

“A”

Appeal Packet
(including County notations on extrinsic
evidence documents)

Hillwalker Vineyard Winery Appeal P24-00237-APL
Board of Supervisors Hearing – February 25, 2025



NAPA COUNTY CLERK OF THE BOARD'S OFFICE
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NAPA COUNTY
EXECUTIVE OFFICE

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Deadline for filing with the Clerk of the Board's office: no later than 2 p.m. on the 10th working day after the filing of the Notice of Intent to Appeal. (Napa County Code sec. 2.88.050(A).)

TO BE COMPLETED BY APPELLANT
(Please type or print legibly)

Action BeingAppealed: KEVIN & ANN MORRISON TR / HILLWALKER VINEYARDS WINERY / EXCEPTION TO THE CONSERVATION REGULATIONS NO. P23-00239-UP, USE PERMIT NO. P23-00101-UP & EXCEPTION TO THE NAPA COUNTY ROAD & STREET Planning and Zoning Commission Hearing - September 21, 2024 - Notice and Procedure did not comply with the law

Permittee Name: Kevin and Ann Morrison, TR
project applicant, adjacent property owner, other (describe)

Permittee Address: 405 Alexander Avenue, Larkspur, CA 94939

Project Site (Address/Location if Different than Permittee Address)

1871 Mount Veeder Road, Napa, CA 94558

Assessor's Parcel No.: 034-110-047.

Access to the property through: APNS 034-100-020, 034-100-043, and 034-110- 059.

Permit No.: NO. P23-00239-UP, USE PERMIT NO. P23-00101-UP

Date of Decision: September 21, 2024

Nature of Permit or Decision: Adopt the revised Mitigated Negative Declaration/Mitigation Monitoring Reporting Program and approve the Exception to the Conservation Regulations, Exception to the County Road and Street Standards (RSS), and a Winery Use Permit subject to the recommended conditions of approval. NO. P23-00239-UP, USE PERMIT NO. P23-00101-UP

Appellant's Name: Water Audit California

Appellant's legal status (check one): Individual Corporation/registered nonprofit
 Individual on behalf of unofficial organization (e.g., neighborhood group, special interest group, etc.)
 Specify organization name: _____ Fax #: (____)

Telephone #: (530) 575-5335

E-Mail Address: legal@waterauditca.org

Mailing Address: 952 School Street, PMB 316 Napa, CA 94559

City _____ State _____ No. _____ Zip _____ Street _____

Appellant's Qualification as Interested Person: Submitted Comment for hearing held on September 21, 2024, no financial interest

Primary Point(s) of Contact for Appellant: Check here if Appellant is sole point of contact and will be the prehearing conference representative

Contact # 1 Name: William McKinnon, Water Audit California

Telephone # (530) 575-5335 Email:legal@waterauditca.org

Mailing Address: 952 School Street, PMB 316 Napa, CA 94559

No. _____ Street _____ City _____ State _____ Zip _____

Check here if this contact will be your representative at the prehearing conference

Contact # 2 Name: Valerie Stephan

Telephone # ()

Email: vstephan@waterauditca.org

Mailing Address: 952 School Street, PMB 316 Napa, CA 94559

No

Street

City

State

Zip

Check here if this contact will be your representative at the prehearing conference

Attach additional sheet(s) for additional contacts if needed.

Reason for Appeal. Be specific – factual or legal basis for such grounds of appeal must be expressly stated or they are waived. At a minimum, you must include: (1) identification and description of the specific factual or legal determination(s) made as part of the decision that are the focus of the appeal; and (2) express assertion of all arguments, contentions, and facts that form the grounds for your appeal. If the basis of the appeal will be, in whole or in part, that there was a prejudicial abuse of discretion on the part of the approving authority, or that there was a lack of a fair and impartial hearing, this must be expressly stated. *(attach additional sheets and/or supporting documentation if necessary)*

Please see attached

Are you appealing a decision relating to real property? (check one) Yes No

If Yes, please ensure that you attach the required Ownership Report, including list of owners and Assessor's map page(s) as indicated on the Checklist.

Evidence of payment of required fees (check one): Attached Will be submitted later*

* Pursuant to Napa County Code sec. 2.88.050, evidence of payment **must** be received by the Clerk of the Board no later than the 2 p.m. deadline.

Signature of Appellant

Date

William McKinnon, Attorney
for Water Audit California

Print Name

CHECKLIST FOR APPEAL PACKET

Did you remember to include the following:

- a. Name and address of the permittee or the subject of the decision being appealed, along with identifying information about the permittee and/or subject property.
- b. Name and address of appellant.
- c. Appellant's status as an individual or entity.
- d. Basis for Appellant's qualification as an interested person.
- e. Names, addresses, telephone numbers, and email addresses of the Appellant's primary point(s) of contact and the designated representative(s) of the Appellant for the mandatory prehearing conference.
- f. Identification and description of the specific factual or legal determination(s) made as part of the decision that are the focus of the appeal.
- g. A description of all asserted grounds for the appeal and all arguments, contentions and facts that you believe support the appeal and/or show that the decision was in some manner erroneous.
- h. If the decision involved real property, an Ownership Report prepared by a title company, engineer, architect, radius search service, or ownership listing service, that includes the following:

1. A list, from within the past 6 months, that identifies by name, address, and assessor's parcel number, the owners of all real property located within 1,000 feet of any and all portions of the real property that is the subject of the appeal.

2. A copy of the Assessor's Map Book Pages that show all real property which is the subject of the appeal and all properties to which the list of property owners within 1,000 feet of the subject property.

To ensure that your Ownership Report contains the necessary components and is provided in the proper format, please provide the following instructions to the preparing company or individual:

INSTRUCTIONS FOR OWNERSHIP REPORT

Please prepare an original and two copies of the property owners' list as follows:

1. Type the property owners' names, parcel numbers and mailing addresses on an 8½" by 11" sheet of Avery #5160 Laser Labels so that this information can be readily used in mailing by the Clerk of the Board of Supervisors.
2. Submit a full page copy of the assessors' map book page(s) and a copy of the latest equalized assessment roll used to compile the property owners' list. Please indicate the location of all parcels listed, by check mark or colored parcel number circled on the pages.

i. _____ Evidence that payment of the relevant fees has been made with the Napa County Treasurer-Tax Collector. Evidence of payment must be obtained and provided to the Clerk of the Board's office prior to the 2 p.m. deadline. If you are unsure of the fees due, you must contact the Clerk of the Board's office to obtain a fee estimate and make the appropriate payment prior to the 2 p.m. deadline.

j. _____ If you are filing by email, you must submit to the Clerk of the Board's office, prior to the 2 p.m. deadline, a copy of the signature page of the Appeal Packet Cover Sheet with your original ("wet") signature.

HOW TO FILE THE APPEAL PACKET

The completed Notice of Intent to Appeal and evidence of payment must be *received* by the Clerk of the Board's office *prior to* the 2 p.m. deadline.

<u>By Hand Delivery</u>	<u>By Mail</u>
Deliver the completed form and evidence of payment to: Napa County Clerk of the Board County Administration Building, 3 rd Floor 1195 Third Street, Suite 310 Napa, CA 94559	Mail the completed form and evidence of payment to: Napa County Clerk of the Board Attention: 2.88 Appeals County Administration Building 1195 Third Street, Suite 310 Napa, CA 94559
<u>By Email</u>	
Scan the signed completed form and attach it, along with evidence of payment, as PDF format to an email addressed to: clerk@theboard@countyofnapa.org . If filing by email, you must additionally provide by hand delivery or mail a copy of the signature page of this Appeal Packet Cover Sheet with your original ("wet") signature. **You are responsible for ensuring that delivery is effective. Any errors or misspellings of the clerk's email address shall not be cause for extending the deadline.**	

Please Note: County staff is *not authorized* to grant any exceptions, including any extension of the deadlines or alterations of the fees, to the requirements for the Appeal Packet as set forth in Napa County Code Chapter 2.88. It is your responsibility to ensure that you have complied with all requirements and that the Clerk of the Board's office receives your Appeal Packet, supporting documentation, and evidence of payment prior to the 2 p.m. deadline. County staff cannot provide advice or legal assistance with this or any other appeal process.



Company
A PUBLIC BENEFIT CORPORATION

SEP 16 2024
NAPA COUNTY
EXECUTIVE OFFICE

952 SCHOOL STREET #316 NAPA CA 94559
VOICE: (707) 681-5111
EMAIL: General@WaterAuditCA.org

September 16, 2024

Napa County Board of Supervisors
1195 Third Street, Ste. 310
Napa, CA 94559

APPEAL PACKET - ADDITIONAL SHEETS
(Appellant Water Audit California)

Appealing the September 21, 2024, decision of the Napa County Planning Commission to Adopt the KEVIN & ANN MORRISON TR / HILLWALKER VINEYARDS WINERY revised Mitigated Negative Declaration/Mitigation Monitoring Reporting Program and approve the Exception to the Conservation Regulations, Exception to the County Road and Street Standards (RSS), and a Winery Use Permit subject to the recommended conditions of approval. NO. P23-00239-UP, USE PERMIT NO. P23-00101-UP

Appellant Name and Contact Information:

Water Audit California
952 School Street, PMB 316
Napa, California 94559
legal@waterauditca.org
530-575-5335

Water Audit California (“Water Audit”) appeals the September 21, 2024, decision of the Napa County Planning Commission’s approval of KEVIN & ANN MORRISON TR / HILLWALKER VINEYARDS WINERY revised Mitigated Negative Declaration/Mitigation Monitoring Reporting Program and approval of the Exception to the Conservation Regulations, Exception to the County Road and Street Standards (RSS), and a Winery Use Permit subject to the recommended conditions of approval. NO. P23-00239-UP, USE PERMIT NO. P23-00101-UP, captioned above (collectively the “Application”).

Water Audit appeals on its own behalf, on behalf of the general public and in the public interest. Water Audit has standing to appeal based on the submission of comment for the September 21, 2024 hearing. (see Napa County Code sec. 2.88.010 (G).)

A. Introduction.

Water Audit is a public benefit organization dedicated to advocating for the public trust and other public interests. Our concerns regarding this matter are greater than the subject decision alone.

B. Standard for Review.

If initial study demonstrates that a project may have significant environmental impact, a mitigated negative declaration may be appropriate – however, only when revisions to a project will avoid or mitigate the significant environmental impacts, as identified in the initial study, “to a point where clearly no significant effect on the environment would occur, and...there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” (emphasis added) (Public Resources Code, §§ 21064.5 and 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331.) “May” in this context means a reasonable possibility of a significant effect on the environment. (Pub. Resources Code, §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors*, supra, 124 Cal.App.4th 903, 927; *League for Protection of Oakland's etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–905.)

The “fair argument” standard requires an EIR if any substantial evidence in the record suggests that a project may have adverse environmental impacts; even under circumstances where opposing evidence is offered that supports an agency’s decision. (CEQA Guidelines, § 15064(f)(1); *Pocket Protectors*, supra, 124 Cal.App.4th 903, 931;

Stanislaus Audubon Society v. County of Stanislaus (1995) 33 Cal.App.4th 144, 150-15; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.) Rather than issuing negative declarations or notices of CEQA exemption, the “fair argument” standard is a “low threshold” that encourages environmental review through an EIR (*Pocket Protectors*, *supra*, 124 Cal.App.4th at 928.) It is opposite of the deference generally provided to agencies.

In describing the scope of judicial review of an agency’s application of the fair argument standard, the Supreme Court has stated:

“If there [is] substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it [can] be “fairly argued” that the project might have a significant environmental impact. Stated another way, if the [reviewing] court perceives substantial evidence that the project might have such an impact, but the agency failed to secure preparation of the required EIR, the agency’s action is to be set aside because the agency abused its discretion by failing to proceed “in a manner required by law.”” (Citation omitted.) “The fair argument standard thus creates a low threshold for requiring an EIR, reflecting the legislative preference for resolving doubts in favor of environmental review. [Citation.]” (*Save the Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665, 675-7 (Emphasis added).)

“[I]t is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination. Review is *de novo*, with a preference for resolving doubts in favor of environmental review.” (*Pocket Protectors*, *supra*, 124 Cal.App.4th 903, 928 [emphasis in original].)

The California Supreme Court found that “[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.” (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320, citing, *No Oil, Inc. v. City of*

Los Angeles (1974) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505.) “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal.App.4th 98, 109 [“CBE v. CRA”].)

An EIR is essential to CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214; *Pocket Protectors*, *supra*, 124 Cal.App.4th 903, 927.) An EIR provides accountability that “demonstrate[s] to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” (*Laurel Heights Improvements Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.)

An EIR is required if “there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” (Pub. Resources Code, § 21080(d); see also *Pocket Protectors*, *supra*, 124 Cal.App.4th 903, 927.) In few conditions, an agency may issue a negative declaration and avoid an EIR (see 14 Cal. Code Regs., § 15371 [“CEQA Guidelines”]), but only under the circumstances where there is not a “fair argument” that the project will have a significant environmental effect. (Pub. Resources Code, §§ 21100, 21064.)

As a matter of law, “substantial evidence includes . . . expert opinion.” (Pub. Resources Code, § 21080(e)(1); CEQA Guidelines, § 15064(f)(5).) When “experts” present conflicted evidence on the potential of environmental impacts, an agency must consider impacts (i.e. effects) as significant and prepare an EIR. (CEQA Guidelines § 15064(f)(5); Pub. Res. Code, § 21080(e)(1); *Pocket Protectors*, *supra*, 124 Cal.App.4th 903, 935.) “Significant environmental effect” is defined as “a substantial or potentially substantial adverse change in the environment.” (Pub. Resources Code, § 21068; see also CEQA Guidelines, § 15382.) Effects do not necessarily need to reach a threshold

of “momentous” to qualify as CEQA “significant”, as the criterion is that the effects are “not trivial.” (*No Oil, Inc.*, 13 Cal.3d at 83.)

“[N]either the lead agency nor a court may ‘weigh’ conflicting substantial evidence to determine whether an EIR must be prepared in the first instance.” (*Pocket Protectors*, *supra*, 124 Cal.App.4th 903, 935.) In the presence of a disagreement on the appropriateness of a negative declaration, the courts require an EIR. “It is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project.” (*Id.*)

Absent an accurate description of the baseline physical environment, a proper CEQA decision cannot be made. CEQA Guidelines section 15125(a) states, in pertinent part, that a lead agency’s environmental review under CEQA:

...must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.

(See *Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 124-125].)

C. Grounds for Appeal

1. The Notice of Determination (NOD) filed with CEQA names both the PBES and “Planning Commission” as Lead Agencies. *Prima facie*, IF TRUE, the Planning Commission was without jurisdiction to consider the project, as it is a fundamental principle of American law that no one may be the judge of their own matter. To draw and analogy, this matter has conflated the role of a prosecutor and a judge. Lead agencies have duties which have not been performed here, and the Planning Commission cannot determine whether they, themselves, have performed them. It is strongly asserted that they have not.

“A Lead Agency is also responsible for complying with all of the process-related

aspects of CEQA, including the preparation and filing of all required notices, conducting all required public outreach activities, and the distribution of documents. Finally, the Lead Agency has a responsibility to consult with Responsible and Trustee Agencies, as described below.

Coordination with Responsible and Trustee Agencies:

The Lead Agency's decision whether to prepare an ND, MND, or an EIR is binding on all Responsible and Trustee Agencies, except in unusual circumstances (PRC Section 21080.1(a); State CEQA Guidelines Section 15050(c)). Therefore, a Lead Agency is required to consult with and involve all Responsible and Trustee Agencies throughout the CEQA process. First, the Lead Agency must consult with Responsible and Trustee Agencies prior to determining whether a negative declaration or an EIR is required for a project (PRC Section 21080.3(a); State CEQA Guidelines Section 15063(g)). If a Lead Agency determines an EIR is required for a project, the Lead Agency must send a Notice of Preparation to all Responsible and Trustee Agencies, who will then specify to the Lead Agency "the scope and content of the environmental information that is germane to the statutory responsibilities" of that agency in connection with the proposed project and which must be included in the EIR (PRC Section 21080.4; State CEQA Guidelines Section 15082(b))

Next, the Lead Agency must send every Responsible and Trustee Agency a Notice of Preparation (NOP) prior to undertaking an EIR (PRC Section 21092; State CEQA Guidelines Section 15082(a)). Within 30 days of receiving the NOP, each Responsible and Trustee Agency and OPR must provide the Lead Agency with detail about the scope and content of the environmental information related to the agency's area of statutory responsibility to be included in the draft EIR. (Pub. Res. Code § 21080.4(a); State CEQA Guidelines Section 15082(b).) Prior to completing an EIR, the Lead Agency must again consult with and invite comments from all Responsible and Trustee Agencies (PRC Sections 21104(a), 21153(a); State CEQA Guidelines Section 15086). If a Lead Agency intends to adopt an ND or MND, the Lead Agency must send a Notice of Intent (NOI) to every Responsible and Trustee Agency (State CEQA Guidelines Section 15073(c)). In addition to reaching out to Responsible and Trustee Agencies, other agencies that

a Lead Agency must consult and request comments from include:

- Any other state, federal, or local agency that has jurisdiction by law with respect to the project or that exercises authority over resources which may be affected by the project (PRC Sections 21104(a), 21153(a); State CEQA Guidelines Section 15086(a)(3)); and
- Every city or county bordering the city or county within which the project is located (State CEQA Guidelines Section 15086(a)(4).)

Lead Agencies may also have special consultation requirements with other agencies in very specific situations-for example, when certain categories of large projects would affect water supplies, the Lead Agency has certain obligations to consult with the agency that would provide water to the project (State CEQA Guidelines Section 15086(a)(3).) Similarly, for a subdivision project within one mile of a State Water Resources Development System facility, a Lead Agency preparing an EIR must consult with Department of Water Resources (State CEQA Guidelines Section 15086(a)(7).) For projects of “statewide, regional, or area-wide significance” (State CEQA Guidelines Section 15206(b)), a Lead Agency must consult with transportation planning agencies and public agencies that have transportation facilities (including public transit agencies, if they have facilities within ½ mile of the project) within their jurisdictions that could be affected by the project (State CEQA Guidelines Section 15086(a)(5))

<https://ceqaportal.org/tp/CEQA%20Lead%20Agency%20Responsible%20Trustee%202020%20Update.pdf>, page 5/6

Proper communication with Responsible and Trustee agencies by the Lead Agency is not discretionary. In *Fall River Wild Trout Foundation v. County of Shasta* (1999) 70 Cal.App.4th 482, 492-93 the Third District Court of Appeal held that a County's failure to send a copy of the mitigated negative declaration to CDFW as Trustee Agency deprived the County of information necessary to informed decision-making and informed public participation, and thus constituted prejudicial abuse of discretion.

The project access embraces for approximately one-half mile a tributary stream to Pickle Creek. Drawings show a clear infringement to the riparian way however the

relevant segment of the stream was not encompassed in the posted CEQA documents. Further, the Application discloses the blocking of a watercourse, and the diversion of a spring, neither of which was disclosed in the CEQA postings.

The application states that PBES and staff will review it for completeness and reasonableness, however there is no staff report.

2. Errors in the record

- (a) Graphics submitted to CEQA do not have necessary dimension or detail. For example, see Graphics "K" which do not show distances of driveway length and from stream or cistern, or between extraction of water and adjacent wells or watercourses. CEQA documents do not disclose two tributaries to Redwood Creek within one thousand feet of the site.
- (b) Clearinghouse do not include any water availability, do not disclose the diversion of a spring, do not disclose the proximity
- (c) CEQA State Clearing House Notice of Determination "Access to the property is through APNs 034-100-020, 034-100-043, and 034-110-059" which differs from the documents submitted. Clearinghouse documents are inconsistent. CEQA State Clearing House Summary Form for Electronic Document Submittal includes "Access to the property is through APNs 034-100-020, 034-100-043, and 034-110-059" however CEQA State Clearing House Notice of Intent "Access to the property is through APNs 034-110-029 and 034-100-020." The former APN should be -"059". It omits 034-100-043. This error is reflected in the CDFW comment on the project. Simply put, the entire project was not submitted for review, and therefore agency review is incomplete.
- (d) CEQA Hillwalker Vineyards IS-MND and MMRP_OCR names five (5) wells, and

"Tier II and III Analysis are not required for the project," however the Water Availability acknowledges only two wells, and does not address the diversion of a spring. At page 4 footnote 2: WAA Procedure: "For the purposes of this procedure, surface waters are defined to include only those surface waters known or likely to support special status species or surface waters with an associated water right; however, as with all of the procedures in this WAA, there may be unique circumstances that require additional site-specific analysis to adequately evaluate a project's potential impacts on surface water bodies."

Because springs originate as groundwater, springs are eligible for WAA Tier 2 analysis. It is required that any proposed project wells within 1,500 feet⁹ of natural springs that are being used for domestic or agricultural purposes be evaluated to assess potential connectivity between the part of the aquifer system from which groundwater is planned to be produced and the spring(s). Springs exist in complex hydrogeologic environments. Other substantial evidence in the record may result in the need for such an analysis even though the spring(s) is located a greater distance from the planned well site. Where evaluation of potential connectivity between the project well(s) and springs is required, site-specific spring interference criteria will be established as appropriate for the springs(s) under consideration.

The latter and the impairment of the riparian way, if disclosed, would have required a Lake and Stream Alteration Agreement from CDFW pursuant to Fish and Game Code section 1602 et seq. Both were concealed on CEQA.

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>

There are adjacent wells and blue water streams within 1,500 feet that require Tier II and Tier III analyzes. There are no geological studies, well completion reports, or well pump test data,

(e) The Water Availability Analysis and Water Use Estimate calculations not in conformity with County's WAA Guidance Document 2015, nor with current Water Availability Analyses. At Agenda Packet pdf page 434/5 there are omissions and inaccurate calculations. At one location in the application it states that the vineyards are dry farmed, in another it states water consumption for vineyard and winery. Winery water consumption stated is one half of the County standards, guest use is one third of County standards, landscape use is misstated, and there is an omitted pool. The cumulative aversely differences impacts the water neutrality determination,

D. The Public Trust

The project watercourses are supportive of federal and state designated special status species that constitute the *res* of the public trust.

The public trust fulfills the basic elements of a trust: intent, purpose, and subject matter. (*Estate of Gaines* (1940) 15 Cal.2d 255, 266.) It has beneficiaries, the people of the state, and trustees, the agencies of the state entrusted with public trust duties. Fish and wildlife form a critical part of the *res* of the public trust. In the limited circumstances of the alienation of components of the public trust into private hands, the private party becomes bound with trustee duties pursuant to Public Resources Code § 6009.1.

The essential idea of the public trust doctrine is that the government holds and protects certain natural resources in trust for the public benefit. (See *Illinois Central*

Railroad v. Illinois (1892) 146 U.S. 387, 452, 456; *National Audubon Society v. Superior Court (Audubon)* (1983) 33 Cal.3d 419, 441; *Berkeley v. Superior Court* (1980) 26 Cal.3d 515, 521.)

Public trust theory has its roots in the Roman and common law (*United States v. 11.037 Acres of Land* (N.D. Cal. 1988) 685 F. Supp. 214, 215) and its principles underlie the entirety of the State of California. Upon its admission to the United States in 1850, California received the title to its tidelands, submerged lands, and lands underlying inland navigable waters as trustee for the benefit of the public. (*People v. California Fish Co. (California Fish)* (1913) 166 Cal. 576, 584; *Carstens v. California Coastal Com.* (1986) 182 Cal.App.3d 277, 288.) The People of California did not surrender their public trust rights; the state holds land in its sovereign capacity in trust for public purposes. (*California Fish*, *Ibid.*)

The courts have ruled that the public trust doctrine requires the state to administer, as a trustee, all public trust resources for current and future generations, specifically including the public trust in surface waters and the life that inhabits our watercourses. These trust duties preclude the state from alienating those resources into private ownership.

The beneficiaries of the public trust are the people of California, and it is to them that the trustee owes fiduciary duties. As Napa County is a legal subdivision of the state, it must deal with the trust property for the beneficiary's benefit. No trustee can properly act for only some of the beneficiaries – 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.

An agency of the State "may not approve of destructive activities without giving due regard to the preservation of those [public trust] resources." (*Center for Biological*

Diversity, Inc. v. FPL Group, Inc. (Bio Diversity) (2008) 166 Cal.App.4th 1349, 1370, fn. 19, 83 Cal.Rptr.3d 588.) [Emphasis added]

Agencies of the state must not engage in unlawful conduct. "It is a fundamental principle of our constitutional scheme that government, like the individual, is bound by the law." (*Alderman v. United States* (1968) 394 U.S. 165, 202.) When lawless conduct occurs, the Government may not profit from its fruits. (*Weeks v. United States*, (1914) 232 U.S. 383.) The County's duty is to obey the law, which among other things requires that it not harm public trust resources by its decisions and requires the state to use its best efforts for the long-term preservation of public trust resources for the public benefit. (*Audubon*, *supra*, 33 Cal.3d 419, 440-441; *Surfrider Foundation v. Martins Beach 1, LLC* (2017) 14 Cal.App.5th 238, 249-251; Public Resources Code, § 6009.1.)

Common law imposes public trust considerations upon the County's decisions and actions pertaining to trust assets. (*Bio Diversity*, *supra*, 166 Cal.App.4th 1349; *Environmental Law Foundation v. State Water Resources Control Board (ELF)* (Cal. Ct. App. 2018) 26 Cal.App.5th 844.) The courts have recognized the State's responsibility to protect public trust uses whenever feasible. (See, e.g., *Audubon*, *supra*. 33 Cal.3d 419, 435; *California Trout, Inc. v. State Water Resources Control Bd. (Cal. Trout I)* (1989) 207 Cal.App.3d 585, 631; *California Trout, Inc. v. Superior Court (Cal. Trout II)* (1990) 218 Cal.App.3d 187, 289.) Napa County has an affirmative duty to administer the natural resources held by public trust solely in the interest of the people of California.

Napa County must manage its public trust resources so as to derive the maximum benefit for its citizenry. Article X of the California Constitution and the public trust doctrine hold that no water rights in California are truly "vested" in the traditional sense of property rights.

Regardless of the nature of the water right in question, no water user in the State "owns" any water. The owner of "legal title" to all water is the State in its capacity as a trustee for the benefit of the public. There can be no vested rights in water use that

harm the public trust. A “water right” grants the holder only the right to use water, an “usufructuary right.” All water rights are usufructuary only and confer no right of private ownership in the water or the watercourse, which belongs to the State. (*People v. Shirokow* (1980) 26 Cal.3d 301 at 307.)

E. Conclusion

For the foregoing reasons, Water Audit California appeals the adoption of the above stated Mitigated Negative Declaration and granting of exception the Conservation Regulations and respectfully requests either that the matter be returned for further proceedings consistent with this appeal, or in the alternative that the applicant be directed to prepare a full EIR.

Respectfully,



William McKinnon
General Counsel
Water Audit California

Extrinsic Evidence - Not Part of the Record

Date: 4/16/2006 Time: 12:20:26 PM

To: Jason Hochieder
From: Mark Holler

Jason,

Here are the driller's reports for the two highest flow wells. #1 is 15 gpm and #3 is 3-5 gpm. There are two other wells at .5 gpm and the man dug well around that rate too in late summer. Right now they will pump water as fast as the pump will go.

Mark Holler

Please forward these to the county and see if they will be adequate.

MHS

Page 1 of 3

4/12/06
RECEIVED

JUN 15 2006

DEPT. OF
ENVIRONMENTAL MANAGEMENT

DAVE BESS PUMP & WELL

1115 MT GEORGE AVE.

NAPA, CALIF. 94558

(707) 253-0574

LIC.# C-57-C-10487027

"WATER WELL TEST"

DATE: 04/25/2006

REPORT NO. W-06-006

LOCATION (well address): 1821 MT. VEEDER RD NAPA, CA. 94558

TEST REQUESTOR: MARK HOLLER PH. # 650-325-4510

SURFACE INSPECTION

CASING DIA. 5" PVC EST. AGE OF WELL 2000 DEPTH OF WELL 305 FT

PRESSURE TANKS (FUNCTIONAL) SANITARY SEAL (FUNCTIONAL)

PIPING SYSTEM (FUNCTIONAL) ELECTRICAL SYSTEM (FUNCTIONAL)

SIZE OF PUMP 1 (HP) EST. AGE OF PUMP: 5 YRS

OPERATING VOLTS: 240 AMPS: L1 8.5 L2 8.5

FLOW TEST DATA

METHOD OF TEST: 2 HOUR OPEN FLOW DISCHARGE TEST USING THE INSTALLED PUMP AND EXISTING EQUIPMENT. (TEST EQUIPMENT USED), 2" FLOW METER, 1 1/4" THROTTLING DISCHARGE VALVE, 0/200 PRESSURE GAGE AND A POWERS WELL DEPTH STATIC METER.

TIME	RATE (GPM)	WATER LEVEL
10:00	12	46 FT
10:30	12	80 FT
11:00	10	108 FT
11:30	10	116 FT
12:00	10	116 FT
12:30	10	116 FT

STATIC LEVEL PRIOR TO TEST 46 FT STATIC LEVEL @ END OF TEST 116 FT

ONE HOUR SUSTAINED WATER LEVEL @ 116 FT

TOTAL DRAW DOWN DURING THIS TEST WAS 70 FT
(AVG.)GALLONS PER MIN. 10 FOR 2 1/2 HOURS OF TESTING.

GENERAL COMMENTS

This test may not be representative of the well's long term yield.

Well and well equipment in working condition @ time of testing. Remaining life expectancy for pump and components unknown @ this time.

TEST CONDUCTED BY: R. Bess DATE: 4/25/06
(optional) CHEMICAL TEST PERFORMED: YES NO

Extrinsic Evidence - Not Part of the Record

ORIGINAL
File with DWR

Page 1 of 1

~~Aug 10 1968~~ Owner: Well No. DEWATER # 3

Permit Work Began 11/23/02

Local Permit Agency: NAPA COUNTY ENVIRONMENTAL

~~Local Permit Agency~~ NAPA COUNTY ENVIRONMENTAL DEPT.
Permit No. 80-12260 Permit Date 11/20/02

Permit No. 80-12260 Permit Date 11/20/02

STATE OF CALIFORNIA
WELL COMPLETION REPORT

Refer to Instruction Page 8

No. 792117

DNR USE ONLY -- DO NOT FILL IN											
STATE WELL NO/STATION NO.											
LATITUDE				LONGITUDE							
APPROX. ELEVATION											

GEOLOGIC LOG				WELL OWNER			
ORIENTATION (-)		VERTICAL — HORIZONTAL — ANGLE — (SPECIFY)		Name [REDACTED]			
DEPTH FROM SURFACE		DRILLING METHOD	ROTARY	FLUID		AIR	
FT. TO FT.		DESCRIPTION		Mailing Address [REDACTED]			
0		Describe material, grain, size, color, etc.		CITY [REDACTED]			
16		DECOMPOSED SANDSTONE CALY		WELL LOCATION			
28		HARDER DECOMPOSED SANDSTONE		Address 1871 MT. VEEDER RD			
32		SANDSTONE / CLAY MIX		City NAPA CA 94558			
32		HARDER BLUE SHALE		County NAPA			
58		HARD SHALE		APN Book 34 Page 110 Parcel 47			
				Township _____ Range _____ Section _____			
				Latitude	DEG. _____	MIN. _____	SEC. _____
				Longitude	DEG. _____	MIN. _____	SEC. _____
				LOCATION SKETCH			ACTIVITY (-)
							<input checked="" type="checkbox"/> NEW WELL <input type="checkbox"/> MODIFICATION/REPAIR — Deepen <input type="checkbox"/> Other (Specify) _____ <input checked="" type="checkbox"/> DESTROY (Describe Procedures and Materials Under "GEOLOGIC LOG") <input checked="" type="checkbox"/> PLANNED TIERS (-) WATER SUPPLY <input checked="" type="checkbox"/> Domestic <input type="checkbox"/> Public <input type="checkbox"/> Irrigation <input type="checkbox"/> Industrial <input type="checkbox"/> MONITORING <input type="checkbox"/> TEST WELL <input type="checkbox"/> CATHODIC PROTECTION <input type="checkbox"/> HEAT EXCHANGE <input type="checkbox"/> DIRECT PUSH <input type="checkbox"/> INJECTION <input type="checkbox"/> VAPOR EXTRACTION <input type="checkbox"/> SPARING <input type="checkbox"/> REMEDIATION <input type="checkbox"/> OTHER (SPECIFY) DEMATURING
				Illustrate or Describe Distance of Well from Roads, Buildings, Fences, Rivers, etc. and sketch a map. Use additional paper if necessary. PLEASE BE ACCURATE & COMPLETE.			SOUTH
							WEST
							EAST
WATER LEVEL & YIELD OF COMPLETED WELL							1
DEPTH TO FIRST WATER 21 (FT) BELOW SURFACE							1
DEPTH OF STATIC WATER LEVEL 21 (FT) & DATE MEASURED 11/24/02							1
ESTIMATED YIELD 3 TO 5 (GPM) & TEST TYPE AIR LIFT							1
TEST LENGTH 2 (MIN) TOTAL DRAWDOWN 80 (FT)							1
May not be representative of a well's long-term yield.							1
TOTAL DEPTH OF BORING 80 (Feet)							1
TOTAL DEPTH OF COMPLETED WELL 80 (Feet)							1

ATTACHMENTS ()

- Geologic Log
- Well Construction Diagrams
- Geophysical Log(s)
- Soil/Water Chemical Analysis
- Other

CERTIFICATION STATEMENT			
I, the undersigned, certify that this report is complete and accurate to the best of my knowledge and belief.			
NAME <u>DAVE BESS PUMP & WELL</u> (PERSON, FIRM, OR CORPORATION) (TYPED OR PRINTED)			
ADDRESS <u>1115 MT. GEORGE AVE</u>		NAPA CITY	CA STATE
Signed <u>I, D. Bess</u>		<u>0245493</u> DATE SIGNED	<u>4/20/2027</u> C-57, LICENSE NUMBER
WELL DRILLER/AUTHORIZED REPRESENTATIVE			

ORIGINAL
File with DWR

Page 1 of 1

~~Owner's Well No.~~ DEWATER #2

Date Work Began 11/20/02 Ended 11/22/02

~~Local Permit Agency~~ **NAPA COUNTY ENVIRONMENTAL DEPT**

Local Permit Agency _____
Permit No. 98-12265 Permit Date 11/20/02

STATE OF CALIFORNIA
WELL COMPLETION REPORT

Refer to Instruction Pamphlet

No. 792116

DWS USE ONLY - DO NOT FILL IN	
STATE WELL NO. STATION NO.	
LATITUDE	LONGITUDE
APMTR/ROTHER	

- GEOLOGIC LOG

WELL OWNER		
Name [REDACTED]		
Mailing Address [REDACTED]		
CITY	STATE	ZIP
WELL LOCATION		
Address 1871 MT VEEDER RD		
City NAPA CA 94568		
County NAPA		
APN Book 34	Page 110	Parcel 47
Township	Range	Section
Latitude	DEG. MIN. SEC.	DEG. MIN. SEC.
LOCATION SKETCH		
NORTH		
ACTIVITY (✓)		
<input checked="" type="checkbox"/> NEW WELL <input type="checkbox"/> MODIFICATION/REPAIR <input type="checkbox"/> Deepen <input type="checkbox"/> Other (Specify) _____		
DESTROY (Describe Procedures and Materials Under "GEOLOGIC LOG")		
PLANNED USES (✓)		
<input checked="" type="checkbox"/> WATER SUPPLY <input checked="" type="checkbox"/> Domestic <input type="checkbox"/> Public <input type="checkbox"/> Irrigation <input type="checkbox"/> Industrial		
<input type="checkbox"/> MONITORING <input type="checkbox"/> TEST WELL <input type="checkbox"/> CATHODIC PROTECTION <input type="checkbox"/> HEAT EXCHANGE <input type="checkbox"/> DIRECT PUSH <input type="checkbox"/> INJECTION <input type="checkbox"/> VAPOR EXTRACTION <input type="checkbox"/> SPARGING <input type="checkbox"/> REMEDIATION <input type="checkbox"/> OTHER (SPECIFY) _____ <input type="checkbox"/> DEWATERING		
SOUTH		
<i>Illustrate or Describe Distance of Well from Roads, Buildings, Fences, Rivers, etc. and attach a map. Use additional paper if necessary. PLEASE BE ACCURATE & COMPLETE.</i>		
WATER LEVEL & YIELD OF COMPLETED WELL		
DEPTH TO FIRST WATER	18	(FT) BELOW SURFACE
DEPTH OF STATIC	18	(FT) & DATE MEASURED
WATER LEVEL	18	11/22/02
ESTIMATED YIELD	1 TO 2	(GPM) & TEST TYPE
TEST LENGTH	1	(FT) TOTAL DRAWDOWN
90 (FT)		
<i>May not be representative of a well's long-term yield.</i>		

~~ATTACHMENTS (L)~~

- Geologic Log
- Well Construction Diagram
- Geophysical Log(s)
- Soil/Water Chemical Analysis
- Other _____

ATTACH ADDITIONAL INFORMATION, IF IT EXISTS.

CERTIFICATION STATEMENT				
I, the undersigned, certify that this report is complete and accurate to the best of my knowledge and belief.				
NAME <u>DAVE BESS PUMP & WELL</u> (PERSON, FIRM, OR CORPORATION) (TYPED OR PRINTED)				
1115 MT. GEORGE AVE ADDRESS		NAPA CITY	CA STATE	14558 ZIP
Signed <u>David W. Bess</u> WELL DRILLER/AUTHORIZED REPRESENTATIVE		02/03/03 DATE SIGNED	C-104-57 487027 C-57 LICENSE NUMBER	

Extrinsic Evidence - Not Part of the Record

Date: 4/16/2006 Time: 12:20:26 PM

Page 3 of 3

From: Mark Holler To: Jason Hocheder

SEP-12-00 TUE 01:13 PM DALE BESS PUMPS & WELLS TOT 253 0574

P. 01

ORIGINAL

File with DWR

Page 1 of 1

Owner's Well No. #1 (ONE)

Date Work Began 8-15-00 Entered 8-20-00

STATE OF CALIFORNIA

WELL COMPLETION REPORT

Refer to Instruction Pamphlet

No. 731004

Local Permit Agency Co. of Napa, Environmental Agency

Permit No. 1605

Permit Date 8-15-00

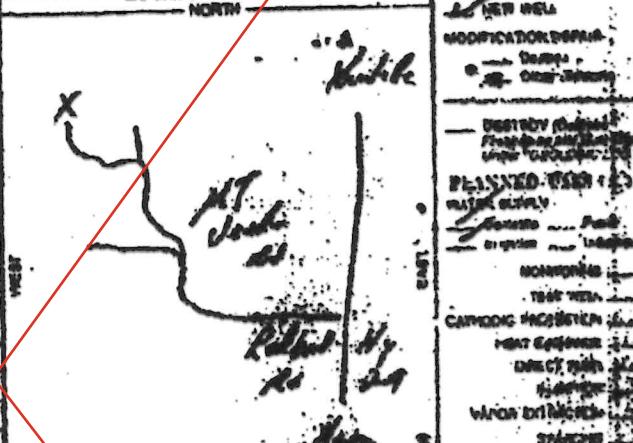
WELL LOCATION	
LATITUDE	LONGITUDE
WELL NUMBER	

GEOLOGIC LOG

ORIENTATION (E)		VERTICAL	HORIZONTAL	ANGLE	azimuth
DEPT. FROM SURFACE	DRILLING METHOD	Air	Rotary	FWD	
0 : 25		Drillite material, grain size, color, etc.			
25 : 40		Gray			
40 : 55		Red Clay			
55 : 60		Soft Sandstone			
60 : 70		Hard Blue Shale			
70 : 100		Sand			
100 : 125		Hard Blue Litter Shaly			
125 : 150		Shale			
150 : 200		Hard Rock			
200 : 220		Hard Blue Shale			
220 : 250		Soft Blue shale Clay			
250 : 300		Crude shale Clay			

WELL OWNERS	
Name	
Mailing Address	
City	
State	
WELL LOCATION	
Address	1821 Mt. Heald Rd
City	Napa
County	Napa
APN Book	34
Page	116
Parcel	47
Township	
Range	
Section	
Latitude	
Longitude	

LOCATION SKETCH



SOUTH
Illustrate or Describe Extent of Well and Rock Bedding, Fracture, Fissure, etc. and attach a map, if possible, and copy of lease, if any. PLEASE BE ACCURATE & COMPLETE.

WATER LEVEL & YIELD OF COMPLETED WELL

DEPTH TO FIRST WATER 60 FT. BELOW SURFACE

DEPTH OF STATIC WATER LEVEL 60 FT. & DATE MEASURED

ESTIMATED YIELD 100 GPM & TEST TYPE

TEST LENGTH 100 FT. TOTAL DRAWDOWN 0 FT.

* May not be representative of a well's long-term yield

TOTAL DEPTH OF BORING 300 FT.
TOTAL DEPTH OF COMPLETED WELL 260 FT.

DEPTH FROM SURFACE	BORE-HOLE DIA. INCHES	CASING (B)				DEPTH FROM SURFACE	AUXILIARY MATERIAL			
		TYPE (E)	GRADE	INTERNAL DIAMETER (INCHES)	GAUGE OR WALL THICKNESS		TYPE	DEPT. INCHES	BORE- HOLE DIA. INCHES	TYPE (INCHES)
0 : 60	4"	X	5	300		0 : 20	4"			
60 : 260	8"	X	5	300	13.2	22 : 30	8"	8"	8"	8"

Well Construction Diagrams
Geophysical Log
Sulfur Content Analysis
GPM

ATTACH ADDITIONAL INFORMATION, IF IT EXISTS

NAME DALE BESS PUMPS & WELLS
ADDRESS 1821 MT. HEALD RD.
CITY NAPA
STATE CA
ZIP 94559
PHONE 707-253-0574
FAX 707-253-0574

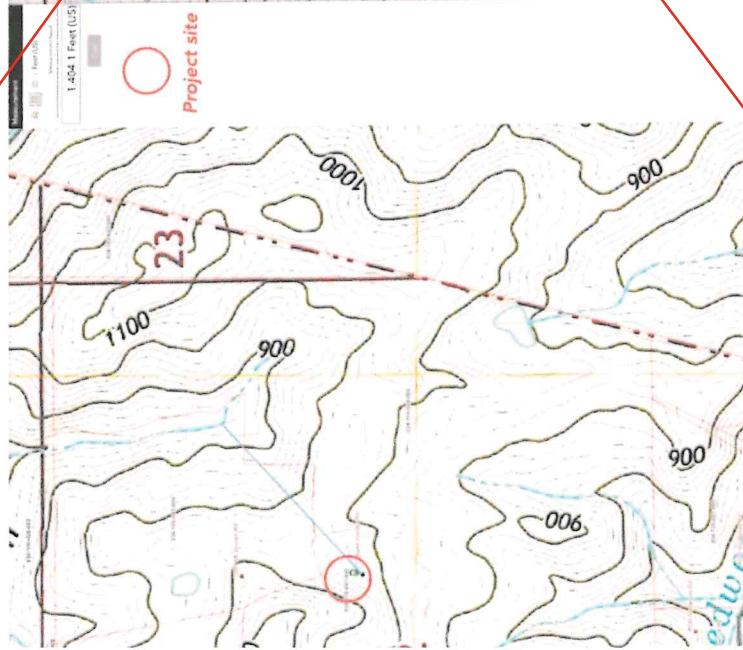
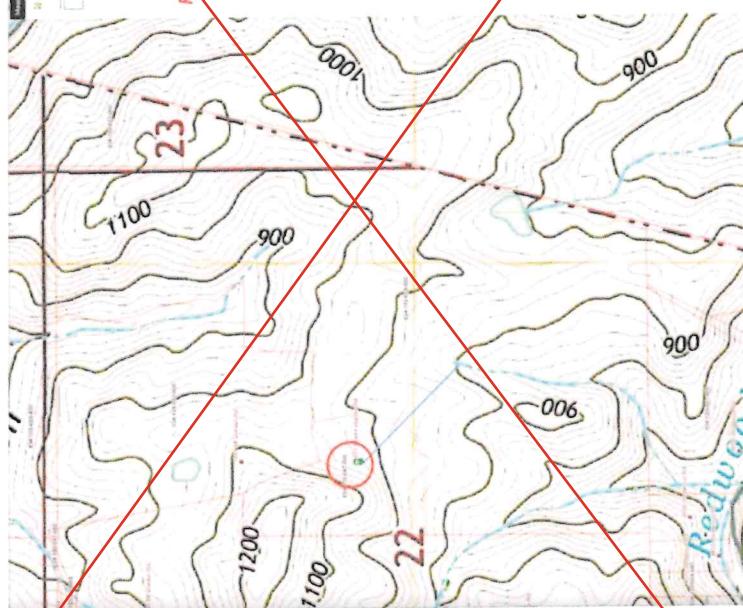
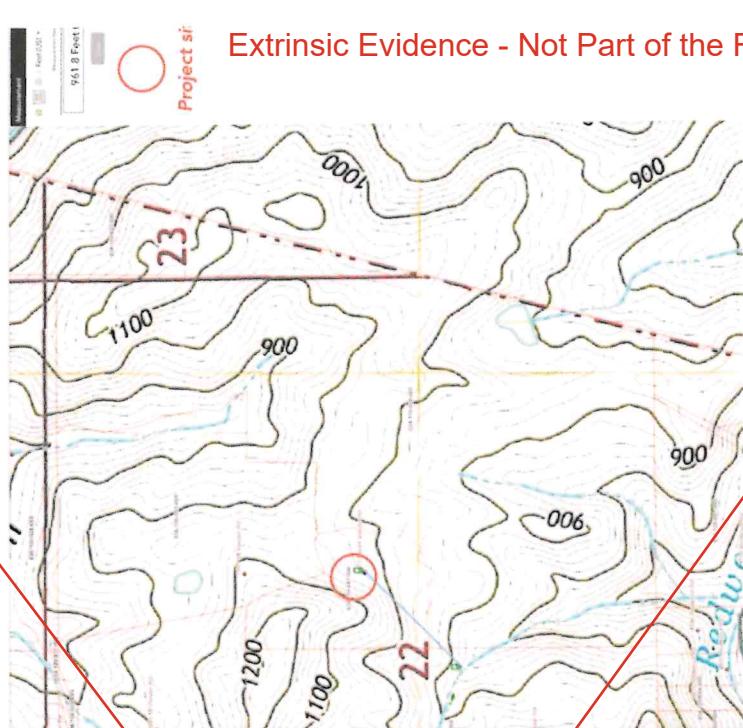
IF ADDITIONAL SPACE IS NEEDED, USE NEXT CONSECUTIVELY NUMBERED FORM

WY Received Buyer 
Buyer 

Bess Phone#
707-253-0574

WELL WATER

Extrinsic Evidence - Not Part of the Record





A Tradition of Stewardship
A Commitment to Service

RECEIVED
ORIGINAL

SEP 16 2024

NAPA COUNTY
EXECUTIVE OFFICE

CAMPAIGN CONTRIBUTION DISCLOSURE FORM
PROJECT APPEALS

(To be included with Appeal Packet)

Effective January 1, 2023, California Senate Bill 1439 expanded requirements of Government Code Section 84308, also known as the "Levine Act," to prohibit public officials from participating in any proceeding involving a license, permit, or other entitlement for use pending before the agency if the official has willfully or knowingly received contributions totaling more than two hundred fifty dollars (\$250) within the preceding 12 months from a party to the proceeding or their agent. The same prohibition applies to contributions from any participant in the proceeding or their agent, if the public official knows or has reason to know that the participant has a financial interest in the decision. The Levine Act requires parties to disclose contributions made by them and their agents to public officials, and to make the disclosure part of the record of the proceeding.

Appellant Name: Water Audit California

Project Name or Number: KEVIN & ANN MORRISON TR /
HILLWALKER VINEYARDS WINERY /
EXCEPTION TO THE CONSERVATION
REGULATIONS NO. P23-00239-UP, USE PERMIT
NO. P23-00101-UP & EXCEPTION TO THE NAPA
COUNTY ROAD & STREET

Appellant Organization or Firm (if different than above): _____

Have you, your organization or firm, or an agent of any of them, made any campaign contributions of more than \$250 to any Napa County public official within the last 12 months? Please aggregate any contributions made over the previous 12 months to determine if the \$250 threshold has been met.

Yes:

No:

(check one)

If no, please sign and date below.

If yes, please provide the following information and then sign and date below. Use additional sheets if necessary.

Date of Contribution	Name of Public Official	Name of Contributor	Amount of Contribution

By signing below, I certify that the information herein is true and correct. I also agree to disclose any future contributions made to Napa County public officials from myself, my organization or firm, or an agent of any of them, after the date of signing this disclosure form, and within 12 months following the County's final decision on the license, permit, or entitlement being appealed. This obligation pertains only to Napa County public officials who have jurisdiction over the appeal.

Date: September 16, 2024

Appellant Signature: W.M.

Organization/Firm name: Water Audit California Appellant Name (printed): William McKinnon, Attorney
for Water Audit California

For questions or additional information, please visit <https://www.fppc.ca.gov/learn/pay-to-play-limits-and-prohibitions.html>
PL Doc. No. 109747; Ver. 1/2024

SEP 16 2024

	<i>First American Title™</i>	Property Owner's Notice Guarantee NAPA COUNTY EXECUTIVE OFFICE
		ISSUED BY
		First American Title Insurance Company
		GUARANTEE NUMBER
		50077800-0001045E
Guarantee		

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, AND THE GUARANTEE CONDITIONS ATTACHED HERETO AND MADE A PART OF THIS GUARANTEE,

FIRST AMERICAN TITLE INSURANCE COMPANY
a Nebraska corporation, herein called the Company

GUARANTEES

the Assured named in Schedule A of this Guarantee

against loss or damage not exceeding the Amount of Liability stated in Schedule A sustained by the Assured by reason of any incorrectness in the Assurances set forth in Schedule A.

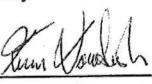
First American Title Insurance Company



Kenneth D. DeGiorgio
President



Greg L. Smith
Secretary

By: 

Authorized Countersignature

 <i>First American Title</i> ™	Property Owner's Notice Guarantee	
	ISSUED BY	First American Title Insurance Company
Schedule A	GUARANTEE NUMBER	50077800-0001045E

File No.: **T0022087-006-006-KD**

Date of Guarantee: **September 10, 2024 at 7:30 AM**

Amount of Liability: **\$1,000.00**

Fee: **\$500.00**

1. Name of Assured:

County of Napa

2. ASSURANCES:

a. According to the last equalized Assessment Roll ("Assessment Roll") in the office of Napa County Assessor/Tax Collector as of the Date of Guarantee,

i. The persons listed below as "Assessed Owner" are shown on the Assessment Roll as owning real property within 1,000 feet of the land identified on the Assessment Roll as Assessor's Parcel Number(s): **034-110-047, 034-100-043, 034-100-020, 034-110-059**

ii. The Assessor's Parcel Number and any addresses shown below are as shown below are as shown on the Assessment Roll.

034-060-026-000
 PAUL R SINGREY TR ETAL
 11436 FLORINDO RD
 SAN DIEGO CA 92127

034-100-017-000
 FRANCISCAN VINEYARDS INC
 207 HIGH POINT DR BLDG 100
 VICTOR NY 14564

034-100-018-000
 STEPHEN LAGIER
 CAROLE MEREDITH
 PO BOX 3167
 NAPA CA 94558

034-100-021-000
 GARY & PENELOPE SCHNEIDER
 1631 BRYCE CT
 NAPA CA 94558

034-100-040-000
 DANIEL & MARIE GALVIN
 140 PINE PL
 SAINT HELENA CA 94574

034-100-046-000
 POTT ART! LLC
 1849 PINE ST
 SAINT HELENA CA 94574

034-110-019-000
 JEFFRY & JANET MILLER
 4715 REDWOOD RD
 NAPA CA 94558

034-110-020-000
 RAYMOND & NETA THORNELL
 4545 REDWOOD RD
 NAPA CA 94558

034-110-049-000
 M & H VINEYARDS INC
 1 CALIFORNIA DR
 YOUNTVILLE CA 94599-1426

034-120-003-000
 MARK PAUL TYLER TR ETAL
 1385 PLAZA ST NW
 SALEM OR 97304-4052

034-120-004-000
 RANDAL BRYANT
 PO BOX 20
 Rutherford CA 94573-0020

034-120-005-000
 THOMAS CASTLE
 314 EMMET PL
 CONCORD CA 94521

SCHEDULE A

(Continued)

034-120-006-000
 SUSAN CRAIG
 3870 MUIR MILL RD
 WILLITS CA 95490-9654

034-120-007-000
 JULIO ARANOVICH
 3701 SACRAMENTO ST
 SAN FRANCISCO CA 94118

034-120-014-000
 SAN PASQUAL FIDUCIARY
 TRUST COMPANY TR
 400 S HOPE ST STE 1300
 LOS ANGELES CA 90071-2809

034-120-015-000
 CHARLES WALTER & BARBARA
 ZOELLNER
 8870 SE 70TH TERRACE
 OCALA FL 34472

034-120-017-000
 PETER HIXSON
 1591 LAUREL ST #4
 SAN CARLOS CA 94070-5129

034-120-019-000
 STEWART BOYD
 3756 WILLIS DR
 NAPA CA 94558

034-230-001-000
 GERALD CASEY
 1483 MOUNT VEEDER RD
 NAPA CA 94558

034-230-020-000
 NAPA MOUNTAIN VINEYARDS INC
 PO BOX 4140
 NAPA CA 94558

034-260-023-000
 ARLENE WOOLERY TR ETAL
 228 ALDEN AVE
 ROHNERT PARK CA 94928

034-100-025-000
 MT VEEDER FARMS LLC
 1945 MT VEEDER RD
 NAPA CA 94558

034-100-035-000
 ROBERT & CHRISTINA JENNINGS
 1945 MOUNT VEEDER RD
 NAPA CA 94558-9773

034-120-008-000
 STEPHEN HARLEY
 4520 REDWOOD RD
 NAPA CA 94558

034-120-018-000
 STEPHEN HARLEY
 4520 REDWOOD RD
 NAPA CA 94558

GUARANTEE EXCLUSIONS AND CONDITIONS (06-05-14)

EXCLUSIONS FROM COVERAGE

Except as expressly provided by the assurances in Schedule A, the Company assumes no liability for loss or damage by reason of the following:

- (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the Land.
- (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the Public Records (1) that are created, suffered, assumed or agreed to by one or more of the Assureds; or (2) that result in no loss to the Assured.
- (c) Defects, liens, encumbrances, adverse claims or other matters not shown by the Public Records.
- (d) The identity of any party shown or referred to in any of the schedules of this Guarantee.
- (e) The validity, legal effect or priority of any matter shown or referred to in any of the schedules of this Guarantee.
- (f) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or, (2) proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the Public Records.
- (g) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the Public Records.

GUARANTEE CONDITIONS

1. Definition of Terms.

The following terms when used in the Guarantee mean:

- (a) the "Assured": the party or parties named as the Assured in Schedule A, or on a supplemental writing executed by the Company.
- (b) "Land": the Land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "Land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- (c) "Mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (d) "Public Records": those records established under California statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
- (e) "Date of Guarantee": the Date of Guarantee set forth in Schedule A.
- (f) "Amount of Liability": the Amount of Liability as stated in Schedule A.

2. Notice of Claim to be Given by Assured.

The Assured shall notify the Company promptly in writing in case knowledge shall come to the Assured of any assertion of facts, or claim of title or interest that is contrary to the assurances set forth in Schedule A and that might cause loss or damage for which the Company may be liable under this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of the Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

3. No Duty to Defend or Prosecute.

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

4. Company's Option to Defend or Prosecute Actions; Duty of Assured to Cooperate.

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:

(a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in Paragraph 4 (b), or to do any other act which in its opinion may be necessary or desirable to establish the correctness of the assurances set forth in Schedule A or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(b) If the Company elects to exercise its options as stated in Paragraph 4(a) the Company shall have the right to select counsel of its choice (subject to the right of the Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.

(c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

(d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, the Assured shall secure to the Company the

right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the Assured for this purpose. Whenever requested by the Company, the Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the correctness of the assurances set forth in Schedule A or to prevent or reduce loss or damage to the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

5. Proof of Loss or Damage.

- (a) In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Assured furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.
- (b) In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this paragraph shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

6. Options to Pay or Otherwise Settle Claims: Termination of Liability.

In case of a claim under this Guarantee, the Company shall have the following additional options:

- (a) To pay or tender payment of the Amount of Liability together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time

of payment or tender of payment and that the Company is obligated to pay.

- (b) To pay or otherwise settle with the Assured any claim assured against under this Guarantee. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or
- (c) To pay or otherwise settle with other parties for the loss or damage provided for under this Guarantee, together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in 6 (a), (b) or (c) of this paragraph the Company's obligations to the Assured under this Guarantee for the claimed loss or damage, other than the payments required to be made, shall terminate, including any duty to continue any and all litigation initiated by the Company pursuant to Paragraph 4.

7. Limitation of Liability.

- (a) This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in Schedule A and only to the extent herein described, and subject to the Exclusions From Coverage of this Guarantee.
- (b) If the Company, or the Assured under the direction of the Company at the Company's expense, removes the alleged defect, lien or, encumbrance or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.
- (c) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom.
- (d) The Company shall not be liable for loss or damage to the Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

8. Reduction of Liability or Termination of Liability.

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the Amount of Liability under this Guarantee pro tanto.

9. Payment of Loss.

- (a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions, the loss or damage shall be payable within thirty (30) days thereafter.

10. Subrogation Upon Payment or Settlement.

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

11. Arbitration.

Either the Company or the Assured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision, or to any other controversy or claim arising out of the transaction giving rise to this Guarantee. All arbitrable matters when the amount of liability is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. Arbitration pursuant to this Guarantee and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

12. Liability Limited to This Guarantee; Guarantee Entire Contract.

(a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and

contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.

(c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

13. Severability

In the event any provision of this Guarantee, in whole or in part, is held invalid or unenforceable under applicable law, the Guarantee shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

14. Choice of Law; Forum

(a) Choice of Law: The Assured acknowledges the Company has underwritten the risks covered by this Guarantee and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of Guarantees of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims that are adverse to the Assured and to interpret and enforce the terms of this Guarantee. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Assured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

15. Notices, Where Sent.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at First American Title Insurance Company, Attn: Claims National Intake Center, 1 First American Way, Santa Ana, California 92707. Claims.NIC@firstam.com Phone: 888-632-1642 Fax: 877-804-7606.

034-060-026-000
 PAUL R SINGREY TR ETAL
 11436 FLORINDO RD
 SAN DIEGO CA 92127

034-100-021-000
 GARY & PENELOPE SCHNEIDER
 1631 BRYCE CT
 NAPA CA 94558

034-110-019-000
 JEFFRY & JANET MILLER
 4715 REDWOOD RD
 NAPA CA 94558

034-120-003-000
 MARK PAUL TYLER TR ETAL
 1385 PLAZA ST NW
 SALEM OR 97304-4052

034-120-006-000
 SUSAN CRAIG
 3870 MUIR MILL RD
 WILLITS CA 95490-9654

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 CHARLES WALTER & BARBARA
 ZOELLNER
 8870 SE 70TH TERRACE
 OCALA FL 34472

034-230-001-000
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 FRANCISCAN VINEYARDS INC
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 VICTOR NY 14564

034-100-040-000
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 140 PINE PL
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034-110-020-000
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034-120-004-000
 RANDAL BRYANT
 PO BOX 20
 RUTHERFORD CA 94573-0020

034-120-007-000
 JULIO ARANOVICH
 3701 SACRAMENTO ST
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 PETER HIXSON
 1591 LAUREL ST #4
 SAN CARLOS CA 94070-5129

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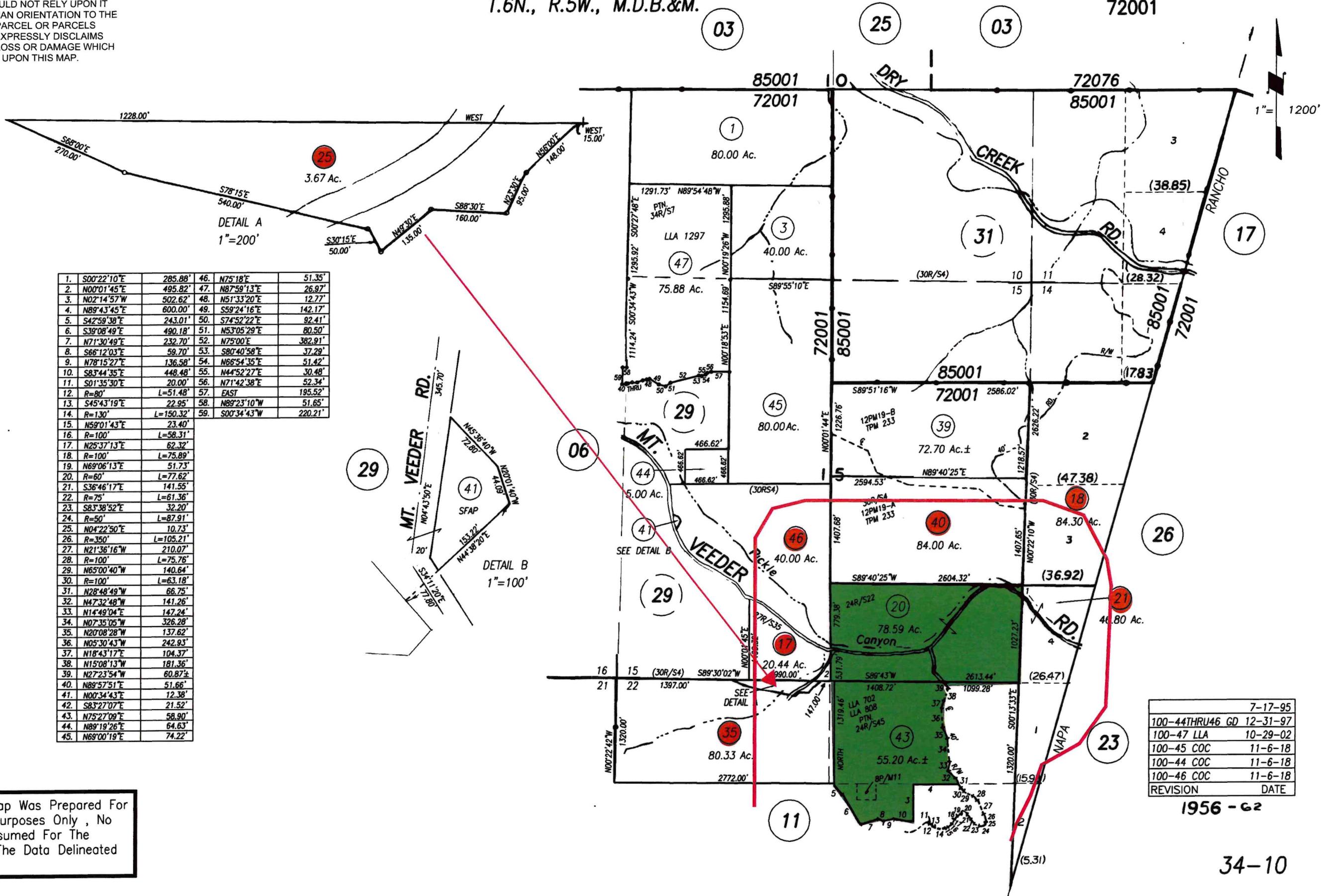
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ANY LIABILITY FOR ALLEGED LOSS OR DAMAGE WHICH
MAY RESULT FROM RELIANCE UPON THIS MAP.

COUNTY ASSESSOR'S PARCEL MAP
T.6N., R.5W., M.D.B.&M.

Tax Area Code
72001

34-10



NOTE: This Map Was Prepared For Assessment Purposes Only, No Liability Is Assumed For The Accuracy Of The Data Delineated Hereon.

	7-17-95
100-44THRU46	GD
100-47	LLA
100-45	COC
100-44	COC
100-46	COC
REVISION	DATE

1956 - 62

34-10

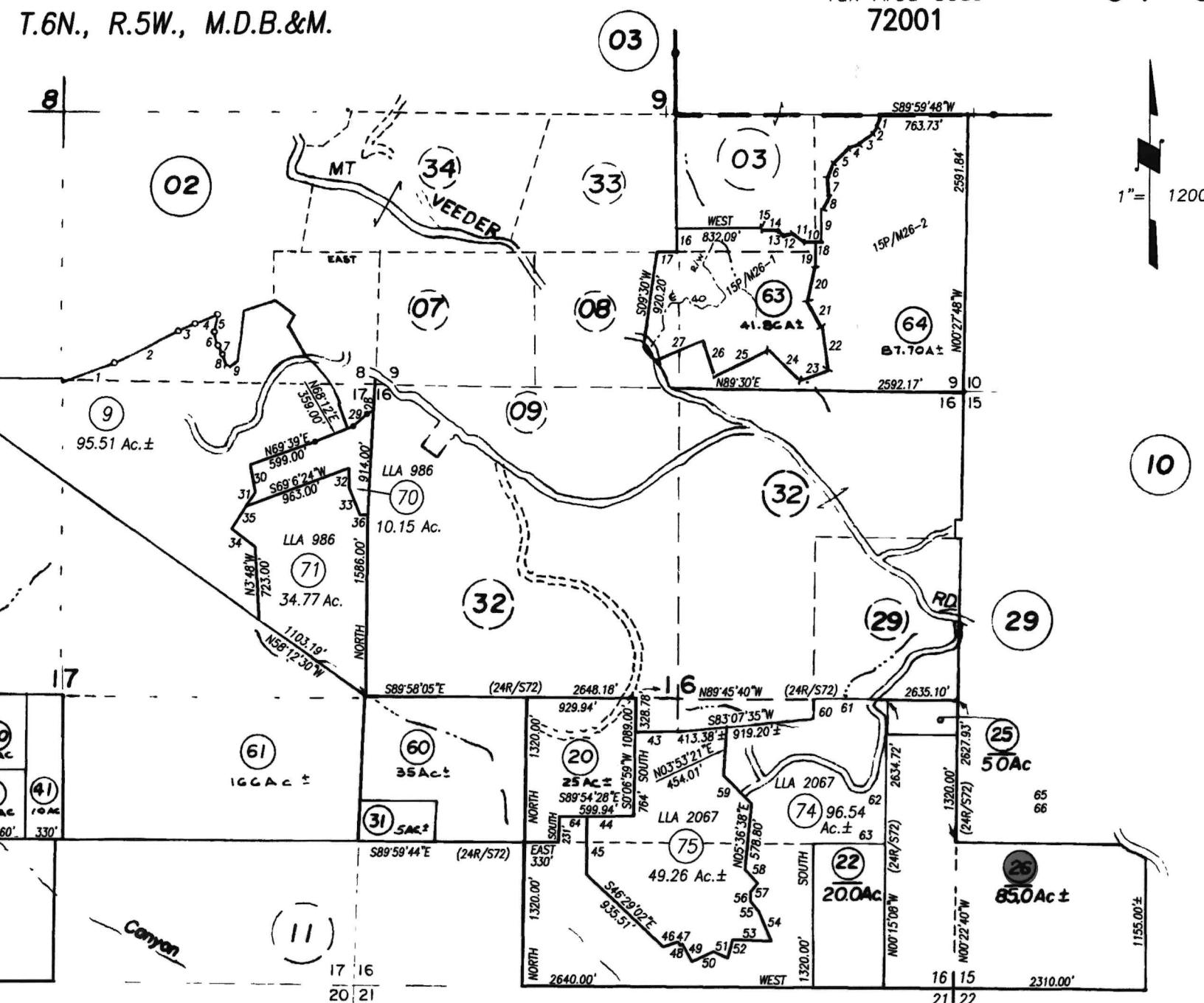
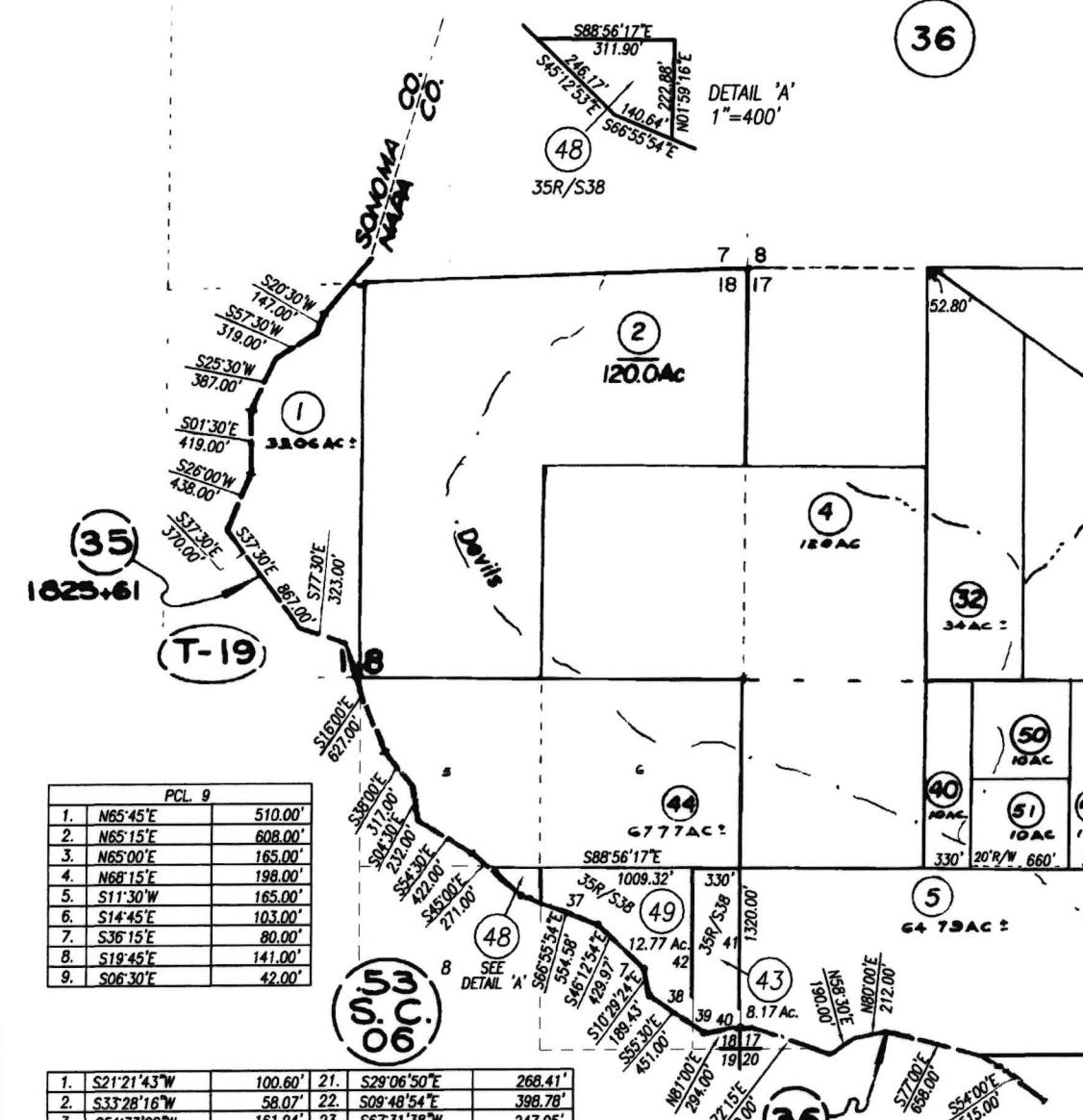
COUNTY ASSESSOR'S PARCEL MAP

T.6N., R.5W., M.D.B.&M.

Tax Area Code
72001

34-06

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**COUNTY ASSESSOR'S PARCEL MAP
PTN. NAPA RANCHO**

34-26
PTN. 34-22

Tax Area Code
72048

PTN. 34-22

1.	$N52^{\circ}45'E$	53.00'
2.	$N62^{\circ}45'E$	70.00'
3.	$S34^{\circ}15'E$	72.00'
4.	$S26^{\circ}16'W$	50.50'
5.	$S32^{\circ}43'E$	58.20'
6.	$N58^{\circ}05'W$	79.00'
7.	$N02^{\circ}16'E$	27.07'
8.	$R=550.95'$	$L=93.91'$
9.	$R=388.96'$	$L=93.68'$
10.	$R=111.49'$	$L=44.79'$
11.	$R=1240'$	$L=189.73'$
12.	$N20^{\circ}33'E$	51.85'
13.	$R=185.19'$	$L=55.11'$
14.	$R=56.67'$	$L=47.25'$
15.	$R=39.60'$	$L=46.06'$
16.	$S30^{\circ}23'E$	78.18'
17.	$R=230.15'$	$L=135.10'$
18.	$R=373.85'$	$L=137.56'$
19.	$S24^{\circ}20'E$	32.35'
20.	$R=32.95'$	$L=46.14'$
21.	$S37^{\circ}15'E$	38.93'
22.	$R=73.96'$	$L=51.83'$
23.	$R=44.31'$	$L=48.55'$
24.	$N21^{\circ}10'E$	116.65'
25.	$R=3524.95'$	$L=199.94'$
26.	$N24^{\circ}25'E$	115.41'
27.	$N27^{\circ}09'W$	41.94'
28.	$R=670'$	$L=109.92'$
29.	$N17^{\circ}45'W$	108.26'
30.	$R=470'$	$L=137.40'$
31.	$N01^{\circ}00'W$	69.75'
32.	$S70^{\circ}22'W$	20.80'
33.	$R=1000'$	$L=104.24'$
34.	$N41^{\circ}21'W$	28.45'
35.	$R=1000'$	$L=178.61'$
36.	$N51^{\circ}35'W$	173.34'
37.	$R=1000'$	$L=304.56'$
38.	$N34^{\circ}08'W$	107.70'
39.	$R=200'$	$L=151.09'$
40.	$N09^{\circ}09'E$	27.88'
41.	$R=200'$	$L=101.06'$
42.	$N19^{\circ}48'W$	146.00'
43.	$R=300'$	$L=38.49'$
44.	$N27^{\circ}09'W$	61.83'
45.	$S51^{\circ}02'51"E$	89.18'
46.	$R=190'$	$L=153.62'$
47.	$N82^{\circ}37'38"E$	27.36'
48.	$R=150'$	$L=145.70'$
49.	$S41^{\circ}43'15"E$	135.54'
50.	$R=873.15'$	$L=165.50'$
51.	$S48^{\circ}04'13"E$	1.89'
52.	$R=1000'$	$L=12.72'$

NOTE: This Map Was Prepared For Assessment Purposes Only, No Liability Is Assumed For The Accuracy Of The Data Delineated Hereon.

Assessor of Napa County 1966

2

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27

62.43 Ad

62.43 Ad

1

1

54°26'53" W

53W

359.90° 57°45'15"E

S42

10-11-77	
2-19-91	
10-26-93	
TRA CHANGE	12-30-00
260-019 CCOC	4-12-06
REVISION	DATE

34-26

5/15
N5719
DETAIL - A
SCALE 1" = 200'

23

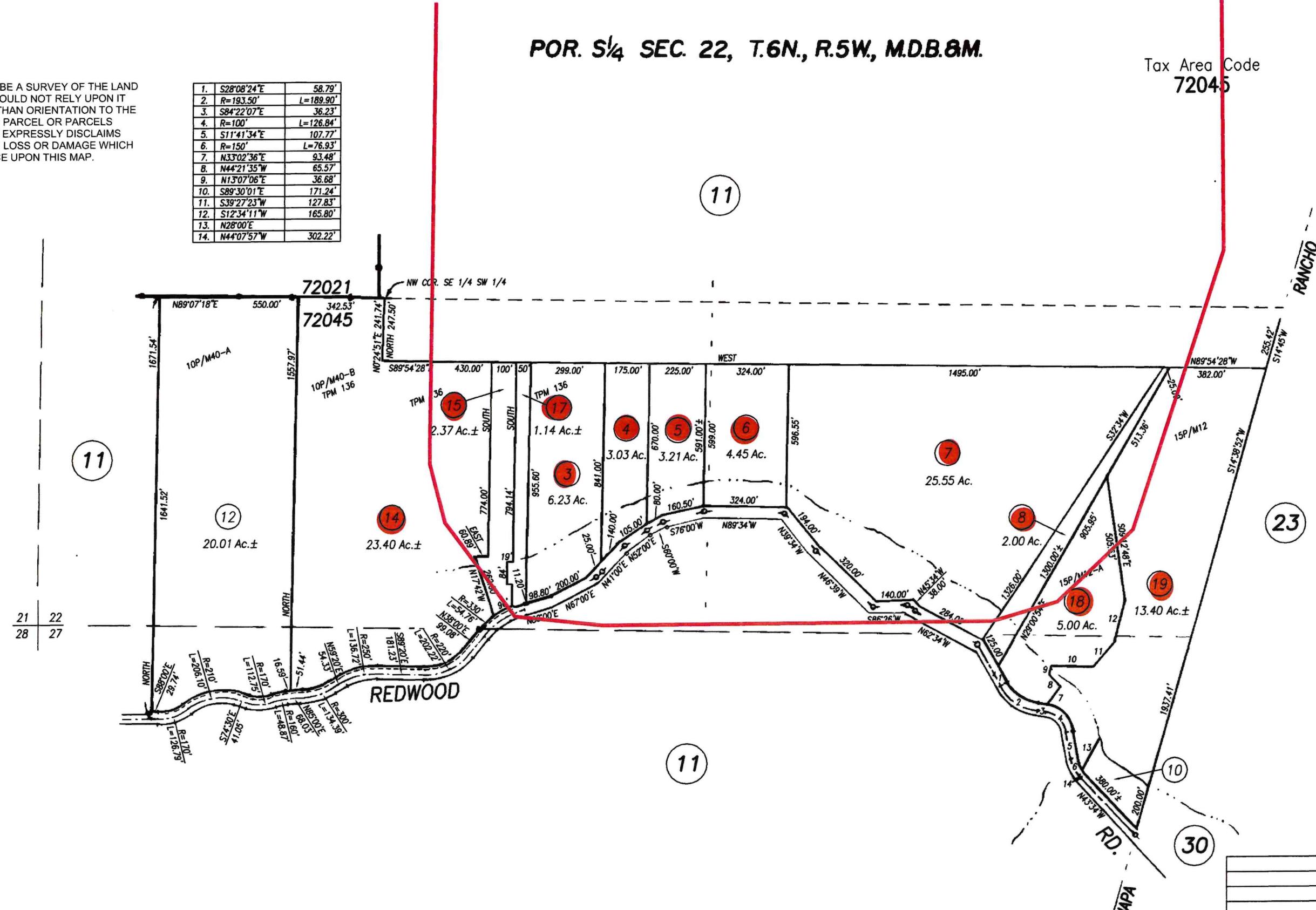
POR. S $\frac{1}{4}$ SEC. 22, T.6N., R.5W., M.D.B.&M.

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Tax Area Code
72045

34-12

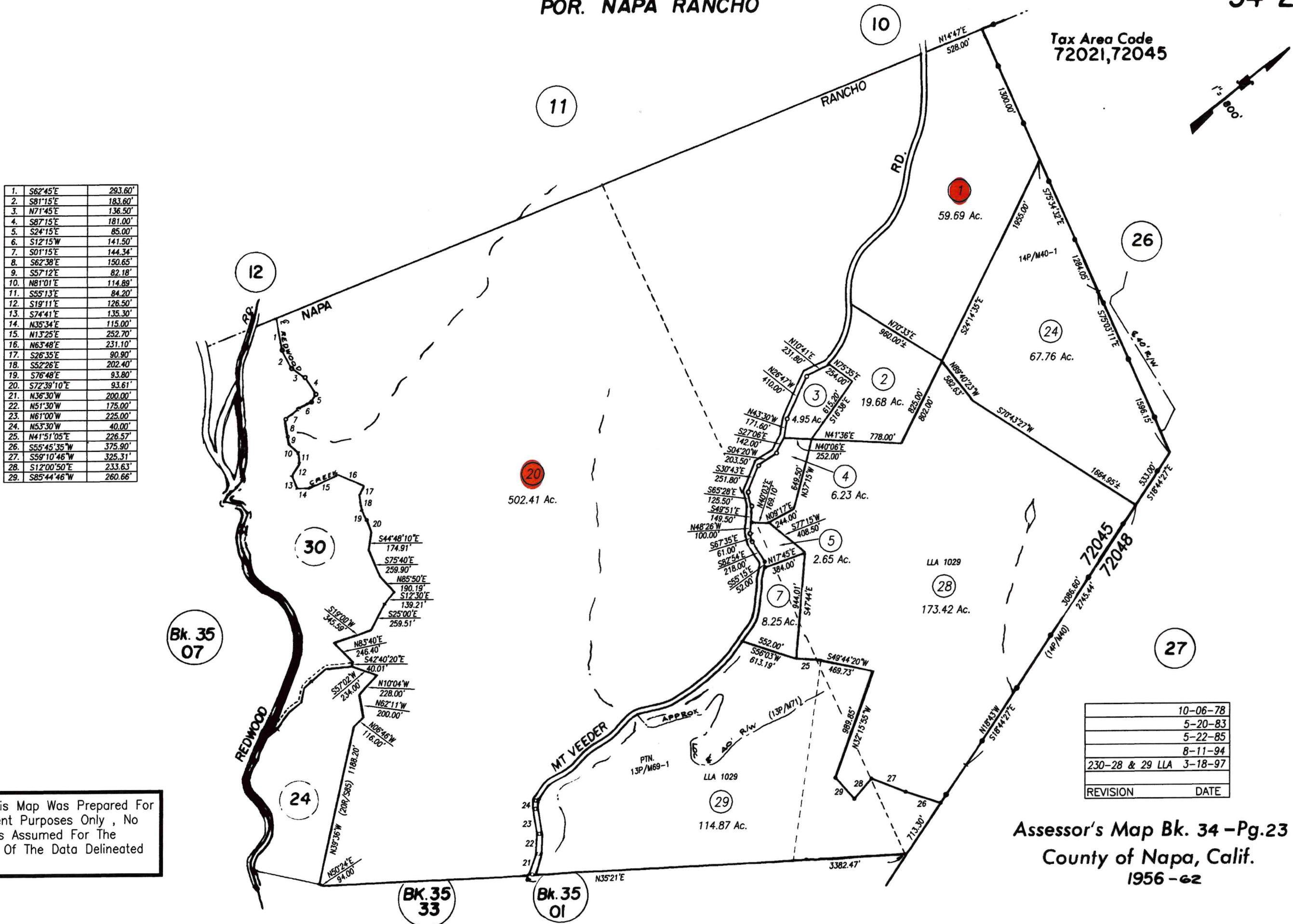
$$1'' = 400'$$



NOTE: This Map Was Prepared For Assessment Purposes Only , No Liability Is Assumed For The Accuracy Of The Data Delineated Hereon.

Assessor's Map Bk. 34 Pg. 12
County of Napa, Calif.
1956-c2

Tax Area Code
72021, 72045



NOTE: This Map Was Prepared For Assessment Purposes Only, No Liability Is Assumed For The Accuracy Of The Data Delineated Hereon.

10-06-78	
5-20-83	
5-22-85	
8-11-94	
230-28 & 29 LLA 3-18-97	
REVISION	DATE

Assessor's Map Bk. 34 - Pg. 23
County of Napa, Calif.
1956 - 62

APPEAL FEE SCHEDULE WORKSHEET

(April 2023)

Required *	Select one ►	COSTS	TOTAL
1 NOTICE BY MAIL (COB)			
100 addresses or less	►	\$49.00	<u>\$ 49.00</u>
101 to 400 addresses	►	\$173.00	
Over 400 addresses	►	\$261.00	
Costs associated w notice by mail/per address # <u>50</u>	*	.54/Per Add.	<u>\$ 27.00</u>
2 NOTICE BY PUBLICATION (COB)			
Cost of publication in newspaper	*	\$198.00	<u>\$ 198.00</u>
Costs associated with notice of publication	*	\$63.00	<u>\$ 63.00</u>
Preparation of agenda	*	\$60.00	<u>\$ 60.00</u>
Court Reporter per diem (if requested)		actual cost	
3 COST OF RECORD ON APPEAL (COB)			
250 pages or less	►	\$91.00	<u>\$ 91.00</u>
Over 250 pages	►	\$184.00	
Duplication of record - \$3 first 5 pages (.60 per page)		\$3.00	
Duplication of record - \$.10 each additional page	#	\$0.10	
Transcript cost		actual cost	
Maps and special needs		actual cost	
4 FEES (DEPARTMENT)			
Notice of Intent - Appeal to the Board of Supervisors		\$1,000.00	<u>\$ 1,000.00</u>
Based on record or de novo		Applicable Department	
GRAND TOTAL			<u>\$ 1,488.00</u>
Date and amount previously received		<u>08/30/24</u>	<u>\$ 1,000.00</u>
Balance due and form of payment			<u>\$ 488.00</u>

I understand the breakdown of the fees charged.

Signature

Date

9/16/24

Water Audit California
952 School St # 316
Napa CA 94559-2826

0139

90-4187
1211

DATE: 9/16/24

PAY TO THE
ORDER OF

 Bank of Marin
1715 Second Street
Napa, CA 94559

Memo

1211418770 257984000

0139

Two hundred fifty-eight

DOLLARS

RECEIPT

DATE 09/16/24

No. 396348

RECEIVED FROM Water Audit California

\$ 488.00

Four hundred eighty eight ^{08/100} DOLLARS

FOR RENT
 FOR Appeal Packet! Hill Walker Vineyards

ACCOUNT	
PAYMENT	0139
BAL. DUE	

CASH
 CHECK
 MONEY ORDER
 CREDIT CARD

FROM _____ TO _____

BY Anthony Williams

3-11