

Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number G-16346

Prior to the issuance of a permit, the Department must receive permit recording fees in the amount of \$300.00. Please include your application number on any documents submitted, including your check made out to the Oregon Water Resources Department.

**Superseding Proposed Final Order**

This Proposed Final Order supersedes the Proposed Final Order issued for G-16346 on March 6, 2007.

*Summary of Recommendation:* The Department recommends that the attached draft permit be issued with conditions.

*Application History*

On November 23, 2004, Black Family Vineyard, LLC. submitted an application to the Department for the following water use permit:

- Amount and Use of Water: 0.35 cubic foot per second (CFS), being 0.31 CFS for irrigation use on 24.5 acres and 0.04 CFS for domestic use for 49 households
- Source of Water: Well 1 in Chehalem Creek Basin and Well 2 in Harvey Creek Basin
- Area of Proposed Use: Yamhill County within Section 23, Section 24, Section 25, and Section 26, Township 3 South, Range 3 West, W.M.

On April 15, 2005, the Department mailed the applicant notice of its Initial Review, determining that "The use of 0.35 cubic foot per second (CFS), being 0.31 CFS for irrigation use on 24.5 acres and 0.04 CFS for domestic use for 49 households, from Well 1 in Chehalem Creek Basin and Well 2 in Harvey Creek Basin is allowable from March 1 through October 31 for irrigation and year round for domestic." The applicant did not notify the Department to stop processing the application within 14 days of that date.

On April 19, 2005, the Department gave public notice of the application in its weekly notice. The public notice included a request for comments, and information for interested persons about both obtaining future notices and a copy of the Proposed Final Order. No written comments were received within 30 days.

The application was on administrative hold pending the Department's review of Hydrogeologic Investigation Report (October 18, 2006) completed for the applicant by Newton Consultants Inc. and Northwest Geotech Inc.

On March 6, 2007, a Proposed Final Order was issued recommending approval of G-16346 for 0.31 CFS for irrigation use on 24.5 acres and 0.04 CFS for domestic use for 49 households from Well 1 in Chehalem Creek Basin and Well 2 in Harvey Creek Basin.

Timely protests to the March 6, 2007 Proposed Final Order were received from Melvin Olson, Arlon Bakanoff, and the City of Dundee.

On April 17, 2008, the applicant amended the application to 0.25 CFS for irrigation use on 20.0 acres, 0.03 CFS for domestic use for 36 households, and also eliminated the use of Well 2 from the application.

In reviewing applications, the Department may consider any relevant sources of information, including the following:

- recommendations by other state agencies
- any applicable basin program
- any applicable comprehensive plan or zoning ordinance
- the amount of water available
- the rate and duty for the proposed use
- pending senior applications and existing water rights of record
- designations of any critical ground water areas
- the Scenic Waterway requirements of ORS 390.835
- applicable statutes, administrative rules, and case law
- any general basin-wide standard for flow rate and duty of water allowed
- the need for a flow rate and duty higher than the general standard
- any comments received

#### *Findings of Fact*

The Willamette Basin Program allows irrigation use and domestic use.

Well 1 in Chehalem Creek Basin is not within or above a State Scenic Waterway.

#### Groundwater Findings Under OAR 690-09

The Department determined, consistent with OAR 690-09-0040(4), that the proposed ground water use will not have the potential for substantial interference with the nearby surface water sources.

In making this determination, the Department considered whether:

- (a) There is a hydraulic connection from the proposed well(s) to any surface water sources.

- (b) The point of appropriation is a horizontal distance less than one-fourth mile from the surface water source;
- (c) The rate of appropriation is greater than five cubic feet per second, if the point of appropriation is a horizontal distance less than one mile from the surface water source;
- (d) The rate of appropriation is greater than one percent of the pertinent adopted minimum perennial streamflow or instream water right with a senior priority date, if one is applicable, or of the discharge that is equaled or exceeded 80 percent of time, as determined or estimated by the Department, and if the point of appropriation is a horizontal distance less than one mile from the surface water source;
- (e) The ground water appropriation, if continued for a period of 30 days, would result in stream depletion greater than 25 percent of the rate of appropriation, if the point of appropriation is a horizontal distance less than one mile from the surface water source.

According to the Department's rules, the potential for substantial interference is assumed if (a) and either (b) or (c) or (d) or (e) are met. For this application, the Department determined that there is no potential for substantial interference, because either (a) is not met, or (b), (c), (d) or (e) are not met, or both.

An assessment of groundwater availability has been completed by the Department's Groundwater/Hydrology section. A copy of this assessment is in the file. Based on this assessment, the Department finds that the use of ground water, as conditioned, will avoid injury to existing rights and the resource.

The Department finds that the amended amounts of water, 0.25 CFS for irrigation and 0.03 CFS for domestic use, are acceptable.

The proposed well is not within a designated critical ground water area.

The Department finds, based on the Ground Water Section's February 16, 2007, Review of Hydrogeologic Investigation Report submitted by the applicant, that Well 1 as currently developed meets the following four recommended permit conditions:

The well shall be continuously cased and continuously sealed to a minimum depth of 290 feet below mean sea level. If it can be shown that an alternative casing and seal depth will prevent commingling of shallow and deep aquifers and prevent interference with the Red Hills Estate and City of Dundee wells listed below, the permittee can contact the Department Hydrogeologist for this permit or the Ground Water/Hydrology Section Manager to request approval for an alternative construction design. The request shall be in writing and shall include a rough well log and a proposed construction design.

Before water is used under this permit, the permittee shall demonstrate, to the satisfaction of the Department, that the well is not likely to interfere with any of the following nearby wells, as currently constructed, which are listed on senior water rights:

- (a) City of Dundee well #3 (YAMH 4549/4538, Certificate 29157)
- (b) City of Dundee well #9 (YAMH 1659/52883, Permit G-12685)
- (c) Red Hills Estates well #1 (YAMH 4548/53743, Permit G-13671)
- (d) Red Hills Estates well #2 (YAMH 121/50706, Permit G-13671)

A down-hole video log shall be made prior to installation of permanent casing and a copy of the log shall be submitted to the Department.

The Department requests that drill cuttings be collected from each well and submitted to the Department for geologic analysis. The samples should be collected at 10-foot intervals and at changes in formation and stored in bags with the sample interval noted on each bag.

#### *Conclusions of Law*

Under the provisions of ORS 537.621, the Department must presume that a proposed use will ensure the preservation of the public welfare, safety and health if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission.

The proposed use requested in this application is allowed in the Willamette Basin Plan, or a preference for this use is granted under the provisions of ORS 536.310(12).

Water is available for the proposed use.

The proposed use will not injure other water rights.

The proposed use complies with other rules of the Water Resources Commission not otherwise described above.

The proposed use complies with the State Agency Agreement for land use.

No proposed flow rate and duty of water higher than the general basin-wide standard is needed.

For these reasons, the required presumption has been established.

Under the provisions of ORS 537.621, once the presumption has been established, it may be overcome by a preponderance of evidence that either:

- (a) One or more of the criteria for establishing the presumption are not satisfied; or
- (b) The proposed use would not ensure the preservation of the public welfare, safety and health as demonstrated in comments, in a protest . . . or in a finding of the department that shows:
  - (A) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected; and
  - (B) Specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected.

In this application, all criteria for establishing the presumption have been satisfied, as noted above. The presumption has not been overcome by a preponderance of evidence that the proposed use would impair or be detrimental to the public interest.

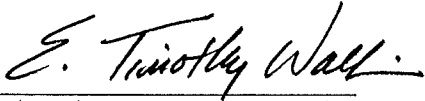
The Department therefore concludes that water is available in the amount necessary for the proposed use; the proposed use will not result in injury to existing water rights; and the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

When issuing permits, ORS 537.628(1) authorizes the Department to include limitations and conditions which have been determined necessary to protect the public welfare, safety, and health. The attached draft permit is conditioned accordingly.

Recommendation

The Department recommends that the attached draft permit be issued with conditions.

DATED June 10, 2008



Phillip C. Ward, Director  
Water Resources Department

*If you have any questions,  
please check the information  
box on the last page for the  
appropriate names and  
phone numbers.*

Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for ground water), you can protest this proposed final order. Protests must be received in the Water Resources Department no later than July 25, 2008. Protests must be in writing, and must include the following:

- Your name, address, and telephone number;
- A description of your interest in the proposed final order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in this proposed final order would impair or be detrimental to your interest;
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known; and
- If you are not the applicant, the protest fee of \$350 required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing. If you do not request a hearing, the Department will presume that you do not wish to contest the findings of the proposed final order.

- *If you do not protest this Proposed Final Order and if no substantive changes are made in the final order, you will not have an opportunity for judicial review, protest or appeal of the final order when it is issued.*

#### Requests for Standing

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for ground water), persons other than the applicant who support a proposed final order can request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order.

Requests for standing must be received in the Water Resources Department no later than **July 25, 2008**. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the proposed final order as issued;
- A detailed statement of how the requester would be harmed if the proposed final order is modified; and
- A standing fee of \$100.00. If a hearing is scheduled, an additional fee of \$250.00 must be submitted along with a request for intervention.

After the protest period has ended, the Director will either issue a final order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and either:

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

*This document was prepared by Jeana Eastman. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 503-986-0859.*

*If you have questions about how to file a protest or a request for standing, please refer to the respective sections in this Proposed Final Order entitled "Protests" and "Requests for Standing". If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.*

*If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801. Address all other correspondence to:*

*Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.*



DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF YAMHILL

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

BLACK FAMILY VINEYARD LLC  
550 WEST C ST SUITE 1300  
SAN DIEGO, CA 92101

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-16346

SOURCE OF WATER: WELL 1 IN CHEHALEM CREEK BASIN

PURPOSE OR USE: IRRIGATION USE ON 20.0 ACRES AND DOMESTIC USE FOR 36 HOUSEHOLDS

MAXIMUM RATE: 0.28 CUBIC FOOT PER SECOND (CFS), BEING 0.25 CFS FOR IRRIGATION AND 0.03 CFS FOR DOMESTIC USE

PERIOD OF USE: IRRIGATION - MARCH 1 THROUGH OCTOBER 31  
DOMESTIC - YEAR ROUND

DATE OF PRIORITY: NOVEMBER 23, 2004

WELL LOCATION: NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , SECTION 25, T3S, R3W, W.M.; 570 FEET SOUTH & 1480 EAST FROM NW CORNER, SECTION 25

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  DOMESTIC  
SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  DOMESTIC AND 4.5 ACRES  
SECTION 23

NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  DOMESTIC  
SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  DOMESTIC AND 1.0 ACRE  
SECTION 24

NE ¼ NW ¼ DOMESTIC AND 3.5 ACRES  
NW ¼ NW ¼ DOMESTIC AND 6.0 ACRES  
SECTION 25

NE ¼ NE ¼ DOMESTIC AND 5.0 ACRES  
SECTION 26  
TOWNSHIP 3 SOUTH, RANGE 3 WEST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of appropriation. The permittee shall maintain the meter(s) in good working order. The permittee shall keep a complete record of the amount of water used each month, and shall submit an annual report which includes the recorded water use measurements to the Department by December 1 of each year. Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.
  - B. The permittee shall allow the watermaster access to the meter(s); provided however, where any meter is located within a private structure, the watermaster shall request access upon reasonable notice.
- (1) Use of water from any well, as allowed herein, shall be controlled or shut off if the well displays:
    - (a) An average water level decline of three or more feet per year for five consecutive years; or
    - (b) A total water level decline of fifteen or more feet; or
    - (c) A hydraulic interference decline of fifteen or more feet in any neighboring well providing water for senior exempt uses or wells covered by prior rights.
  - (2) The permittee/appropriator shall be responsible for complying with each of the following requirements for measuring water levels in the well(s).
    - (a) Use of water from a new well shall not begin until an initial static water level in the well has been measured and reported to the Department.
    - (b) In addition to the measurement required in subsection (a) of this section, a water level measurement shall be made each year during the period March 1 through March 31.

- (c) All water level measurements shall be made by a qualified individual. Qualified individuals are certified water rights examiners, registered geologists, registered professional engineers, licensed land surveyors, licensed water well constructor, licensed pump installer, or the permittee/appropriator.
- (d) Any qualified individual measuring a well shall use standard methods of procedure and equipment designed for the purpose of well measurement. The equipment used shall be well suited to the conditions of construction at the well. A list of standard methods of procedure and suitable equipment shall be available from the Department.
- (e) The permittee/appropriator shall report the record of measurement to the Department on a form available from the Department. The record of measurement shall include both measurements and calculations, shall include a certification as to their accuracy signed by the individual making the measurements, and shall be submitted to the Department within 90 days from the date of measurement. The Department shall determine when any of the declines cited in section (1) are evidenced by the well measurement required in section (2).
- (f) Measurements from a suitable alternative well can be substituted for measurements in the production well if an alternative measurement plan is submitted to, and approved by, the Department.

The well shall be continuously cased and continuously sealed to a minimum depth of 290 feet below mean sea level. If it can be shown that an alternative casing and seal depth will prevent commingling of shallow and deep aquifers and prevent interference with the Red Hills Estate and City of Dundee wells listed below, the permittee can contact the Department Hydrogeologist for this permit or the Ground Water/Hydrology Section Manager to request approval for an alternative construction design. The request shall be in writing and shall include a rough well log and a proposed construction design.

Before water is used under this permit, the permittee shall demonstrate, to the satisfaction of the Department, that the well is not likely to interfere with any of the following nearby wells, as currently constructed, which are listed on senior water rights:

- (a) City of Dundee well #3 (YAMH 4549/4538, Certificate 29157)
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A down-hole video log shall be made prior to installation of permanent casing and a copy of the log shall be submitted to the Department.

The Department requests that drill cuttings be collected from each well and submitted to the Department for geologic analysis. The samples should be collected at 10-foot intervals and at changes in formation and stored in bags with the sample interval noted on each bag.

#### STANDARD CONDITIONS

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may not be valid, unless the Department authorizes the change in writing.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The well(s) shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR Chapter 635, Division 415, Section 030 adopted November 13, 1991 shall be followed.

The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

Where two or more water users agree among themselves as to the manner of

rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water shall be limited when it interferes with any prior surface or ground water rights.

Completion of construction and complete application of the water to the use shall be made on or before October 1, 2012. If the water is not completely applied before this date, and the permittee wishes to continue development under the permit, the permittee must submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued \_\_\_\_\_, 2008

DRAFT - THIS IS NOT A PERMIT

\_\_\_\_\_  
for Phillip C. Ward, Director  
Water Resources Department

RECEIVED

MAY 12 2008

WATER RESOURCES DEPT  
SALEM, OREGON



LOCATED IN:  
SE 1/4 OF SE 1/4 OF SECTION 23;  
SW 1/4 OF SW 1/4 OF SECTION 24;  
N 1/2 OF NW 1/4 OF SECTION 25; AND  
NE 1/4 OF NE 1/4 OF SECTION 26  
IN T3S R3W, W.M. YAMHILL COUNTY

**LEGEND**

TL 700 TAX LOT



1/4 1/4 SECTION



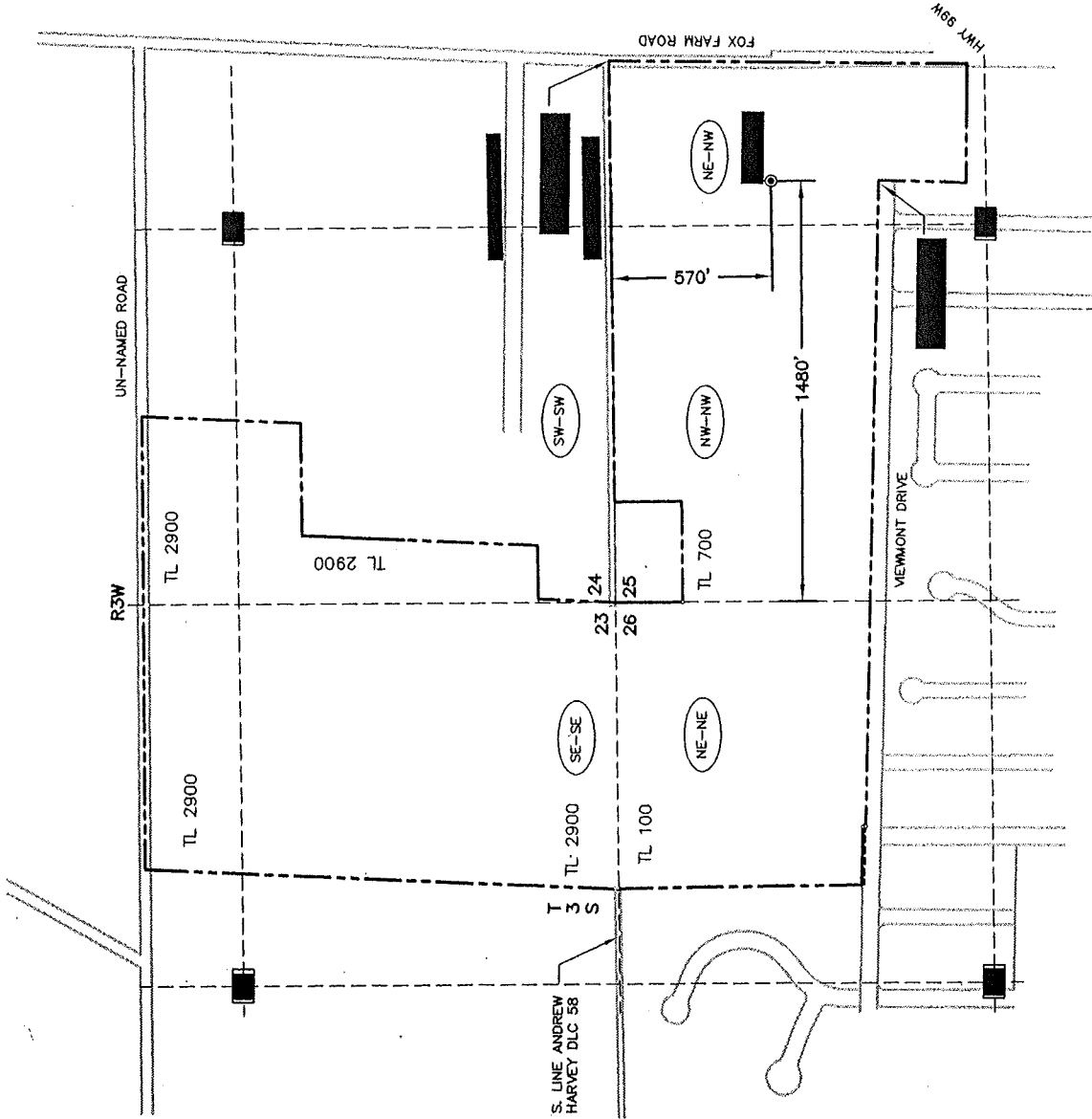
1/4 SECTION

PROJECT BOUNDARY

SECTION	QTR-QTR	ACRES PLUS DOMESTIC
23	SE-SE	4.5
24	SW-SW	1.0
25	NW-NW	6.0
25	NE-NW	3.5
26	NE-NE	5.0

**NOTES:**

1. THIS MAP WAS PREPARED FOR THE PURPOSE OF IDENTIFYING THE LOCATION OF WATER RIGHTS ONLY AND IS NOT INTENDED TO PROVIDE LEGAL DIMENSIONS OR LOCATIONS OF PROPERTY OWNERSHIP LINES.



VINEYARDS AT DUNDEE SPRINGS  
BLACK FAULT VINEYARD, LLC  
SAY DUCK 54 92122  
818-818-1243

CES|NW  
15329 HARVEY ROAD, STE 100  
LAKE OSWEGO, OREGON 97035  
503.508.6533 www.cesnw.com

GROUNDWATER  
APPLICATION G-16346

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