.

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Planning, Building & Environmental Services

1195 Third Street, Suite 210 Napa, CA 94559 www.countyofnapa.org

> **David Morrison** Director

NOTICE of VIOLATION

October 30, 2015

Jeremy J. Nickel 7107 S. Yale Ave. #322 Tulsa Ok 74136

LOCATION:

1581 Oakville Grade, Napa CA. APN 027-360-022-000

Dear Property Owner:

The Napa County Department of Planning, Building, & Environmental Services received information that you have been advertising and potentially holding wine tastings and wine sales at the above address/assessor's parcel number without the benefit of a use permit and in violation of Title 18 of the Napa County Code as follows:

Section 18.20.010 through 040 (Agricultural Watershed [AW] District) - All activities listed above, wine sales and tastings are allowed - but only upon the issuance of a use permit.

Section 18.12.080: (Establishment of Zoning Districts) - No land shall be used or occupied except in conformity with all of the regulations established for the zoning district in which it is located.

Section 18.144.040: (Nuisance) - Any use of property contrary to the provisions of Title 18 is hereby declared to be unlawful and a public nuisance.

You are directed to immediately cease all unapproved sales, tours and tastings, and remove any website or other advertisements of said unauthorized commercial activities on the subject property until a use permit has been obtained and a certificate of occupancy has been issued.

Please respond within seven (7) days of the date of this letter (November 6, 2015) to inform us of your willingness to comply with Napa County Code. You may reach me at (707) 299-1348. Your cooperation is requested; however, failure to comply and to promptly respond to this letter may result in referral to the District Attorney or County Counsel for appropriate legal action.

Regards,

Inde Stelle

Linda St. Claire.

Code Enforcement Officer

Cc: David Morrison PBES Director; David Giudice, Supervising Code Enforcement Officer; John Tuteur, Assessor; Chron, File





A Commitment to Service

Form 1 – Information Sheet Planning, Building & Environmental Services

> 1195 Third Street, Suite 210 Napa, CA 94559 www.countyofnapa.org

> > David Morrison Director

INFORMATION AND NOTICE REGARDING APPARENT CODE VIOLATION

October 30, 2018

Via Certified and Regular USPS Mail

Nickel, Jerome J 7101 S. Yale Ave. # 322 Tulsa, OK 74136

LOCATION: 1581 Oakville Grade; APN: 027-360-022-000

Dear Property Owner:

The Napa County Department of Planning, Building, & Environmental Services has again received information and/or observed that a Code violation exists or has occurred at the above-referenced Property. We have received a complaint that you are advertising and hold wine tastings and sales at the winery without the benefit of a use permit and in violation of Title 18 of the Napa County Code.

Please refer to the attached notice and informational sheet that describes in more detail the reported or apparent Code violation(s) and the references to the provisions that appear to have been violated.

Please contact us within ten (10) calendar days of the date of this Notice (by November 08, 2018) to indicate your willingness to comply with Napa County Code and the California Building Code. We look forward to discussing this situation with you and resolving the apparent violation promptly. You may reach me at (707) 253-4018.

Sincerely,

Ams!

Joseph W. Ssenkumba Code Compliance Officer Planning, Building & Environmental Services

Cc. Chron, File



January 25, 2019 File #P18-00448-UP & P18-00451-VAR The Vineyard House Winery Page 2 of 3

Advisory

Be advised that pursuant to Resolution No. 2010-48 (enclosed) adopted by the Board of Supervisors on May 11, 2010 "to discourage property owners from constructing residences and barns with the express intent of converting them to wineries, the County does not generally support use permit proposals seeking to convert existing buildings to winery use if the buildings have been constructed or substantially modified within the last 5 to 7 years." The submitted project statement indicates that the barn was completed in

Building Division

See the enclosed comment memorandum from the Building Division, dated January 14, 2019.

Engineering Services Division

See the enclosed comment memorandum from the Engineering Division, dated January 23, 2019.

Environmental Health Division

Completeness comments from the Environmental Health Division will be sent under separate cover the week of January 28, 2019.

Fire Department

See the enclosed comment memorandum from the Napa County Fire Department, dated January

Public Works Department

See the enclosed comment memorandum from the Public Works Department, dated January 24, 2019.

Please be aware that this is an identification of information known to be necessary at this time to continue processing of your application. Further review of your project may necessitate the request for additional information, including supplemental reports in the event County staff determines that submitted reports have been prepared in a manner inconsistent with County protocol or otherwise inadequate for the purposes of application processing and evaluation under the CEQA.

Thank you in advance for providing the above material. Please submit all materials required for completeness as one resubmittal, and submit it directly to me. Partial resubmittals will not be accepted. In addition, please insure that all revised plans, reports, or other resubmitted documents are clearly marked "revised" and dated.

of the materials to the County's current To facilitate uploading (http://www.countyofnapa.org/cdpdprojects/) in accordance with the direction of the Planning Commission and Board of Supervisors, please provide all application materials, plans, and supplemental reports in electronic format (.pdf, with plans converted directly from the CAD or electronic files), as well as hard copy.

Please be advised that failure to provide the responsive information requested above, within 120 days of the date of this letter, shall cause the application to be deemed "abandoned" in accordance with Section 401(b)(2) of Napa County's Local Procedures for Implementing the California Environmental Quality Act,

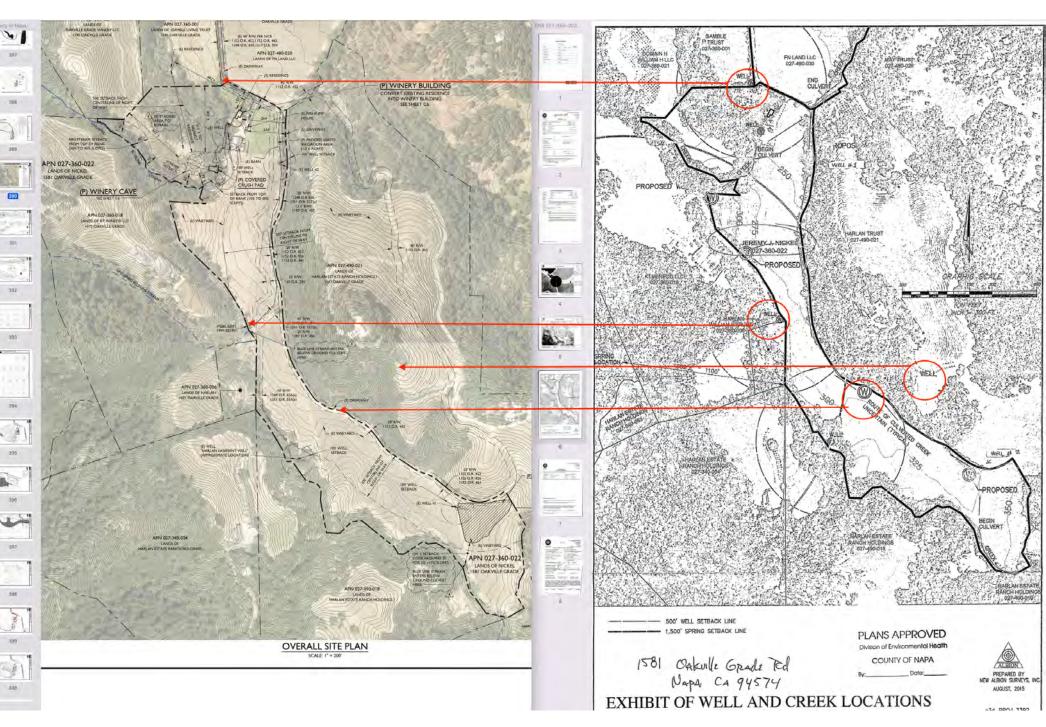
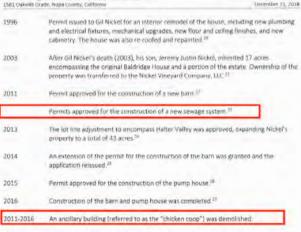


EXHIBIT 8



Architectural Resources Group

In addition to the chronology outlined above, a number of alterations were noted during the May 2, 2017 site visit. Following is a list of alterations undertaken at unknown dates:

- A one-story addition, including a new entrance porch and patio, was constructed on the north façade of the original two-story house.
- An L-shaped one-story addition was constructed on the south façade of the original two-story house. The current appearance (including its roofline, arrangement of fenestration, and window dimensions) of the southern addition suggests it may date to the 1940s or 1950s.

William Baldridge House Historical Resources Technical Report

11 Document Nos. F31 00458 and F11 00459. Farcel Report. APM 027:350-022. Nana County PRES, accessed tune 12-26

rttp://www.epuntyotnapa.org/phes/parceldata/.

Occument No. W13.00156, Parcel Report, APN 027-360-022, Napa County PRES, accessed June 12, 2017.

http://www.sountyofnapa.org/pbes/parceldata/.
** Extension Reguest/Response, Bill 00956, Napa County PBES, accessed 74ay 20, 2017.

http://www.is.countyofnapa.org/PRESDocumentSearchill.

Application Form, 815-01743, Napa County PRES, accessed July 7, 2017.

http://services.countyofnape.org/PBESOocumentSearch8.

77 Certification of Occupancy, B11 00956, Napia County PBES, accessed July 7, 2017.

http://services.countyofnapa.org/PIIEsDocumentSearch#

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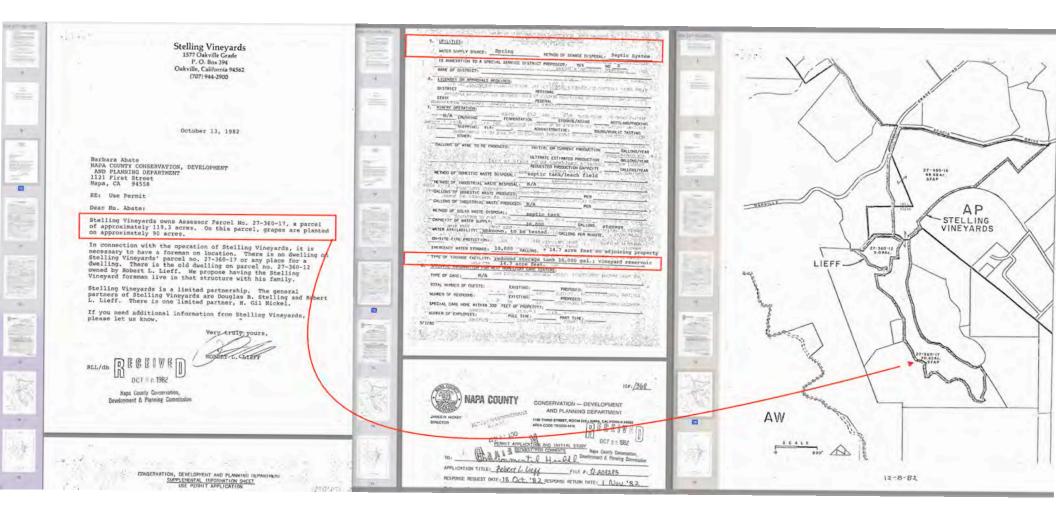


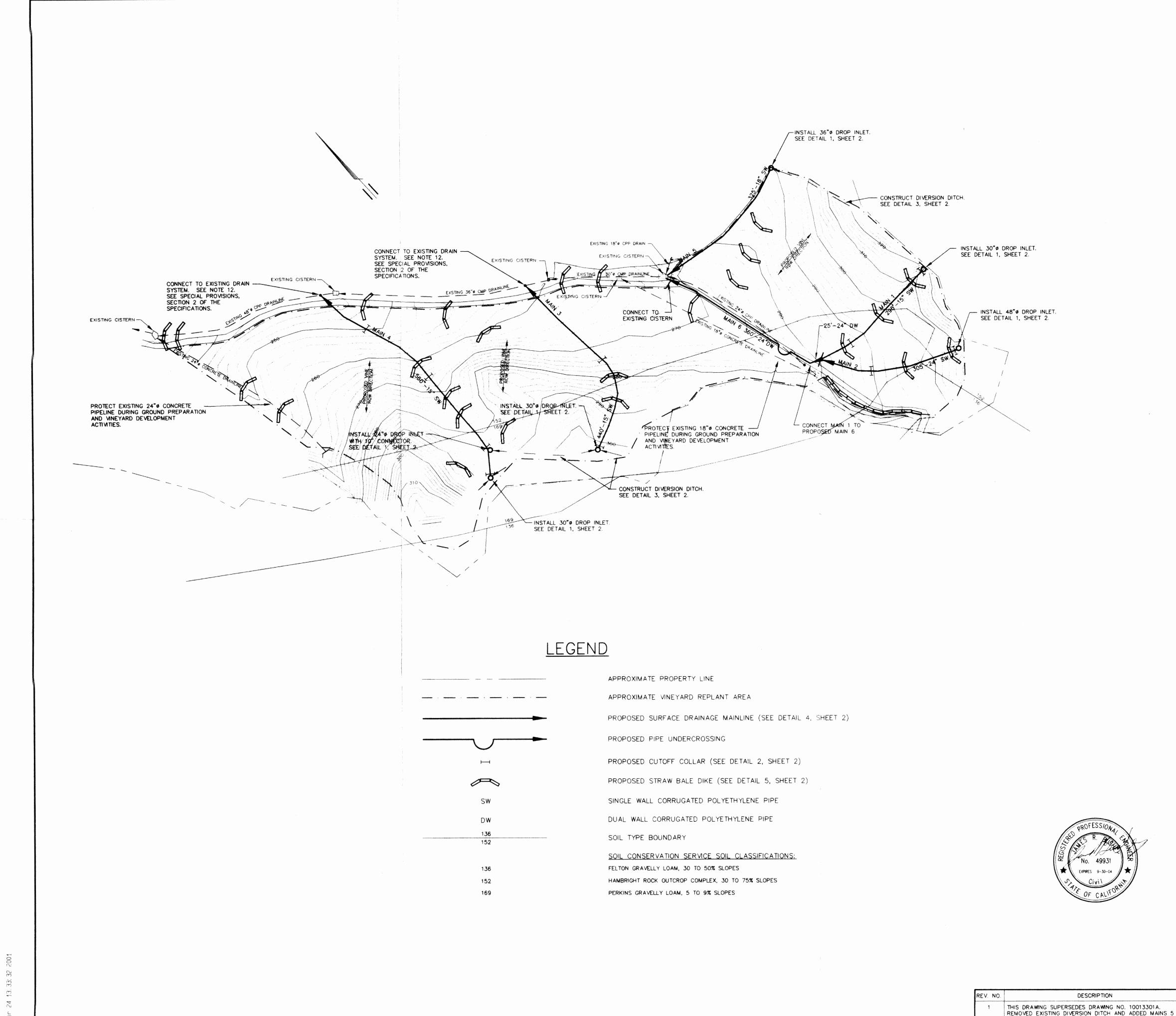
Application Forms, 896.00251 and 896.00274, Napa County 8665, accessed May 20, 2017.

http://services.cournyofnapa.org/PBESOccumentSearch#

^{**} Napa County Book of Deeds
** Application Form, 812,00956, Napa County FBLS, accessed May 20, 2017.

http://wrytops.countyofraga.org/PBFSDocumentSearch#.







LOCATION MAP 1"=±2000'

NOTES:

STELLING MNEYARDS P.O. BOX 327 1. OWNER:

OAKVILLE, CA 94562-0327

NO SITUS ADDRESS APN 027-360-017 3. EXISTING VEGETATION CONSISTS OF ANNUAL GRASSES. VINES WERE REMOVED PRIOR

4. THE NAPA COUNTY SOIL SURVEY MAPS PROJECT SOILS AS HAMBRIGHT-ROCK OUTCROP COMPLEX, 30-75% SLOPES; FELTON GRAVELLY LOAM, 30-90% SLOPES; AND PERKINS GRAVELLY LOAM 5-9% SLOPES.

6. PERMANENT COVER CROP (NO-TILL):
ALL DISTURBED AREAS WITHIN THE PROJECT AREA AND ALL AVENUES SHALL BE
SEEDED WITH A PERMANENT, NO-TILL COVER CROP PRIOR TO OCTOBER 15 OF THE
YEAR OF CONSTRUCTION. THIS COVER CROP WILL BE GENERATED BY SEEDING WITH

<u>VARIETY</u> BLANDO BROME ZORRO FESCUE ROSE CLOVER

THE PERMANENT COVER CROP WILL BE MANAGED EACH YEAR SUCH THAT ANY AREAS WHICH HAVE LESS THAN 70% VEGETATIVE COVER WILL BE RESEEDED AND MULCHED UNTIL ADEQUATE COVERAGE IS ACHIEVED. THE PERMANENT COVER CROP SHALL BE

7. STRAW MULCH SHALL BE APPLIED TO ALL DISTURBED AREAS AT A RATE OF 3000 LBS/ACRE BY OCTOBER 15 OF THE YEAR OF CONSTRUCTION.

CONSTRUCT CUTOFF COLLARS AS SHOWN IN DETAIL 2, SHEET 2. CUTOFF COLLARS
 SHALL BE LOCATED AS SHOWN ON THE PLAN OR AS STAKED IN THE FIELD BY THE
 ENGINEER.

9. OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS.

10. PROPERTY LINES AS SHOWN ARE APPROXIMATE, OWNER SHALL BE RESPONSIBLE FOR SURVEYING PROPERTY LINE(S) AS NECESSARY PRIOR TO ANY SITE DISTURBANCE.

11. TOPOGRAPHIC MAPPING PROVIDED BY MICHAEL W. BROOKS & ASSOCIATES USING ASSUMED ELEVATION DATUM. BASE MAP CREATED FROM ORIGINAL DRAWING

2858TOPO, DATED MAY 12, 2000.

12. THE LOCATIONS OF THE EXISTING DRAINLINES INTERCONNECTING THE CISTERNS ARE APPROXIMATE.

13. ALL AVENUES SHALL CONFORM TO NATURAL GRADE.



VYBORNY VINEYARD MANAGEMENT STELLING VINEYARDS

EROSION CONTROL PLAN SITE PLAN

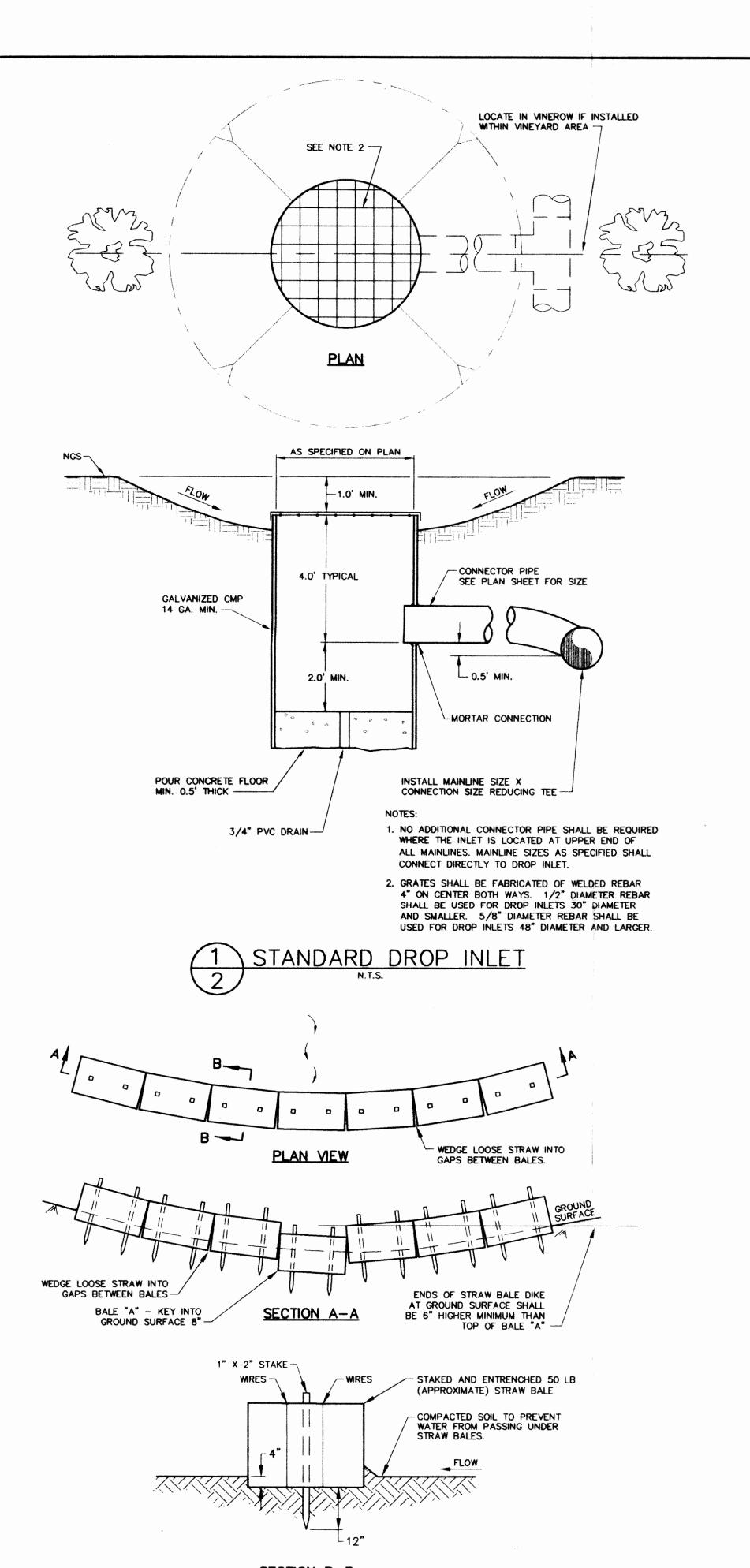
ENGINEERING DESIGN ENGINEER: NAPA, CA 94558 - 6281 707/253-1806 FAX 707/253-1604 J. VICENCIO, J. BUSHEY

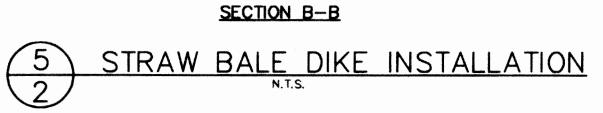
BY DATE

JV 1-3-01

& 6 PER VINEYARD MANAGER'S REQUEST. REVISION 1 DOES NOT AFFECT SHEET 2 (10013301B) OF THIS PLAN JOB NO: 10013301

27 -300-017



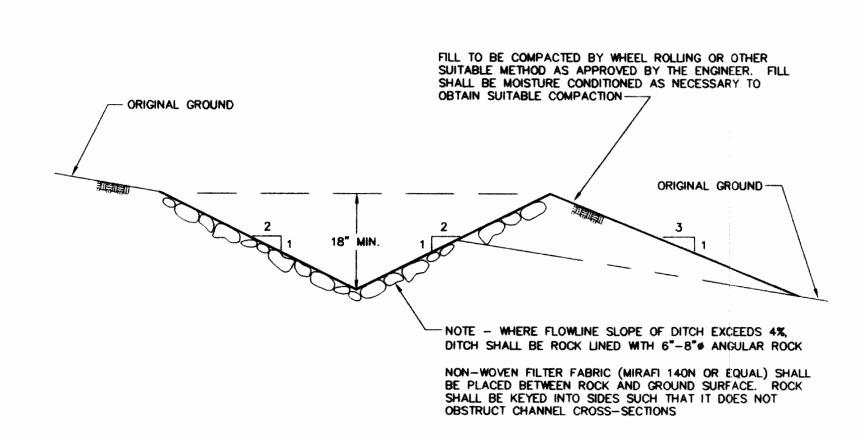


PERFORATE PIPE 3 FEET UPSTREAM OF COLLAR WITH A MINIMUM OF 30 1/8" HOLES BACKFILL WITH APPROPRIATE ENVELOPE MATERIAL. SEE SPECIFICATIONS PLAN VIEW 1.5' MIN.¬

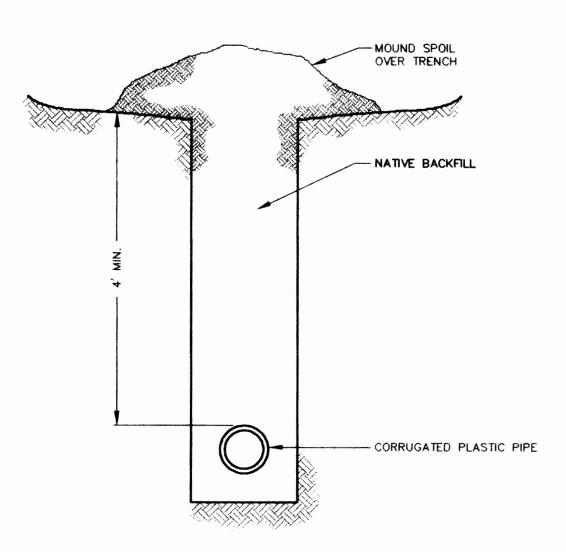
X-SECTION



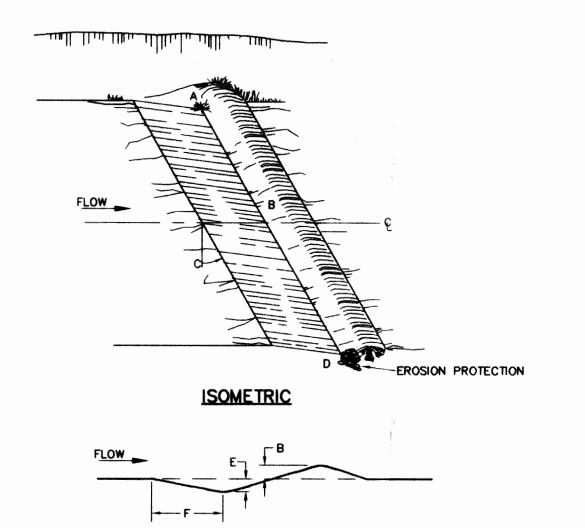
1.0' MIN. FROM SIDE OF TRENCH



DIVERSION DITCH TYPICAL X-SECTION



SURFACE DRAINAGE PIPELINE



- 1.0' MIN. FROM BOTTOM OF TRENCH

1. WATERBAR CONSTRUCTION FOR LITTLE OR NO TRAFFIC. SPECIFICATIONS ARE AVERAGE AND MAY BE ADJUSTED TO CONDITIONS.

2. A, TIE-IN TO BANK.

3. B, CROSS DRAIN BERM HEIGHT 4 TO 6 INCHES ABOVE THE ROAD.

4. ANGLE DRAIN 30 TO 45 DEGREES DOWNGRADE WITH ROAD CENTERLINE, C.

5. D, DRAIN OUTLET CUT 8 TO 16 INCHES INTO ROADBED. 6. E, DEPTH 4 TO 6 INCHES.

7. F, 3 TO 4 FEET.

WATERBAR FOR VEHICULAR TRAFFIC



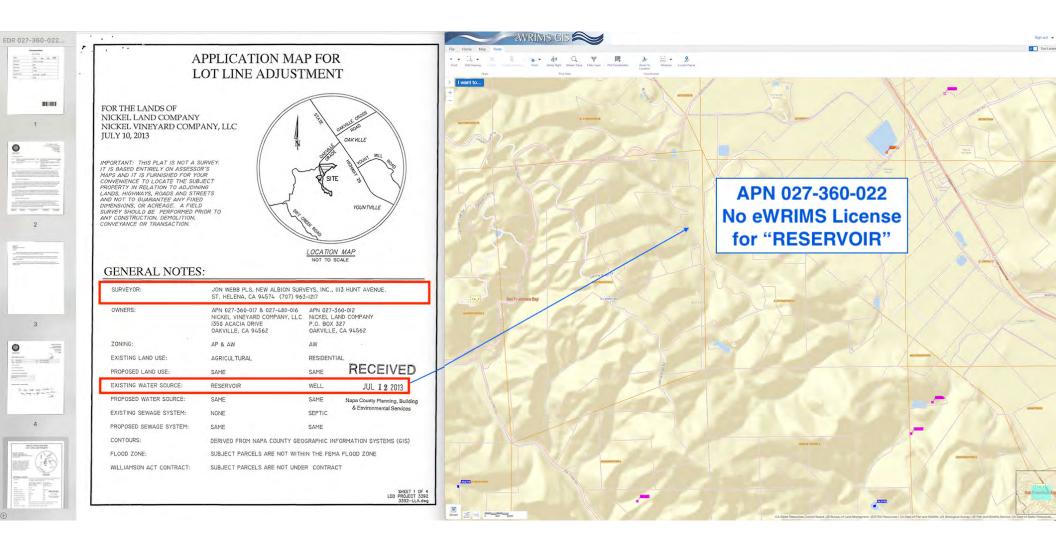
COMPLETE

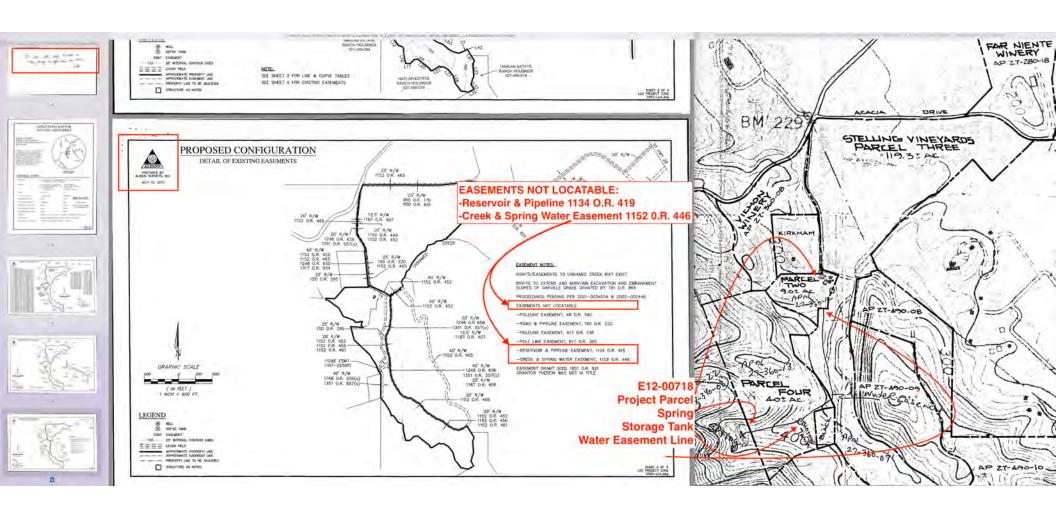
DETAILS ON THIS SHEET:

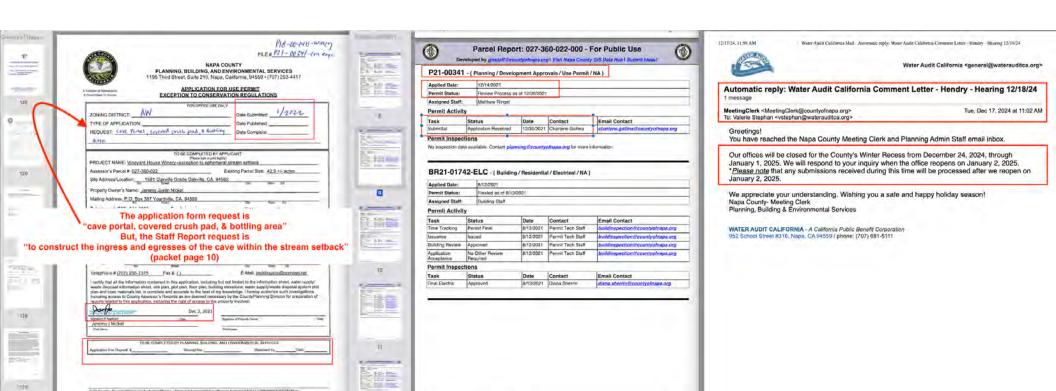
STANDARD DROP INLET CUTOFF COLLAR DIVERSION DITCH SURFACE DRAINAGE PIPELINE STRAW BALE DIKE INSTALLATION WATERBAR FOR VEHICULAR TRAFFIC

VYBORNY VINEYARD MANAGEMENT STELLING VINEYARDS

EROSION CONTROL PLAN **DETAILS** 80 NAPA VALLEY CORP. WAY, SUITE G NAPA, CA 94558 - 6281 707/253-1806 FAX 707/253-1604 J. VICENCIO, J. BUSHEY JOB NO: 10013301 9-7-00 AS SHOWN DWG. NO: 10013301B

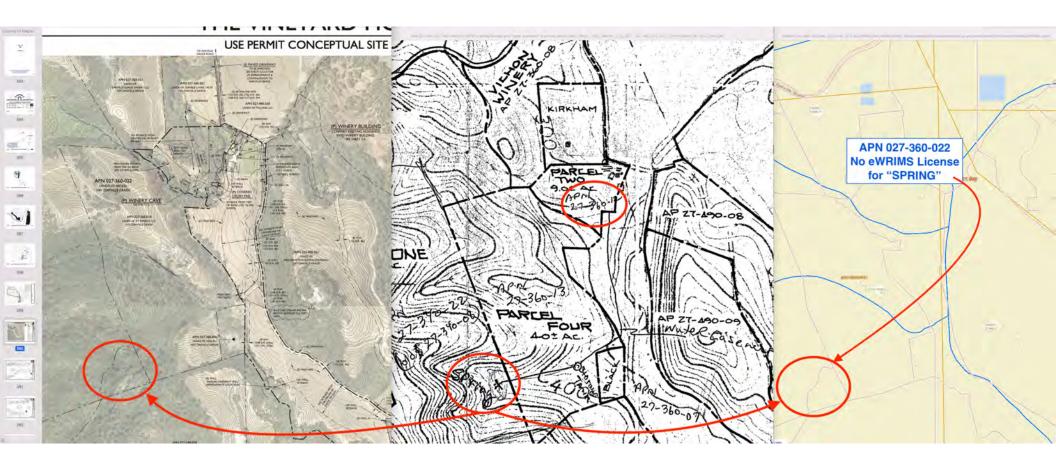






Page 9 of 31

Parcel Report Created 7/5/2025 1:19:18 PM





Buchalter

1230 Pine Street St. Helena, CA 94574 707.967.9656 Phone 707.963.0771 Fax

707.200.9414 Direct kfalace@buchalter.com

July 14, 2025

VIA EMAIL

Laura Anderson Deputy County Counsel Office of Napa County Counsel 1195 Third Street, Suite 301 Napa, CA 94559

Email: laura.anderson@countyofnapa.org

Re: The Vineyard House Conditions of Approval

Use Permit #P18-00448

Dear Ms. Anderson:

In approximately 1997, Mr. Harlan drilled a well and installed an electrical utility box in the "knoll area" of Mr. Nickel's property. Mr. Harlan stated that when the well was drilled he believed it was on his property. A subsequent survey demonstrated this was not the case and a lawsuit ensued styled *Harlan v. Nickel et al.*, Napa County Superior Court Number 26-14791.

In addition to other matters considered, the Court considered whether sufficient evidence was presented to establish a good faith improver cause of action. The test for an equitable easement by good faith improver is codified in sections 871.1 through 871.7 of the Code of Civil Procedure.

The matter proceeded to trial and on November 21, 2003, final judgment was entered. In balancing the equities, the Court allowed Harlan to retain ownership rights to the well and associated equipment by finding in his favor as to the good faith improver cause of action. Through the judgment, Mr. Nickel would retain ownership of the property, but Mr. Harlan would own the well and have an equitable easement to access same.

In light of the Court's findings, the Nickel parcel cannot be compelled to install a meter as the well is the personal property of Mr. Harlan.

buchalter.com

Arizona
California
Colorado
Georgia
Illinois
Oregon
Tennessee
Utah

Washington

Buchalter

Laura Anderson Deputy County Counsel July 14, 2025 Page 2

Please let me know if you have any questions.

Very truly yours,

BUCHALTER

A Professional Corporation

Katharine H. Falace

Shareholder

KHF:jg