

ATTACHMENT A

Appeal Packet

15 NYS 15-0001
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NAPA COUNTY
EXECUTIVE OFFICE

APPEAL PACKET FORM
(Chapter 2.88.050 of Napa County Code)

Please submit original plus two (2) copies of the entire Appeal Packet, including this form.

TO BE COMPLETED BY APPELLANT (Please type or print legibly)	
Appellant's Name:	<u>Oakville Winery LLC c/o Thomas F. Carey, Esq.</u> <i>Applicant's Representative</i>
Telephone #:	<u>(707) 479-2856</u> Fax #: <u>()</u>
E-Mail Address:	<u>tcarey.law@gmail.com</u>
Mailing Address:	<u>P.O. Box 5662</u> <u>Napa</u> <u>CA</u> <u>94581</u> <small>No. Street City State Zip</small>
Status of Appellant's Interest in Property:	<u>Applicant</u> <small>project applicant, adjacent property owner, other (describe)</small>
Action Being Appealed:	<u>Napa County Planning Commission</u>
Permittee Name:	<u>Oakville Winery LLC c/o Steven Christopherson</u>
Permittee Address:	<u>P.O. Box 222 Oakville</u> <u>CA</u> <u>94562</u> <u>917-00343-UP</u>
Permit Number:	<u>917-00343-VAR</u> Date of Decision: <u>4/18/2018</u>
Nature of Permit or Decision:	<u>Denial of Request for Continuance,</u> <u>use permit and a variance</u>
Reason for Appeal (Be Specific - 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, that there was a lack of a fair and impartial hearing, or that no facts were presented to the approving authority that support the decision, factual or legal basis for such grounds of appeal must be expressly stated or they are waived. (attach additional sheet if necessary): <u>See attached statement of Appeal;</u> <u>prejudicial abuse of discretion; lack of fair</u> <u>and impartial hearing; insuff. evd to support dec</u>	
Project Site Address/Location:	<u>Dry Creek + Mt. Veeder Rds.</u> <u>Napa</u> <u>CA</u> <small>Street City State Zip</small>
Assessor's Parcel No.:	<u>027-310-039</u> <u>94558</u>

If the decision appealed from involves real property, the Appellant must also submit the original and two copies of 1) Title Insurance Report and 2) Assessor's Map Book Pages pursuant to County Code Section 2.88.050(B).

<u>Thomas F. Carey</u>	<u>5/9/18</u>	<u>Thomas F. Carey</u>
Signature of Appellant	Date	Print Name

TO BE COMPLETED BY CLERK OF THE BOARD	
Appeal Packet Fee \$ <u>471.80</u>	Receipt Nos. <u>260873</u>
Received by: <u>[Signature]</u>	Date: <u>5/9/18</u>

STATEMENT OF APPEAL

**OAKVILLE WINERY LLC/DRY CREEK MT. VEEDER PROJECT
USE PERMIT P17-00343 AND VARIANCE P17-0045
SOUTHWEST CORNER OF DRY CREEK AND MT. VEEDER ROADS, NAPA, CALIFORNIA
APN 027-310-039**

Applicant Oakville Winery LLC (the "Applicant") hereby appeals the Napa County Planning Commission's April 18, 2018, decision to deny Use Permit P17-00343-UP and Variance P17-00345-VAR (the "Application") and to deny Applicant's request for a continuance of the public hearing on the Application.

The grounds for appeal include, without limitation, the prejudicial abuse of discretion on the part of the approving authority; the lack of a fair and impartial hearing; and that insufficient facts were presented to the approving authority that support the decision.

The following is a description of the specific factual or legal determination of the approving authority which is being appealed, and the basis for such appeal. We further intend to ask the Board Chair that the appeal be heard *de novo* to allow for better graphics illustrating some of the Commission's concerns and ways the Applicant could have addressed these had it been given the opportunity.

BACKGROUND

On September 18, 2017, the Applicant filed applications for a use permit and variance for a 30,000 gallons per year winery on a 55.50-acre parcel located at the northern end of Mt. Veeder Road and its intersection with Dry Creek Road (the "Parcel"). Access to the Project Site from Highway 29 in Oakville is Oakville Grade west to where Oakville Grade becomes Dry Creek Road west to Mt. Veeder Road south. The current entrance to the property is approximately 250 feet south of the Dry Creek Road/Mt. Veeder Road intersection.

The proposed winery building "envelope" is located within the 300-foot setback for new and expanded wineries required under Napa County Code section 18.104.230A2. (See Applied Civil Engineering, Use Permit Conceptual Site Improvement Plans, September 13, 2017, the "Civil Plans," submitted as part of the Application and hereby incorporated into this appeal.)

As stated in the Application, grant of the variance to would allow the winery's outdoor covered crush pad to be constructed 84 feet from the centerline of Mt. Veeder Road and the 2,400 square-foot winery building to be constructed 104 feet from the centerline of Mt. Veeder Road. (Elimination of the covered crush pad and winemakers residence from the site plan would allow the winery building to be "shifted" northwest within the proposed building envelope and create a 160-foot road setback.)

SITE CONDITIONS

As shown on Sheet V1 of the Civil Plans (the "Opportunities & Constraints Site Plan") and the Environmental Sensitivity Maps maintained by the Napa County Planning, Building and Engineering Services Department (the "Environmental Sensitivity Maps"), the Project Site is comprised of mixed hardwood forest with varied terrain, with areas of relatively steep slopes interspersed with very steep slopes equal to or exceeding 30 percent.

There are two existing clearings on the parcel: (1) the proposed winery location in a small, relatively flat clearing southwest of the confluence of Dry Creek and Montgomery Creek (the "Lower Flat"), and (2) a small clearing located approximately 1,000 feet horizontal feet and 300 feet vertical upslope from the Lower Flat (the "clearing with brush"). There is an existing drainage course in the interior of the of the Parcel running west to east to Mt. Veeder road approximately 250 feet south of the proposed driveway (See Condor Earth, Preliminary Geologic Hazards Evaluation, September 8, 2017, the "Geotechnical Evaluation," submitted as part of the Application and hereby incorporated into this appeal.)

The Environmental Sensitivity Maps for the Parcel note that Spotted Owls potentially occur "in the general area" and three areas abutting the proposed winery site on the Lower Flat contain arrows noting "small landslide deposits." Unsurprisingly, the Parcel is located in an area designated as Very High Fire Hazard Severity. (CalFire used the Lower Flat as a staging area during the Nuns Fire in October 2017.)

PROJECT DESIGN

From project inception, the Applicant and its consultants, Applied Civil Engineering, Napa, California, Condor Earth, Sonoma, California and Northwest Biosurvey, Cobb, California, attempted to design the project in an environmentally sensitive manner. They did so with an understanding of the specific environmental issues arising from the Parcel's location at the base of Mt. Veeder. They were directed to find a location on the Parcel where a modest winery development, including buildings, crush pads, parking areas and access roads, could occur with as little impact to sensitive plant and animal habitat, streams and other watercourses as possible. Areas of the Parcel with significant landslide and erosion potential, particularly areas with steep slopes and other geologic hazards, were to be avoided altogether if possible.

The Application met these goals. Condor states on Page 2 of the Geotechnical Evaluation that "the proposed winery location avoids areas underlain by historic landslides and areas containing deposits from small, non-recent landslides." Northwest Biosurvey states, "as shown in the plan, the project is limited to the ruderal (Disturbed) area cleared by Cal Fire during the Nuns Fire. Consequently, I agree that the project will not significantly impact woodland or other biological resources provided that the mitigation measures (55-foot riparian wildlife corridor) recommended in our report are implemented." (See Northwest Biosurvey, Response to Mount Veeder "Incomplete Application Letter" from Napa County Planning Staff", January 10, 2018, included in Planning Commission Supporting Materials for April 18, 2018 meeting and hereby incorporated into this appeal.)

Other areas of the Project were considered for development but were considered environmentally inferior. The "clearing with brush" upslope from the proposed winery site on the "Lower Flat" is proximate to a seasonal drainage (see Figure 2B of the Condor Report), and lies in the interior of a forested parcel. Excessive grading and tree removal would be necessary simply to construct a winery access roadway meeting the County's Road and Street Standards and CalFire regulations.

SPECIFIC GROUNDS FOR APPEAL

The week prior to the April 18, 2018, Planning Commission hearing, Applicant's representative received the "Staff Report" for the Application. The Board Agenda Letter included in the Staff Report stated that

the proposal "is consistent with the Zoning Ordinance and applicable policies of the General Plan" and that the finding necessary for the variance request "can be met." The Agenda Letter further stated:

Strict application of the required minimum setback from Mount Veeder Road would result in the excessive hillside grading and tree removal while failing to take advantage of the previously disturbed relatively flat area of the parcel.

The Staff Report included Proposed Findings, prepared with the input of County Counsel, supporting the approval of the use permit and variance. These findings cites the specific Zoning Ordinance sections and General Plan policies that support approval of the Application.

Applicant's representative, Tom Carey, met with Commissioner Gallagher on Saturday April 14 and Commissioners Cottrell, Scott and Basayne separately on April 17. Each of the Commissioners expressed concerns about the Application during these site visits, and the possibility of a continuance was discussed with Commissioners Scott and Basayne. Further concerns were expressed at the hearing on April 18. These included concerns about the "speculative" nature of future grape sourcing, whether the grant of the variance would set a "precedent," screening of the winery building from view, protection of streams and watercourses and too much parking. Two neighbors, Gary Margadant and Harris Nussbaum, expressed concerns about the project's impacts on watercourses and expounded on the general theme of winery overdevelopment.

At the close of the hearing, Applicant's representative requested a continuance at on the grounds that "[this hearing] has been a useful experience in hearing what the Commission, after having been out there, is concerned about" and "we would like to request more time to ingest these views and see if there can be some sort of accommodation and redesign here, or bolstering of the application." (Transcript of Videotaped Proceedings, Meeting of April 18, 2018, page 46, the "Transcript," attached hereto and hereby incorporated by reference.) Commissioner Basayne made a motion to continue the hearing, which Commissioner Hansen seconded. (Ibid. p. 48.)


After Chair Cottrell closed the public hearing and the three other Commissioners did not appear to support the motion, Applicant's representative asked Chair Cottrell to reopen the public hearing, and again requested a continuance, stating "many of these concerns only came to light within the last 24 hours, that's when we had the bulk of the Commissioners up there [to the project site]. I would really – strongly argue that in this this case the applicant gets a [an initial] continuance. If you depart from that practice, which has been understood to be a good practice, taking into account the applicant's investment in the project, many of the things we have heard here today are tangible suggestions of alternative locations for the project." (Ibid p. 50.) The Commission did not grant the continuance, and went on to deny the variance and use permit applications by a vote of 3-2.

The Commission majority's decision to deny an applicant's initial request for a continuance less than 24 hours after visiting the project site and expressing their concerns constituted a prejudicial abuse of discretion and a lack of a fair hearing. There was no evidence presented (such as multiple prior hearings and continuances) supporting the majority's decision that more time would not have resulted in better information upon which a final decision could be made.

Moreover, the conduct of the hearing, perhaps because of Applicant's mistaken belief that an initial continuance was a possibility, constituted a lack of a fair hearing insofar as there was no opportunity

after the close of the public hearing and the continuance was denied. (See Transcript, Page 38-53.)
Because Applicant had no opportunity to address these additional concerns (see Transcript of
Commissioner Scott's comments, Page 51, Lines 10-19.)

ⁱ Oakville Winery LLC/Dry Creek Mt. Veder Project Statement of Appeal, May 9, 2018

	First American Title™	Property Owner's Notice Guarantee
Guarantee		ISSUED BY First American Title Insurance Company
		GUARANTEE NUMBER 5022800-0001275E

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

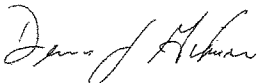
GUARANTEES

COUNTY OF NAPA

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




Dennis J. Gilmore
President



Jeffrey S. Robinson
Secretary

By: 
Authorized Countersignature

	First American Title™	Property Owner's Notice Guarantee	
Schedule A		ISSUED BY First American Title Insurance Company	
		GUARANTEE NUMBER 5022800-0001275E	

File No.: LU004639-006-006

Date of Guarantee: **May 2, 2018 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 THE NAPA COUNTY TAX ASSESSOR 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 1000 feet of the land identified on the Assessment Roll as Assessor's Parcel Number(s): **027-310-039-000**

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

APN: 027 310 005 000
BRIAN HURLEY & KATHLEEN KUSEK
215 W WASHINGTON ST #3408
CHICAGO IL 60606-3519

APN: 027 310 008 000
ERNEST BURROUGHS ETAL
PO BOX 4377
EL DORADO HILLS CA 95762-0017

APN: 027 310 012 000
NICHOLAS W & STEPHANIE K STEPHENS
3421 16TH ST
SAN FRANCISCO CA 94114-1732

APN: 027 310 014 000
MELINI A SUC CARREON TR
1800 EL DORADO AVE
LA HABRA CA 90631-4408

APN: 027 310 018 000
JO ANN PEDRONCELLI ETAL
1110 CRAIG AVE
SONOMA CA 95476-4034

APN: 027 310 021 000
TIMOTHY G LIBBY
4044 MOUNT VEEDER RD
NAPA CA 94558-9578

APN: 027 310 022 000
JOHANNES S H ELBERSE & ELIZABETH ANN
RIVERA
213 MONTCALM ST
SAN FRANCISCO CA 94110-5327

APN: 027 310 024 000
NAPA COMMUNITY COLLEGE
DISTRICT
2277 NAPA VALLEJO HWY
NAPA CA 94558-6236

APN: 027 310 043 000
60 CLEAR CREEK HOLDINGS LLC
855 HAMILTON AVE
PALO ALTO CA 94301

Guarantee No.: 5022800-0001275E File No.: LU004639-006-006

SCHEDULE A

(Continued)

APN: 027 310 044 000
AUGUST GROUP LLC
1922 GRAND VALLEY DR
HOUSTON TX 77090

APN: 027 330 005 000
MARK S ADAMS & JULIE A THORNTON
29 CAPE ANDOVER
NEWPORT BEACH CA 92660-8401

APN: 027 330 014 000
JAMES B LARSON & WENDY J WICKERSHAM
TR
6091 DRY CREEK RD
NAPA CA 94558-9382

APN: 027 330 015 000
MARIAN A KENNEY TR
166 SKYVIEW PL
VACAVILLE CA 95687-6581

APN: 034 370 015 000
RON BELLER & JENNIFER MOSES TR
139 24TH AVE
SAN FRANCISCO CA 94121-1220

APN: 034 370 019 000
RON BELLER & JENNIFER MOSES TR
139 24TH AVE
SAN FRANCISCO CA 94121-1220

APN: 034 370 020 000
RON BELLER & JENNIFER MOSES TR
139 24TH AVE
SAN FRANCISCO CA 94121-1220

APN: 034 370 028 000
AUGUST GROUP LLC
1922 GRAND VALLEY DR
HOUSTON TX 77090

APN: 034 370 029 000
DIANE EDWARDS LIPERA
794 AVENIDA SOLARIA
CHULA VISTA CA 91910-7727

APN: 034 370 036 000
FRANCIS & BETH CHAMBERLAIN TR ETAL
1611 MULLER DR
NAPA CA 94559-1006

APN: 027-310-016-000
CAROL J LOVE
6061 DRY CREEK RD
NAPA CA 94558-9775

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 Assured 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 Guaranties 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.

APN: 027 310 005 000
BRIAN HURLEY & KATHLEEN KUSEK
215 W WASHINGTON ST #3408
CHICAGO IL 60606-3519

APN: 027 310 008 000
ERNEST BURROUGHS ETAL
PO BOX 4377
EL DORADO HILLS CA 95762-0017

APN: 027 310 012 000
NICHOLAS W & STEPHANIE K STEPHENS
3421 16TH ST
SAN FRANCISCO CA 94114-1732

APN: 027 310 014 000
MELINI A SUC CARREON TR
1800 EL DORADO AVE
LA HABRA CA 90631-4408

APN: 027 310 018 000
JO ANN PEDRONCELLI ETAL
1110 CRAIG AVE
SONOMA CA 95476-4034

APN: 027 310 021 000
TIMOTHY G LIBBY
4044 MOUNT VEEDER RD
NAPA CA 94558-9578

APN: 027 310 022 000
JOHANNES S H ELBERSE & ELIZABETH ANN
RIVERA
213 MONTCALM ST
SAN FRANCISCO CA 94110-5327

APN: 027 310 024 000
NAPA COMMUNITY COLLEGE DISTRICT
2277 NAPA VALLEJO HWY
NAPA CA 94558-6236

APN: 027 310 043 000
60 CLEAR CREEK HOLDINGS LLC
855 HAMILTON AVE
PALO ALTO CA 94301

APN: 027 310 044 000
AUGUST GROUP LLC
1922 GRAND VALLEY DR
HOUSTON TX 77090

APN: 027 330 005 000
MARK S ADAMS & JULIE A THORNTON
29 CAPE ANDOVER
NEWPORT BEACH CA 92660-8401

APN: 027 330 014 000
JAMES B LARSON & WENDY J WICKERSHAM TR
6091 DRY CREEK RD
NAPA CA 94558-9382

APN: 027 330 015 000
MARIAN A KENNEY TR
166 SKYVIEW PL
VACAVILLE CA 95687-6581

APN: 034 370 015 000
RON BELLER & JENNIFER MOSES TR
139 24TH AVE
SAN FRANCISCO CA 94121-1220

APN: 034 370 019 000
RON BELLER & JENNIFER MOSES TR
139 24TH AVE
SAN FRANCISCO CA 94121-1220

APN: 034 370 020 000
RON BELLER & JENNIFER MOSES TR
139 24TH AVE
SAN FRANCISCO CA 94121-1220

APN: 034 370 028 000
AUGUST GROUP LLC
1922 GRAND VALLEY DR
HOUSTON TX 77090

APN: 034 370 029 000
DIANE EDWARDS LIPERA
794 AVENIDA SOLARIA
CHULA VISTA CA 91910-7727

APN: 034 370 036 000
FRANCIS & BETH CHAMBERLAIN TR ETAL
1611 MULLER DR
NAPA CA 94559-1006

APN: 027-310-016-000
CAROL J LOVE
6061 DRY CREEK RD
NAPA CA 94558-9775

THIS MAP MAY OR MAY NOT BE A SURVEY OF THE LAND DEPICTED HEREON. YOU SHOULD NOT RELY UPON IT FOR ANY PURPOSE OTHER THAN ORIENTATION TO THE GENERAL LOCATION OF THE PARCEL OR PARCELS DEPICTED. FIRST AMERICAN EXPRESSLY DISCLAIMS ANY LIABILITY FOR ALLEGED LOSS OR DAMAGE WHICH MAY RESULT FROM RELIANCE UPON THIS MAP.

Attachment A, Page 13

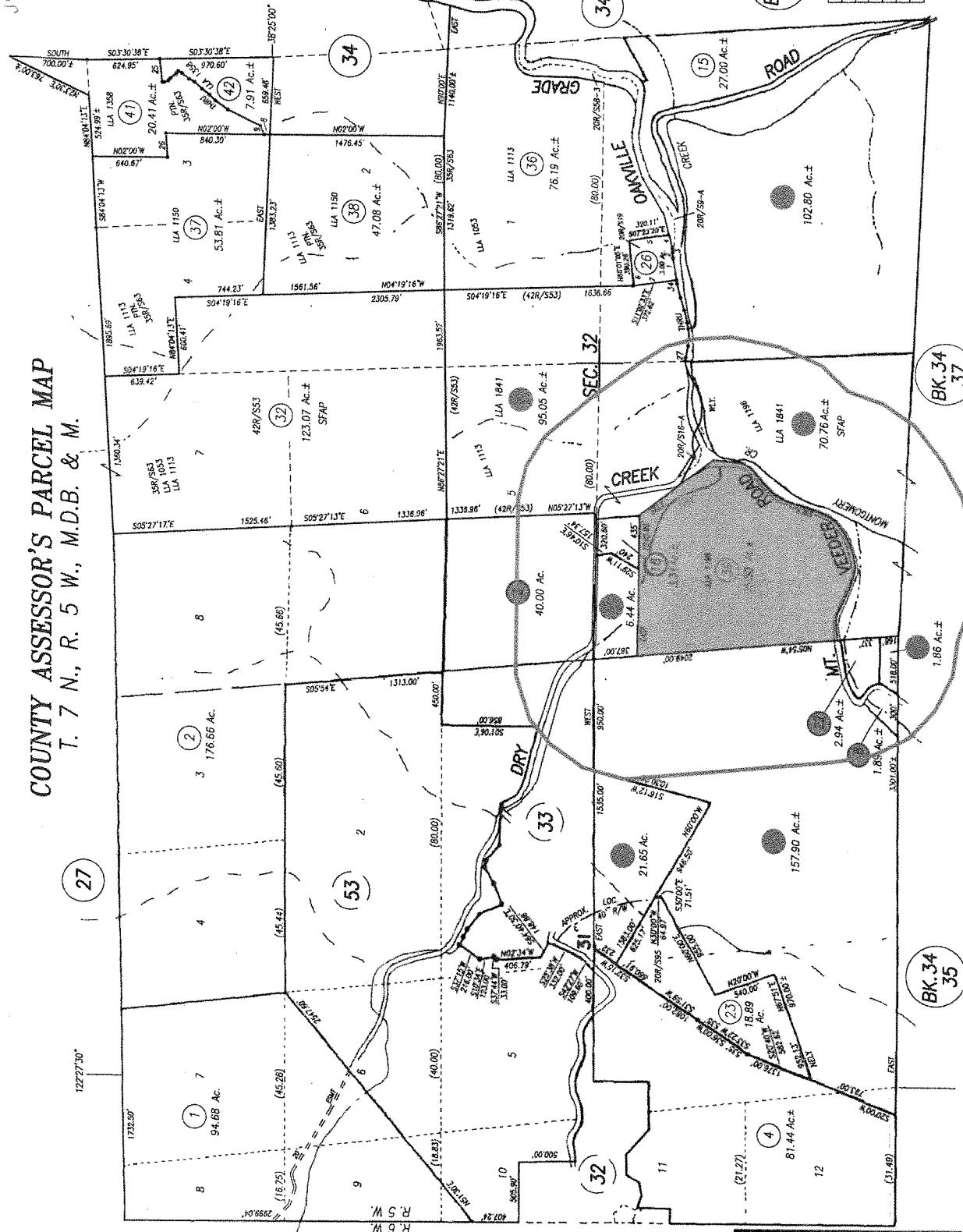
NOTE: This Map Was Prepared For Assessment Purposes Only. No Liability Is Assumed For The Accuracy Of The Data Delineated Hereon.

COUNTY ASSESSOR'S PARCEL MAP T. 7 N., R. 5 W., M.D.B. & M.

JUL 06 2016

27-31

Tax Area Code
85006



1.	N75°57'27"W	156.32'
2.	R-130°	1-25.27'
3.	S75°57'27"W	156.32'
4.	S75°57'27"W	156.32'
5.	S75°57'27"W	156.32'
6.	S75°57'27"W	156.32'
7.	N75°57'27"W	156.32'
8.	N75°57'27"W	156.32'
9.	N75°57'27"W	156.32'
10.	N75°57'27"W	156.32'
11.	N75°57'27"W	156.32'
12.	N75°57'27"W	156.32'
13.	N75°57'27"W	156.32'
14.	N75°57'27"W	156.32'
15.	N75°57'27"W	156.32'
16.	N75°57'27"W	156.32'
17.	N75°57'27"W	156.32'
18.	N75°57'27"W	156.32'
19.	N75°57'27"W	156.32'
20.	N75°57'27"W	156.32'
21.	N75°57'27"W	156.32'
22.	N75°57'27"W	156.32'
23.	N75°57'27"W	156.32'
24.	N75°57'27"W	156.32'
25.	N75°57'27"W	156.32'
26.	N75°57'27"W	156.32'
27.	N75°57'27"W	156.32'
28.	N75°57'27"W	156.32'
29.	N75°57'27"W	156.32'
30.	N75°57'27"W	156.32'
31.	N75°57'27"W	156.32'
32.	N75°57'27"W	156.32'
33.	N75°57'27"W	156.32'
34.	N75°57'27"W	156.32'

310-31, 34, 36, 37, 38	RS 5-22-03
310-41 & 42	LLA 12-31-03
310-01	ESMT 2-16-07
ADJ PG CHANGE	7-16-09
310-31 & 32	RS 9-9-13
310-43 & 44	LLA 12-23-15
REVISION	DATE

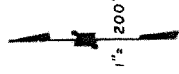
27-31

COUNTY ASSESSOR'S PARCEL MAP

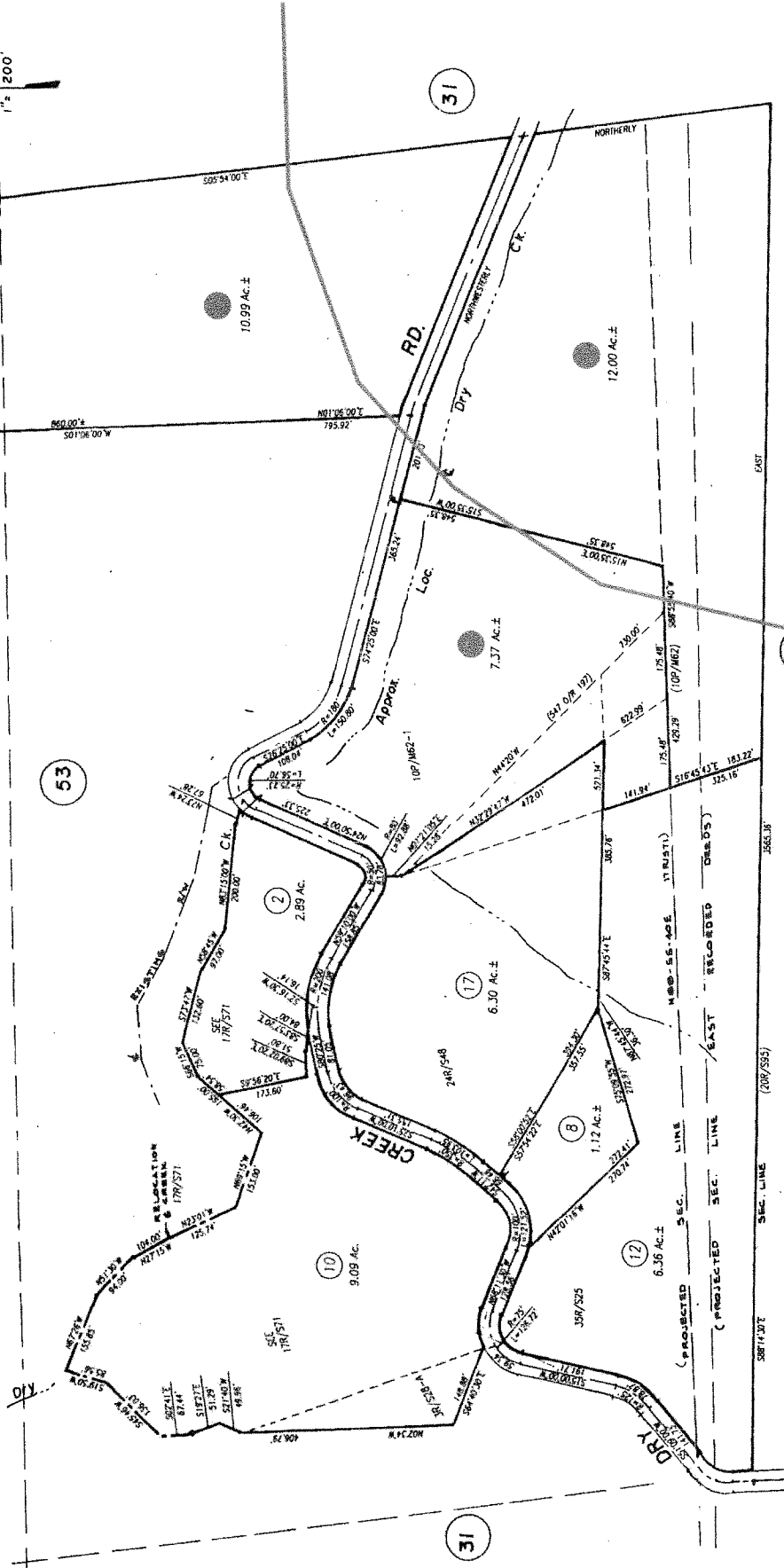
LOT 1 SEC. 31 T. 7 N., R. 5 W., M.D.B.M.

APR 01 2003
Tax Area Code
85006

27-33



SEC. 32
SEC. 31



Assessor of Nepa County

REVISION	DATE
12-7-79	
7-21-83	
9-14-85	
3-30-88 & 14 DEC'S 8-9-92	
PIN 330-17 RS	12-11-02

1979

27-33

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

Note: This map was prepared by computer. Only

[illegible]

Assessor of Napa County 1982

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

370-18 RS	4-17-02
370-30 THRU 34	12-28-05
370-35 LIA	12-18-07
370-36 THRU 38	9-8-09
370-39 & 40 LIA	11-23-10
PTM 370-31,35,38 RS	5-19-11
370-28 LIA	12-23-15

Assessor's Map Bk. 34 Pg. 37
County of Napa Calif