



RESPONSE TO A NOTICE OF PROBABLE VIOLATION

Case Number: D223320008

Name: Nautilus General Contractors

The provisions of California Code of Regulations, Title 19, Division 4, Chapter 3, governs the Notice of Probable Violation (Notice) proceeding before the California Underground Safety Board (Board). Specifically, 19 CCR section 4252 provides your response options upon the receipt of a Notice.

Be advised that all material submitted by you in response to a Notice are subject to public disclosure.

Please select from one of the response options listed below. You have 30 business days to submit your written response to the Underground Safety Board. Failure to submit a written response will be considered by the Board as a “No Contest” response. Please attach this form with your selection to your response. If you choose “Contest in Writing” or “Contest in Writing and Request Informal Hearing,” please also include your written explanation and documents that may be referenced in your written explanation or informal hearing. For all options, Board investigators may present the basis for your probable violation on the date of the public meeting as provided in your Notice, and the Board will review your case and vote to determine whether a probable violation exists and whether the corrective action and/or penalty proposed by the Board staff is appropriate at the meeting.

Response Options

___ No Contest

You do not contest the violations or the penalty. If you choose to not contest the violations or the penalty, you will waive your right to request the Board to reconsider its decision or recommendation issued.

___ Contest in Writing

You wish to contest either the violation, the penalty, or both by providing the Board with written explanations and other records supporting the explanation. You will submit the written explanations and records, if any, with your written response within 30 business days of receiving this Notice. Your response must not exceed 10 pages (excluding exhibits) in length and must be on 8.5” x 11” white paper, double-spaced, and in a font size no smaller than 11-point. You must submit the original and 12 physical copies of the written explanation and records to the address below or submit one (1) copy electronically to enforcement.dig@energysafety.ca.gov. You may request an extension to the page limit by submitting a request to the Board staff within 5 days of

receiving this Notice. The Board staff will notify you of its determination with respect to the page limit extension request within 10 days of you submitting the request. The Board will review and vote on your case on the date of the public meeting provided in the Notice.

X Contest in Writing and Request Informal Hearing

You wish to contest either the violation, the penalty, or both with oral argument at an informal hearing during a public Board meeting. You will submit with your written response, written explanations, information, or other materials you wish to reference in your oral hearing. Your response must not exceed 10 pages (excluding exhibits) in length and must be on 8.5" x 11" white paper, double-spaced, and in a font size no smaller than 11-point. You must submit the original and 12 physical copies of the written explanation and records to the address below or submit one (1) copy electronically to enforcement.dig@energysafety.ca.gov.

Your hearing would be during the public meeting noted in the Notice, on November 17, 2025, at 1:00 p.m., and the location of the meeting will be in Sacramento, California.

California Natural Resources Agency Building
Auditorium – First Floor
715 P Street
Sacramento, California 95814

Please note that your oral hearing may not start exactly at the time provided as there may be multiple hearings during one Board meeting. You may request to reschedule your hearing no later than 15 business days from your hearing date. Your request to reschedule a hearing may be granted no more than once and only for good cause.

You may participate in person or through a virtual meeting platform. You will have 15 minutes to present your reasons for contesting the allegation or reasons that may support a modification or elimination of the penalty or corrective action. During your hearing, conducted pursuant to Section 4253 of Title 19 of the California Code of Regulations, board investigators may present the basis for your Notice of Probable Violation. You will be granted up to 15 minutes to respond to the Notice and up to 5 minutes to respond to any Board staff rebuttal. You may arrange, at your expense, for a stenographer or court reporter to transcribe the informal hearing. You must provide a copy of any transcription to the Board.

The Board will issue a decision at,

- The informal hearing;
- Thereafter within 45 business days of the informal hearing; or
- At a subsequent Board public meeting where a quorum of the Board is present.

The Board will adopt the issued written decision at the hearing or a subsequent public meeting. The Board's decision is effective upon the adoption of the written decision.

___ Reservation of Rights to Contest Violation with the Enforcement Agency

You contest the violation, the penalty, or both, but do not wish to present your comments to the Board. You request that the Board refer the case to the appropriate state or local agency that would conduct the enforcement of the probable violation pursuant to Government Code section 4216.6(c) (Enforcement Agency), and you will reserve the right to contest the violation, the penalty, or both before the Enforcement Agency. The Board will review and vote on your case to determine whether a probable violation exists and whether the corrective action and/or penalty proposed by the Board staff is appropriate at the public meeting noted in your Notice. Should the Board determine a probable violation exists, the Board will refer your case to the Enforcement Agency.

Board Contact Information:

Please direct all formal correspondence, including your written response to the Notice, to the Board either via email at enforcement.dig@energysafety.ca.gov or via mail to the following address:

Office of Energy Infrastructure Safety
Underground Safety Board
715 P St., 15th Floor
Sacramento, CA 95814

Please provide your written response within 30 business days of receiving this Notice. If a response is provided via mail, the mailed response must be received by the Board within 30 business day.

Penalties

Any penalties, including corrective actions, are only proposals by Board staff, and do not require any current corrective action or payment at this time. Your Enforcement Agency will provide the final determination to and instructions for any penalty. Please do not include any proof of compliance with proposed corrective actions or payment of a proposed penalty with your written response.

ADA Compliance

The California Underground Safety Board complies with the Americans with Disabilities Act ("ADA") by ensuring that the facilities are accessible to persons with disabilities, and providing this Notice and information given to the members of the California Underground Safety Board in appropriate alternate formats when requested. If you need further assistance, including disability-related modifications or accommodations, you may contact the Underground Safety Board no later than seven (7) calendar days before a scheduled hearing at (916) 902-6000. California Relay Service is available by dialing 711.



October 24, 2025

VIA EMAIL: enforcement.dig@energysafety.ca.gov

Office of Energy Infrastructure Board
Underground Safety Board
715 P Street, 15th Floor
Sacramento, California 95814

RE: Case No. D223320008
RESPONSE TO "NOTICE OF PROBABLE VIOLATION"

Dear Board:

We are in receipt of the September 15, 2025 "Notice of Probable Violation" drafted by Anona Nonner, Chief of Investigations/Underground Safety Board. We have read the document and attachments thoroughly, we have met internally, and we have reviewed all of our relevant file material, and studied the Investigation Report. We contest the violation and request to appear at the hearing on November 17, 2025. As requested, attached is our written response, with supportive attachments.

Scope of Work

As a part of a larger contract, we were hired to remove and replace approximately 6,900 square feet of concrete driveway paving in a private community. We were not hired to do any excavation – simply to demolish the existing concrete and replace that same concrete on grade. No digging, subsurface exploration or excavation was a part of this work or ever contemplated.

We hired a properly licensed subcontractor, Agundez Concrete (Agundez), to perform this scope of work for us. This was the first and only time ever working with this contractor. Consistent with our contracted scope of work, Agundez was not contracted to perform any excavation or subgrade work. More specifically, their contract (and ours) *excludes* work on sub base materials that are below grade.

Interpretation of "Excavation" and "Excavator"

Throughout the Notice of Possible Violation, the words "excavation," "excavator" and "digging" are used repeatedly to define the work performed by our subcontractor Agundez (and us as the general contractor by extension). Some of the asserted violations are tied to excavation work and statutes related to excavation work are quoted. These words and descriptions are misleading and incorrect given the work that was actually contracted and performed.

Reconstruction
Contracting & Consulting
California Lic. 807552
Arizona Lic. 173528, 173529, 236107
Nevada Lic. 58265, 73819
New Mexico Lic. 379523
Utah Lic. 9873226-5501

Nautilus General Contractors, Inc.
Nautilus Building Consultants, Inc.

Phone 858.939.1344
8033 Vickers Street
San Diego, CA 92111
nautilusgeneral.com

It is important to note that no excavation work or digging was performed as a part of the work discussed in the Notice of Probable Violation. As the general contractor, we were not hired to perform any excavation, we did not perform any excavation or digging, and our subcontractor, Agundez, was not hired nor did they perform any excavation either.

According to Government Code 4216(g) and (h), as is quoted in the Notice, "Excavation" and "Excavator" are defined as:

(g) "Excavation" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives in any of the following ways: grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing and driving, or any other way.

(h) Except as provided in Section 4216.8, "excavator" means any person, firm, contractor or subcontractor, owner, operator, utility, association, corporation, partnership, business trust, public agency, or other entity that, with their own employees or equipment, performs any excavation.

The work our subcontractor and we performed does not meet the definition of excavation, as we did not perform any of the work described above in the paved driveway. To be clear, our subcontractor was hired to demolish existing concrete paving on grade, and to replace that same concrete on the existing grade. The subgrade was not to be included in any of their work. If you refer to the photos taken by the investigators and included in the Notice of Probable Violation, you will see no evidence of any excavation or digging by our construction team. (The only subsurface digging shown in the photos is actually the repair performed directly by the Olivenhain Water District – not by us.)

Specific Allegations

1. Government Code § 4216.2(g): Excavating prior to all operators responding to the ticket.

Response: *Our subcontractor Agundez was not performing excavation as defined by the Government Code – they were demolishing concrete above grade. Therefore, they did not contact DigAlert or anybody else before beginning work. Our Project Manager, Joseph Villegas, did call DigAlert because of other work we were contracted to perform independent of the driveway paving – specifically, work to be performed in adjacent planters where we were going to be digging and excavating. Again, we did not believe we needed to notify DigAlert for the replacement of concrete driveway, but we did know we needed to contact DigAlert for our planned planter excavation and related work, which was not started prematurely. This is evidenced in our proposal to our client, which is included in this package.*

We believe that the DigAlert notice has confused the investigator, as she has referenced and linked the Dig Alert notification to the driveway repairs and not the planter repairs. It is correct that Agundez did not wait until all operators responded to the ticket, but in fairness to Agundez, they did not believe this was needed because they were not intending to perform any excavation, nor did they know there was a ticket or that our PM had called DigAlert, because it was for other related digging/excavation that was to be performed by others.

2. Government Code § 4216.4(a)(2)(B): Use of power-tools to remove pavement when subsurface facilities were known to be embedded in the pavement.

Response: *It is correct that our subcontractor Agundez did use power tools to demolish*

and remove the concrete pavement knowing that there was a water valve cover embedded in the pavement. We were unaware of this at the time, as we were not on site when Agundez was working around the valve cover. We have a written contract agreement with Agundez that requires them to:

- *comply with safety measures initiated by the Contractor and with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, including without limitation OSHA and Cal OSHA, for the safety of persons and property.*
- *protect physical property, including but not limited to materials, finishes, surfaces and building components of adjacent property, from damage arising out of its Work.*

In short, while we understand that we are the general contractor and are accountable for our subcontractors' work, we did not approve or allow Agundez to use power tools around the valve cover, we did not expect them to do so, and we did expect them to protect the adjacent work (i.e. the valve covers). These valve covers were known, we discussed this with our subcontractor prior to their work, and they were identified on site. Our subcontract clearly makes them responsible for these conditions. As the general contractor here, our culpability is limited to our role as the general contractor by extension, as we did not authorize, know of, or agree to their use of power tools around these valve covers.

3. Government Code § 4216.4(c)(3): Failure to report damage to the regional notification center within 48 hours.

Response: *We did not know or understand the need to do this because the Olivenhain Water District and their investigator Joshua Westbrook became involved that same day almost immediately (11/28/22), we were completely cooperative and in direct discussions with him, and the valve box was repaired the very next day (11/29/22). Essentially, within that 48 hours, this matter was resolved completely and directly with the appropriate utility. We had no idea there was any need to report this to someone else given that the damage was identified and corrected completely and permanently – all before 48 hours had expired.*

Actual Damage Incurred

While not discounting that the Government Code and associated requirements are the law should be considered inflexible, and are important for us as contractors to follow, it should be noted that the damage that was incurred was extremely minor in nature and amounted to a very small chip in one concrete collar at the top of the valve casing and valve can (at the top of the grade where it met the surrounding paving), which was easily and quickly repaired by others. No damage of any kind was done to the subsurface waterline or valve.

Nautilus' Responsibility As The General Contractor

It is clear that our subcontractor is the one who performed the actual work that caused damage that has resulted in the alleged violations included in the Notice of Probably Violations. No allegation has been made that Nautilus or our employees performed any of the actual associated work in question. We do understand that the Business and Professions Code makes us responsible for the work of our subcontractors, as well as responsible for their supervision, control and monitoring. We accept that, but our culpability is limited to that, and in our attempts to supervise and manage our subcontractor, we knowingly called DigAlert when we believed it was appropriate, we discussed the valve covers with Agundez, and marked them out so that they were clear and noticeable for purposes of working around them. It is

unfortunate for us that Agundez did not adhere to proper procedures.

Nautilus' History of Governmental Compliance

We have been working as a Class B General Building Contractor and Class A General Engineering Contractor since we were formed in 2002. In the 23 years we have been actively working in California and other states, we have never, ever been accused, cited, or found in violation of any contracting law, ordinance or other. Our records speaks for itself and is unblemished. This is the first time we have ever been accused of a violation. We have a history of positive interaction with all governmental offices and we have a company philosophy that respects and follows all laws and contracting requirements. We hope that the Board will take that into consideration in evaluating our involvement and culpability in this matter.

Proposed Fines

Ms. Nonner's letter recommends a "Financial Penalty to be Determined by the Board," but also presents maximum fines for various levels of violation as follows:

An operator or excavator may be subject to a maximum penalty of:

- \$10,000 for negligent violation, and
- \$50,000 for a knowing and willful violation, and
- \$100,000 for damage to a gas or hazardous liquid pipeline subsurface installation that results in the escape of any flammable, toxic, or corrosive gas or liquid.

The amounts of these maximum fines scare us, as they do not seem appropriate for the issues raised in this matter. In review of the aforementioned, it is important to note the following:

- No excavation or digging of any kind was performed, despite descriptions to the contrary.
- The operator of the equipment performing paving demolition was Agundez Concrete Company, and not Nautilus. Nautilus would be guilty by extension only, as the general contracting entity.
- There is no evidence of any known or willful violation, nor was there any known or willful violation.
- There was no gas or hazardous liquid pipeline subsurface installation involved in this matter. The underlying utility was a domestic water line and valve, which was not damaged in any way, shape or form. Accordingly, there was no discharge of any flammable, toxic, or corrosive gas or liquid of any kind.

Summary

We can certainly understand how, as the general contractor, we are jointly responsible for our subcontractor's work by extension as identified in the Business and Professions Code. We can accept that, and do on this matter. However, please understand that as the general contractor, we did attempt to properly follow the law, and did not disregard our requirements for management and supervision of our subcontractor.

Given the aforementioned, we think it appropriate, and even a good idea, that we be required to complete the recommended the Board's education course, as recommended in the Notice of Probably Violation.

However, given 1) there was no willful, intentional violation of any law or ordinance, 2) our continued history of complying with known laws and ordinances, 3) this is a first alleged incident in 23 years in business, 4) we were not on site during this mishap, 5) we were not the ones who caused the damage (Agundez Concrete did), 6) the damage was minimal, 7) we cooperated with the Olivenhain Water District to repair the damage the very next day, and 8) have cooperated with the investigators completely and professionally, we do not believe that a financial penalty is appropriate or warranted in this matter. A financial penalty is solely punitive. It will not serve as an incentive or deterrent, as we already made attempts to comply with applicable laws and will continue to do so.

Thanks for your consideration.

Sincerely,

NAUTILUS GENERAL CONTRACTORS, INC.

A handwritten signature in dark ink, appearing to read 'Stefen E. Gustafson', with a long horizontal flourish extending to the right.

Stefen E. Gustafson
President

Exhibits:

1. Proposal To Client (note DigAlert reference)
2. Agundez Concrete Subcontract (highlighted)
3. Photos from Investigation (annotated)



Villas at Whispering Palms

ca lic. 807552

Median planter-curb repairs

Stamped Concrete Option A

5050 Avenida Encinas Suite 160

Carlsbad, CA 92008

C/o: Jenna McDaniel

No excavation was part of the concrete removal and replacement work.

October 14, 2022

CONSTRUCTION BUDGET

Description	Category Subtotal	Direct Cost	Notes
Scope of Work	\$ 187,200		3 WEEK DURATION
Concrete work			
Median Planter Reinstallation:			
Saw cut, break and demo existing concrete curb. Set forms and install (2) strands of rebar. Dowell rebar into existing concrete. Pour and finish new 12" vertical planter curb. Patch back any damaged asphalt as necessary.		\$ 182,000	
Stamped Concrete at Driveway Entrance:			
Demo existing stamped concrete. Subgrade prep work and remove any debris, compact subgrade. Pour new colored concrete. Stamp new concrete per the HOA approved pattern.		\$ -	Demo will included removing all rebar in existing concrete. New stamped concrete to match entrance located at 16027 Via Galan, Rancho Santa Fe CA.
Landscape			
Landscape removal:			
Complete removal of (7) Queen palms to the stump and roots. Any extra stumps to be removed from ground out. Excess soil on planter will be hauled off site.		\$ 5,200	Soil will remain 2-3 inches below curb inside the entire planter. All stump roots will be grinded down 12" inches below grade level.
Additional landscape removal:			
Remove all birds of paradise plants. Remove all beach rocks inside planter and set back after new concrete curb is poured.		\$ -	Dig alert will be notified 2 weeks prior to start.
GENERAL CONDITIONS	\$ 17,800		This includes Project Management, project coordination and Superintendent responsibilities. Temp utilities, clean up, hauling and demobilization.
TOTAL DIRECT CONSTRUCTION COSTS:		\$ 205,000	
Contingency		\$ 7,000	This line item to included the following: Irrigation lines, electrical conduit lines and landscape fixtures. This cost is a "not to exceed amount" based on the scope of work above.
Contractors Fee	17.0%	\$ 34,850	
GL Insurance	2.0%	\$ 4,797	
TOTAL PROJECT COST		\$ 251,647	

CLARIFICATIONS

This proposal is valid for 30 days from the submitted date.

Excludes any permits, electrical or underground utility work. Nautilus will be responsible to manage this project from inception to completion.

Nautilus will provide closeout documents to the HOA at the time of completion. There is no contingency added to this project.

We anticipated calling Dig Alert prior to working in landscaped areas. The landscaping work was performed by a separate subcontractor from the concrete replacement work.

Extracted pages from our signed Subcontract
with Agundez Concrete showing the detailed
scope of work.

IN WITNESS WHEREOF, Subcontractor and Contractor executed this Contract as of the date set forth.

SUBCONTRACTOR:

Agundez Concrete
1534 Quiet Trail Drive
Chula Vista, CA 91915

By: _____

D7D96B0488AC4F9...

Authorized Signature

Owner

Title: _____

10/27/2022

Date: _____

CONTRACTOR:

NAUTILUS GENERAL CONTRACTORS, INC.
8033 Vickers St.
San Diego CA 92111

By: _____

115E77E14E40453

Authorized Signature

Project Manager

Title: _____

10/27/2022

Date: _____

California - Contractor's State License Board – License No. 1069587

EXHIBIT "A"

DETAILED SCOPE OF WORK

Location: 1780 Avenida Del Mundo, San Diego, CA 92118

Description: Demolition and pouring of new concrete driveway.

SCOPE OF WORK

Subcontractor agrees to provide all labor, materials, tools, equipment, supplies and any other incidentals required to perform and complete a thorough job for the following work:

General inclusions:

1. For demolition and removal of the existing concrete entry driveway and install 6,900 square feet of six-inch-thick Palomino Davis base color with a choice of three powdered release colors, 5x5 foot diamond pattern with Old Granite textured stamped concrete.
2. Install a 12-inch-wide Palomino color broom finished concrete band around the entire perimeter of the new concrete work and around the entire new concrete curb at the center island.
3. For demolition, removal, and replacement of 186 ft of 6x12 inch Palomino colored concrete curb at center island.
4. All new work will be concise of the following:
 - a. Rebar placed 24 inches on center each way
 - b. 3000 PSI strength concrete
5. Three samples included

Sample that has been chosen is sample B

Exclusions:

Excludes any importing or exporting of and sub base materials that are below grade.



Excavation is excluded.

Only concrete being hauled off.



Our work included
concrete removal and
replacement only, no
excavation



Olivenhain Municipal Water District staff making repairs to valve casing. We did not dig around the valve casing or make any repairs to the valve casing.