

EXHIBIT B-2

KJELDSSEN BIOLOGICAL CONSULTING
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923 St. Helena Ave.
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July 19th, 2019

To: Heather McCollister

Shannon Ranches
P.O. Box 2037
Clearlake Oaks CA 95423

Re: Drainage Classification

Mitsuko, Shannon Ranches Vineyard Conversion
Agricultural Erosion Control Plan (ECPA) File # P19-00052-ECPA
4189 Withers Road: APN 047-280-017

INTRODUCTION

This drainage review is in response to Napa County Donald Barrella's October 10, 2017 e-mail requesting "discussion and supporting documentation of the modification of the blue-line stream(s) or portions thereof located on the property."

Section 404 of the Clean Water Act

Section 404 of the Clean Water Act gives the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers regulatory and permitting authority regarding discharge of dredged or fill material into "navigable waters of the United States" Section 502(7) of the Clean Water Act defines navigable waters as "waters of the United States, including territorial seas." Section 328 of Chapter 33 in the Code of Federal Regulations defines the term "waters of the United States" as it applies to the jurisdictional limits of the authority of the Corps under the Clean Water Act. A summary of this definition of "waters of the U.S." in 33 CFR 328.3 includes (1) waters used for commerce and subject to tides; (2) interstate waters and wetlands; (3) "other waters" such as intrastate lakes, rivers, streams, and wetlands; (4) impoundments of waters; (5) tributaries of waters; (6) territorial seas; and (7) wetlands adjacent to waters. Therefore, for purposes of determining Corps jurisdiction under the Clean Water Act, "navigable waters" as defined in the Clean Water Act are the same as "waters of the U.S." defined in the Code of Federal Regulations above.

The limits of Corps jurisdiction under Section 404 as given in 33 CFR Section 328.4 are as follows: (a) Territorial seas: three nautical miles in a seaward direction from the baseline; (b) Tidal waters of the U.S.: high tide line or to the limit of adjacent non-tidal waters; (c) Non-tidal waters of the U.S. ordinary high water mark or to the limit of adjacent wetlands; (d) Wetlands: to the limit of the wetland.

California Fish and Wildlife Code Section 1600

Streams, lakes, and riparian vegetation as habitat for fish and other wildlife species, are subject to jurisdiction by the CDFW under Sections 1600-1616 of the California Fish and Wildlife Code. Any activity that will do one or more of the following: 1) substantially obstruct or divert the natural flow of a river, stream, or lake; 2) substantially change or use any material from the bed, channel, or bank of a river, stream, or lake; or 3) deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into a river, stream, or lake; generally require a 1602 Lake and Streambed Alteration Agreement. The term “stream,” which includes creeks and rivers, is defined in the California Code of Regulations (CCR) as follows: “a body of water that flows at least periodically or intermittently through a bed or channel having banks and supports fish or other aquatic life. This includes watercourses having a surface or subsurface flow that supports or has supported riparian vegetation” (14 CCR 1.72). In addition, the term stream can include ephemeral streams, dry washes, watercourses with subsurface flows, canals, aqueducts, irrigation ditches, and other means of water conveyance if they support aquatic life, riparian vegetation, or stream-dependent terrestrial wildlife. Riparian is defined as, “on, or pertaining to, the banks of a stream;” therefore, riparian vegetation is defined as, “vegetation which occurs in and/or adjacent to a stream and is dependent on, and occurs because of, the stream itself.” Removal of riparian vegetation also requires a Section 1602 Lake and Streambed Alteration Agreement from the CDFW.

Waters of the U. S.

Waters of the U.S. are defined as wetlands, ponds, lakes, creeks, streams, rivers, ephemeral drainages, ditches and seasonally ponded areas (EPA and ACOE rule August 28, 2015). Seasonal stream channels with a definable bed and bank fall within the jurisdiction of (EPA, ACOE and CDFW).

Waters of the State

The term “Waters of the State” is defined by the Porter-Cologne Act as “any surface water or groundwater, including saline waters, within the boundaries of the state.” “Waters of the State” are determined by the evaluation of continuity, “ordinary high-water mark,” a definable bed and bank, evidence of or ability to transport sediment and/or a blue line on USGS Quadrangle Map. The Regional Water Quality Control Board (RWQCB) protects all waters in its regulatory scope and has special responsibility for wetlands, riparian areas, and headwaters. These water bodies have high resource value, are vulnerable to filling, and are not systematically protected by other programs. RWQCB jurisdiction includes “isolated” wetlands and waters that may not be regulated by the ACOE under Section 404.

FINDINGS

The property was reviewed in the field on July 10, 2019. Review of Cuttings Wharf USGS Topographic Map shows a Blue Line drainage within the project boundary. This drainage has been piped in the past. Available information documents piping the drainages on the site in the early 1980's. This predated the U.S. Army Corps of Engineers Jurisdiction on Waters of the U.S. and predates California Department of Fish and Wildlife records. Piping of the Blue Line at this time was not a violation. Review of historic aerial photos shows that no riparian vegetation was removed when the drainage was piped. California Department of Fish and Wildlife and U.S. Army

Corps of Engineers considers a culverted or piped drainage as jurisdictional. Therefore, the piped drainage is currently considered a Blue Line creek

The surface drainages within the study area do not support aquatic life or have the ability to transport sediment. The piped sections may transport sediment.

Napa County Chapter 18.108. Conservation Regulations

"Stream" means any of the following:

1. A watercourse designated by a solid line or dash and three dots symbol on the largest scale of the United State Geological Survey maps most recently published, or any replacement to that symbol;

18.108.025 - General provisions—Intermittent/perennial streams.

1. Setbacks for New Land Clearings for Agricultural Purposes. No land clearing or earthmoving activities as defined in Section 18.108.030 for new agricultural uses as defined by Section 18.08.040 shall take place within the following minimum setbacks from streams:

Slope (Percent)	Required Setback
<1	35 feet
1—5	45 feet
5—15	55 feet
15—30	65 feet

Ephemeral or intermittent streams that do not meet the criteria for a stream as defined in Section 18.108.030 shall have a minimum 35-foot setback.

The Cuttings Wharf USGS Topographic map shows a historic Blue Line drainage on the property. The Main channel has been piped and is still a feature in the landscape. This is mapped on the attached Drainage Classification Map as Drainage A. Napa County policy would require a 45-foot setback from the center line of this feature.

Drainage B is also mapped as a USGS. Blue Line. This drainage has been diverted into drainage A. There are no surface manifestations of this feature (vegetation change or topographic features). Napa County policy would not require a setback.

There are two additional ephemeral drainages C and D that have been piped and contain very small surface features that could transport surface water during storm events. Current Napa County policy would require a 35-foot setback from the center line of these features.



Photo illustrating conditions at Drainage A.



Photo illustrating conditions at Drainage B.



Photo illustrating drop inlet structures along Drainage A.



Photo illustrating conditions at Drainage D.

Should you have any questions, please do not hesitate to contact us at: Telephone (707) 544-3091, Email kjeldsen@sonic.net, or Fax (707) 575-8030. Thank you for the opportunity to clarify the above material.

Sincerely,

Kjeldsen Biological Consulting

Plate I. Site Map

Plate II. Drainage Classification Map

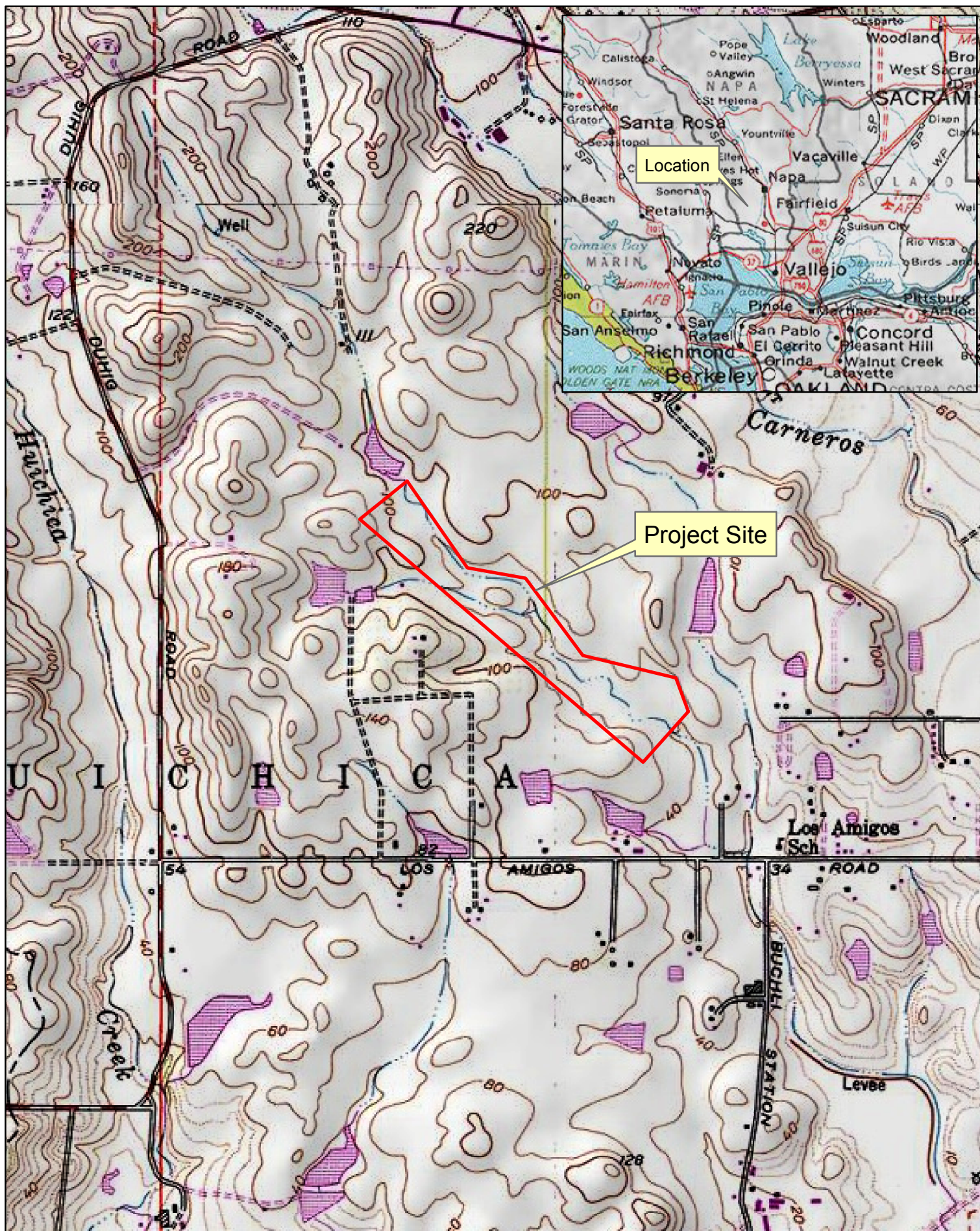


Plate I. Location and Site Map

(USGS Cuttings Wharf Quadrangle)



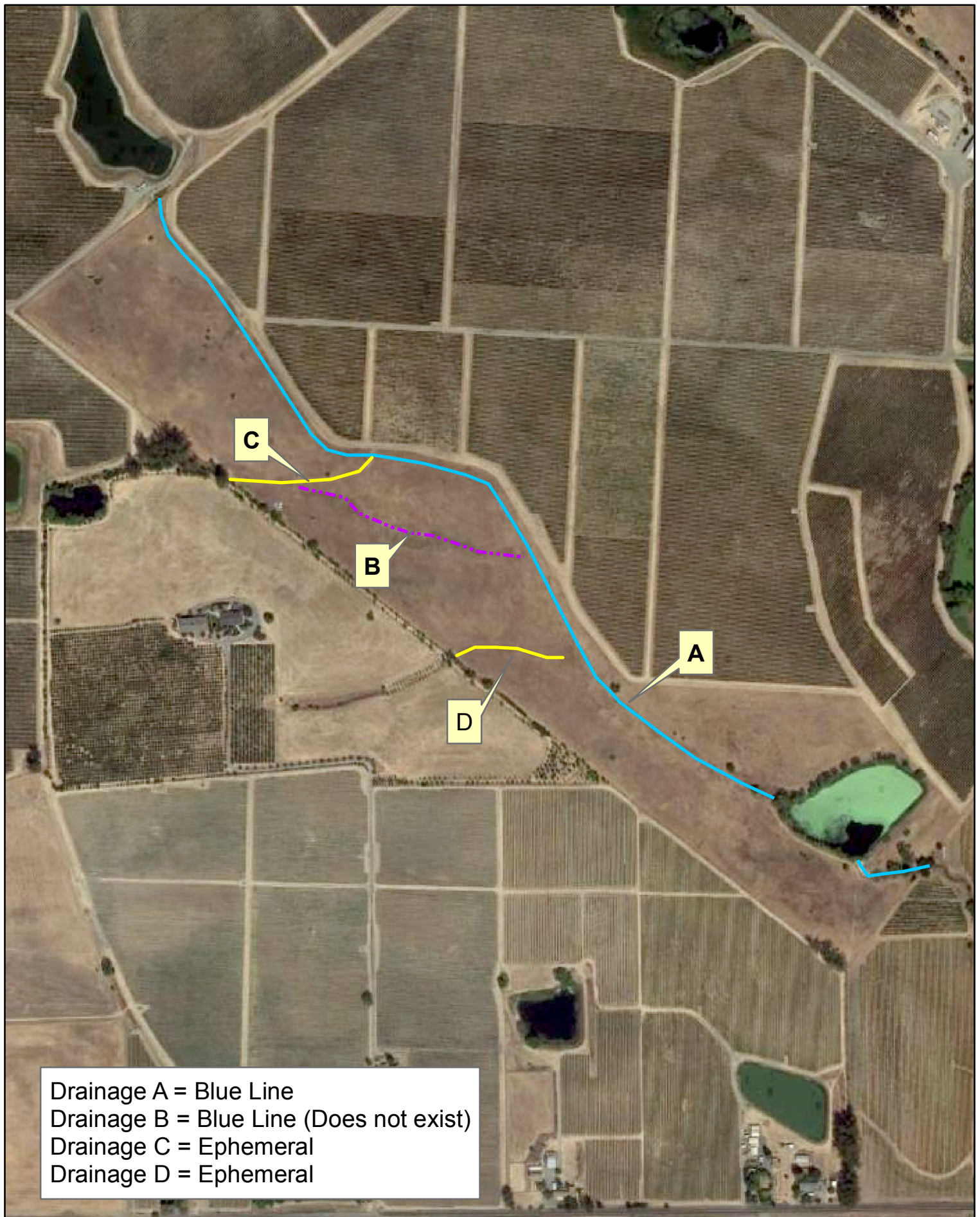


Plate II. Drainage Classification

