

“D”

Previous Conditions of Approval



NAPA COUNTY

CONSERVATION—DEVELOPMENT AND PLANNING COMMISSION

W. Scott Snowden
CHAIRMAN

1121 FIRST STREET • NAPA, CALIFORNIA 94558
AREA CODE 707/253-4416

697879
021-400-002
P-UP-APVL
8/24/79

August 24, 1979

David S. Clark
2290 Boyson Lane
St. Helena, CA 94574

Dear Mr. Clark:
Your Use Permit Application Number U-697679 to reactivate a winery
on a 26.65 acre parcel

located on east side of Deer Park Rd. within an ADU: Development Assessor's Parcel #21-400-02
has been approved by the Napa County Conservation, Development and Planning Commission based upon the following conditions:

(SEE ATTACHED LIST OF CONDITIONS OF APPROVAL)

APPROVAL DATE: August 15, 1979

Your Use Permit becomes effective ten (10) working days from the approval date, provided all conditions of approval are met or assurances made to guarantee compliance. The ten (10) day waiting period is required to provide sufficient time for anyone wishing to appeal the action of the Commission in approving your Use Permit. In the event an appeal is made to the Board of Supervisors, you will be notified.

Should this Use Permit not be used within one (1) year after the date of approval, it shall be null and void without further action by the Commission or Department.

If you intend to request any time extension for your approved Use Permit, please note that any such request must be submitted to the Conservation, Development and Planning Department at least 30 days prior to the expiration of the present permit.

Very truly yours,

JAMES H. HICKEY
Secretary-Director

Note: Approval of this application is subject to rezoning approval by the Board of Supervisors.

JHH:jg

cc: Donald W. Jonas
Building Codes Administrator
County of Napa

NAPA COUNTY
CONSERVATION, DEVELOPMENT AND PLANNING DEPARTMENT

USE PERMITS

DEPARTMENT REPORT AND RECOMMENDATION

Meeting of August 15, 1979

Agenda Item: 11

APPLICATION DATA:

APPLICANT: David S. Clark Etal #U-697879 (Filed May 2, 1979)

REQUEST FOR: To reactivate a winery on a 26.65 acre parcel

LOCATION: On the east side of Deer Park Rd. at its intersection with Sanitarium Rd. within an RD: B-5 Dist (Recommended for AW) assessor's Parcel # 21-400-02

FINDINGS: [All checked (X) Items Apply to This Application]

SPECIAL INFORMATION:

- 1. Details of the proposal are contained in the attached supplemental information sheet.
- 2. Comments and recommendations from various County departments and other agencies are attached.
- 3. On Aug. 1, 1979, the Commission recommended to the Board of Supervisors that the subject parcel along with an adjacent parcel owned by the applicant be removed from RD: B-5 and RD: A. B-5 TO AW.

ENVIRONMENTAL ANALYSIS:

- 4. General Rule (Not Subject to CEQA).
- 5. Categorically Exempt pursuant to the California Environmental Quality Act (Class # _____).
- 6. Final Environmental Impact Report # _____ prepared by: _____
- 7. (See Agenda Item # _____).
The project is not anticipated to result in significant environmental effects, either individually or cumulatively. There are no unique or rare biological or physical resources that will be adversely effected. A Negative Declaration is recommended.

Page 2
Report and Recommendation

Meeting Date: August 15, 1979

Use Permit - *U-697879, David S. Clark

PLANNING AND ZONING ANALYSIS:

- 8. The procedural requirements for Use Permit outlined in the Zoning Ordinance have been satisfied in regard to this application.
- 9. The submitted proposal is in general compliance with Ordinance requirements.
- 10. Approval of this proposal would not result in detrimental effects to the public health, safety or general welfare.
- 11. The proposal is in conformance with the General Plan designation of Open Space - Aqueduct, Watershed specified for the property.
- 12. The property is within the district boundary and/or the Sphere of Influence of the following districts:

American Canyon County Water District Within district Within Sphere
(See attached map).
 American Canyon Fire Protection District Within district Within Sphere
(See attached map).
 _____ _____ _____

- 13. This proposal should be denied pursuant to findings contained in the attached Exhibit _____.
- 14. _____

RECOMMENDATION:

- Continue to meeting of _____.
- Action

ENVIRONMENTAL:

- None Required.
- Issue a Negative Declaration.
- Certify Final EIR as adequate.

PLANNING:

- DENIAL based on Finding #13.
- APPROVAL with Findings and subject to the attached Conditions of Approval.

CONDITIONS OF APPROVAL

#U-697879, David S. Clark Agenda Item: 11

Meeting Date: August 15, 1979

- 1. The permit be limited to: reactivation of a \pm 6780 sq. ft. winery
Any expansion or changes in use to be by separate Use Permit submitted for Commission consideration.
- 2. Submission of a detailed landscaping, fencing and parking plan to the Department for review and approval indicating names and locations of plant materials, method of maintenance and location of off-street parking spaces. Said plan to be submitted prior to finalization of the Building Permit.
- 3. Provisions for a min. of 5 off-street parking spaces on a dust free, all weather surface approved by Public Works.
- 4. Plans for any outdoor signs be submitted to the Department for review and approval with regard to design, area, height and placement.
- 5. The applicant enter into an agreement with the County not to oppose annexation to an appropriate service district when deemed necessary by the County. The agreement to be reviewed by Environmental Health and approved by County Counsel.
- 6. Annexation of the property to the following districts:
 - American Canyon County Water District
 - American Canyon Fire Protection District
 - _____
- 7. All open storage of _____ be screened from view of _____ and adjacent properties by a visual barrier. No open storage to exceed height of screening.
- 8. The permit be limited to a _____ year period.
- 9. Compliance with all applicable building codes, zoning standards and requirements of various County departments and agencies.
- 10. No public tours or tastings be allowed
- 11. Any exterior lighting be directed away from adjacent properties.

NAPA COUNTY
CONSERVATION, DEVELOPMENT AND PLANNING DEPARTMENT
SUPPLEMENTAL INFORMATION SHEET
USE PERMIT APPLICATION

1. DESCRIPTION OF PROPOSED USE:

USE: WINERY AND VINEYARD

PRODUCT OR SERVICE PROVIDED: TABLE WINES AND GRAPES

FLOOR AREA: EXISTING STRUCTURES SEE SQ. FT. NEW CONSTRUCTION NONE SQ. FT.
ATTACHED SITE IMPROVEMENT PLOT.

2. NEW CONSTRUCTION:

TYPE OF CONSTRUCTION: NONE

FENCING: TYPE VARIOUS WIRE/WOOD LOCATION VARIOUS-DRIFT FENCE HEIGHT 3-4 FT.

MAX. HEIGHT (FT.): EXISTING STRUCTURES 15 FT. PROPOSED STRUCTURES N/A

3. AVERAGE OPERATION:

HOURS OF OPERATION 8:00 A.M. TO 5:00 P.M. DAYS OF OPERATION 5 M-F

NUMBER OF SHIFTS: 1 EMPLOYEES PER SHIFT: 2 FULL TIME 2 PART TIME 1

NUMBER OF DELIVERIES OR PICK-UPS: ONE OR LESS PER DAY

NUMBER OF VISITORS ANTICIPATED: ONE PER DAY SIX PER WEEK

ARE THERE SPECIAL OPERATIONS? PLEASE DESCRIBE ON ATTACHED PAGE

4. LANDSCAPING AND PARKING:

EXISTING LANDSCAPING: CITRUS, WALNUT, OLIVE, LIVE OAK, PINE, MANZANITA, CHAPARRAL

PROPOSED LANDSCAPING: PLANT FLOWERS & DECORATIVE SHRUBS AROUND DWELLING & WINERY

PARKING SPACES: EXISTING SPACES 9 EMPLOYEE 4 CUSTOMER 5
PROPOSED SPACES NONE EMPLOYEE — CUSTOMER —

5. UTILITIES:

WATER SUPPLY SOURCE: FRIESEN WATER CO. METHOD OF SEWAGE DISPOSAL: SEPTIC TANKS

6. LICENSES OR APPROVALS REQUIRED:

DISTRICT _____ REGIONAL _____
STATE WINE GROWERS FEDERAL WINE GROWERS

7. WINERY OPERATION:

YES CRUSHING YES FERMENTATION YES STORAGE/AGING YES BOTTLING/PACKING
YES SHIPPING: VIA TRUCK: YES ADMINISTRATIVE: NO TOURS/PUBLIC TASTING
OTHER: _____

GALLONS OF WINE TO BE PRODUCED: INITIAL OR CURRENT PRODUCTION 7300 GALLONS/YEAR
 ULTIMATE PRODUCTION 14,400 GALLONS/YEAR

6/10/77



RECEIVED

JUL 12 1979

Ant

NAPA COUNTY

Napa County Conservation,
Development & Planning Commission
CONSERVATION DEVELOPMENT
AND PLANNING DEPARTMENT

JAMES H. HICKEY
Director

1121 FIRST STREET • NAPA, CALIFORNIA 94558
AREA CODE 707/253-4416

PERMIT APPLICATION AND INITIAL STUDY
REQUEST FOR COMMENTS

TO: Environmental Health APP 21-010-47 and 21-400-02
APPLICATION TITLE: Clark Winery FILE #: U-697879
RESPONSE REQUEST DATE: July 10, 1979 RESPONSE RETURN DATE: July 24, 1979

This application (see enclosed project description and/or maps) is being sent to you for your review and comment. With respect to environmental analysis, the County is assuming Lead Agency status for the project and will be preparing the necessary environmental documents.

Please advise us as to which of your permits is required, your environmental concerns, and whether you recommend that a Negative Declaration or an Environmental Impact Report be prepared on this project. Due to the provisions of AB 884, it is essential that we receive your comments within the next 10 days.

General Questions

1. Do you have jurisdiction by law over this project Yes [] No
2. Do you recommend: Approval [] Denial [] No Recommendation
3. Recommended conditions-of-approval (use additional page if needed);
That the applicant secure a discharge requirement, or waiver of same, from the Regional Water Quality Control Board.
That all solid waste be stored and disposed of in a manner to prevent nuisances or health threats from insects, vectors and odors.
That a permit for the sewage disposal system be secured from the Division of Environmental Health.
4. Are you a responsible agency? Yes [] No. If yes, indicate required permits: Water supply and sewage disposal.
5. Indicate areas of environmental concern and availability of appropriate technical data: None
6. Do you recommend: Negative Declaration [] Environmental Impact Report
7. Have you previously reviewed an application on any portion of this project? Yes [] No
8. Name of contact person: Trent Cave Telephone: 253-4431

Response Prepared by: *Howley*
Title: Land Use Specialist
Date: 7-11-79

February 8, 1978



NAPA COUNTY

HARRY D. HAMILTON
Director of Public Works

County Surveyor — County Engineer
Road Commissioner

RECEIVED
AUG 8 1979

Napa County Conservation,
Development & Planning
DEPARTMENT OF PUBLIC WORKS

1127 FIRST STREET • NAPA, CALIFORNIA 94558
AREA CODE 707/ 253-4351

August 8, 1979

Napa County Conservation,
Development and Planning
Commission
1121 First Street
Napa, California 94558

RE: DEER PARK ROAD
CLARK, ET AL - WINERY
CPD FILE # 6-697879

Commissioners:

This Department and the Napa County Flood Control and Water Conservation District have reviewed the referenced use permit application. The following items which are checked, as filled in, apply to this application. Our recommendations are based upon that data supplied to us with the use permit application.

We find that the intended use will not generate a significant amount of traffic. Therefore, no roadway improvements are recommended.

A strip of land _____ feet in width along _____ is to be irrevocably offered for dedication to Napa County for roadway and utility right of way purposes.

Any rights of way found crossing the proposed parcels to serve parcels further removed from the public roadways are to be irrevocably offered to the County of Napa for roadway and utility rights of way purposes. These rights of way shall have a minimum width of 40 feet.

Right of way widening to 30 feet from the centerline of DEER PARK ROAD along the frontage of the subject parcels is to be granted in easement to Napa County for roadway and utility right of way purposes.

A roadway which extends from the winery to the County road is to be constructed to the status of a dust free all weather surface, i.e., a minimum 11 foot paved roadway consisting of a double seal coat on a minimum of 5 inches Class II aggregate base, with a 4 foot graded shoulder.

Paved turn-outs, consisting of a pavement widening to 16 feet, with a length of 60 feet, are required at strategic points, i.e., where terrain and/or road alignment warrant, with 500 feet being the maximum distance between turn-outs.

A driveway connection is to be constructed to provide a pavement width of 16 feet from the public road back to 30 feet from the public road. This is to be improved to the status prescribed above.

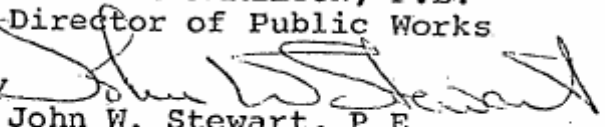
Any parking area required by the Commission is to be improved to the status of a dust free all weather surface, i.e., a minimum of 5 inches of Class II aggregate base and a double sealcoat.

The Napa County Flood Control and Water Conservation District has no comments.

Very truly yours,

HARRY D. HAMILTON, P.E.
Director of Public Works

by


John W. Stewart, P.E.
Associate Civil Engineer

JWS/pjs

cc: Applicant



NAPA COUNTY

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JUL 20 1979

Napa County Conservation, Development & Planning Commission
CONSERVATION AND PLANNING DEPARTMENT

JAMES H. HICKEY
Director

1121 FIRST STREET • NAPA, CALIFORNIA 94559
AREA CODE 707/253-4416

PERMIT APPLICATION AND INITIAL STUDY
REQUEST FOR COMMENTS

TO: S. F. Bay Regional Water Quality Control Board

APPLICATION TITLE: CLARK WINERY FILE #: U-697879

RESPONSE REQUEST DATE: 10 July '79 RESPONSE RETURN DATE: 24 JULY 1979

This application (see enclosed project description and/or maps) is being sent to you for your review and comment. With respect to environmental analysis, the County is assuming Lead Agency status for the project and will be preparing the necessary environmental documents.

Please advise us as to which of your permits is required, your environmental concerns, and whether you recommend that a Negative Declaration or an Environmental Impact Report be prepared on this project. Due to the provisions of AB 884, it is essential that we receive your comments within the next 10 days.

General Questions

- Do you have jurisdiction by law over this project? Yes No
- Do you recommend: Approval Denial No Recommendation
- Recommended conditions-of-approval (use additional page if needed);
Adequate sewage disposal system
Proposed project should not impair water quality
- Are you a responsible agency? Yes No. If yes, indicate required permits: Napa Co. Health Dept. approval will suffice but waste discharge requirements will be adopted if recommended by Health Dept. or if flow increases.
- Indicate areas of environmental concern and availability of appropriate technical data: Potential effects on groundwater
- Do you recommend: Negative Declaration Environmental Impact Report
- Have you previously reviewed an application on any portion of this project? Yes No
- Name of contact person: Robert K Baker Telephone: (415) 464-0379

Response Prepared by: Robert K Baker
Title: Area Engineer
Date: 7/18/79



NAPA COUNTY

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JUL 18 1979

CONSERVATION - DEVELOPMENT
Development & Planning Commission
AND PLANNING DEPARTMENT

JAMES H. HICKEY
Director

1121 FIRST STREET • NAPA, CALIFORNIA 94558
AREA CODE 707/253-4416

PERMIT APPLICATION AND INITIAL STUDY REQUEST FOR COMMENTS

TO: Dept. of Alcoholic Beverage Control
APPLICATION TITLE: CLARK WINERY FILE #: U-697879
RESPONSE REQUEST DATE: 10 July '79 RESPONSE RETURN DATE: 24 JULY 1979

This application (see enclosed project description and/or maps) is being sent to you for your review and comment. With respect to environmental analysis, the County is assuming Lead Agency status for the project and will be preparing the necessary environmental documents.

Please advise us as to which of your permits is required, your environmental concerns, and whether you recommend that a Negative Declaration or an Environmental Impact Report be prepared on this project. Due to the provisions of AB 884, it is essential that we receive your comments within the next 10 days.

General Questions

1. Do you have jurisdiction by law over this project Yes No
2. Do you recommend: Approval Denial No Recommendation
3. Recommended conditions-of-approval (use additional page if needed);

4. Are you a responsible agency? Yes No. If yes, indicate required permits: Winegrower

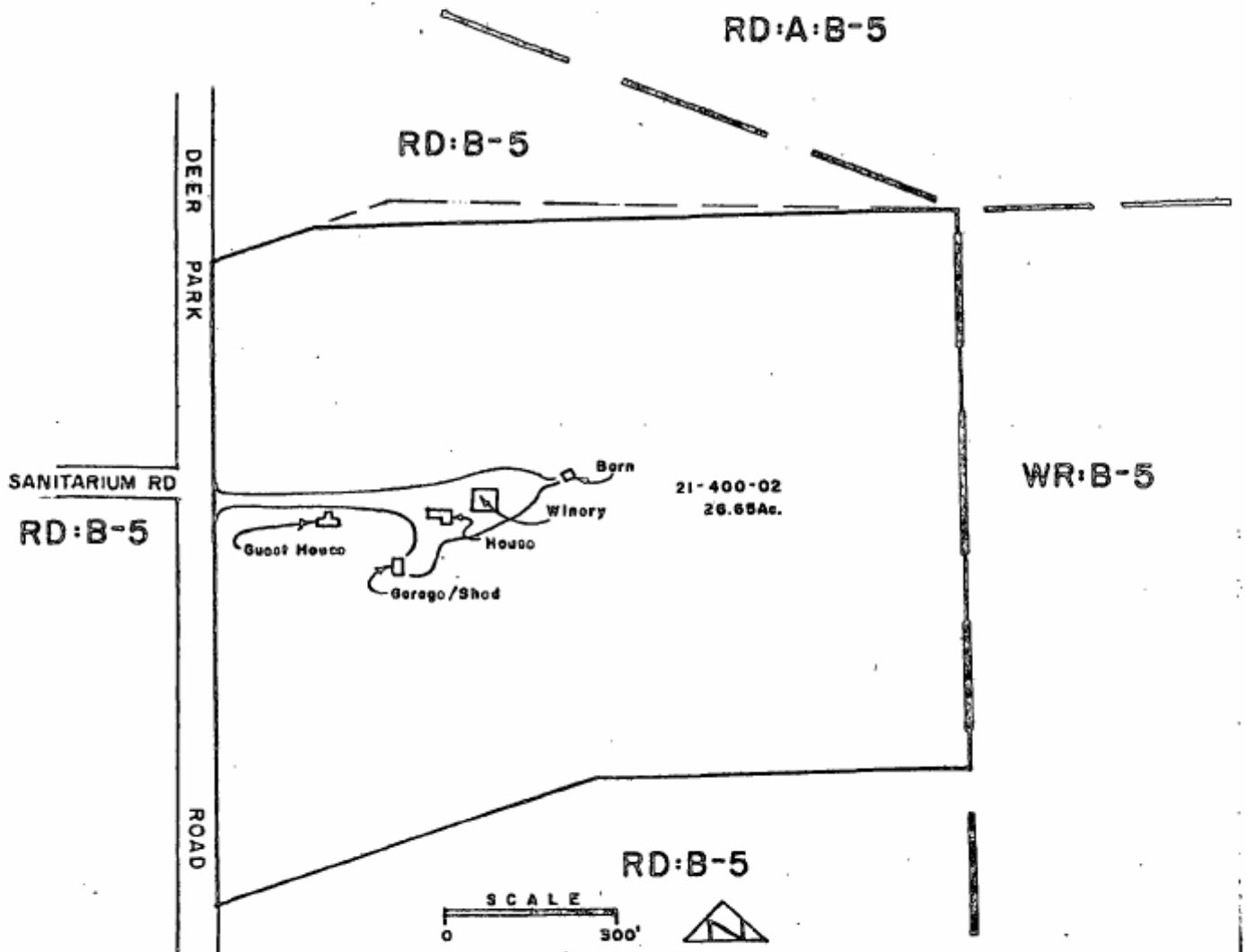
5. Indicate areas of environmental concern and availability of appropriate technical data:

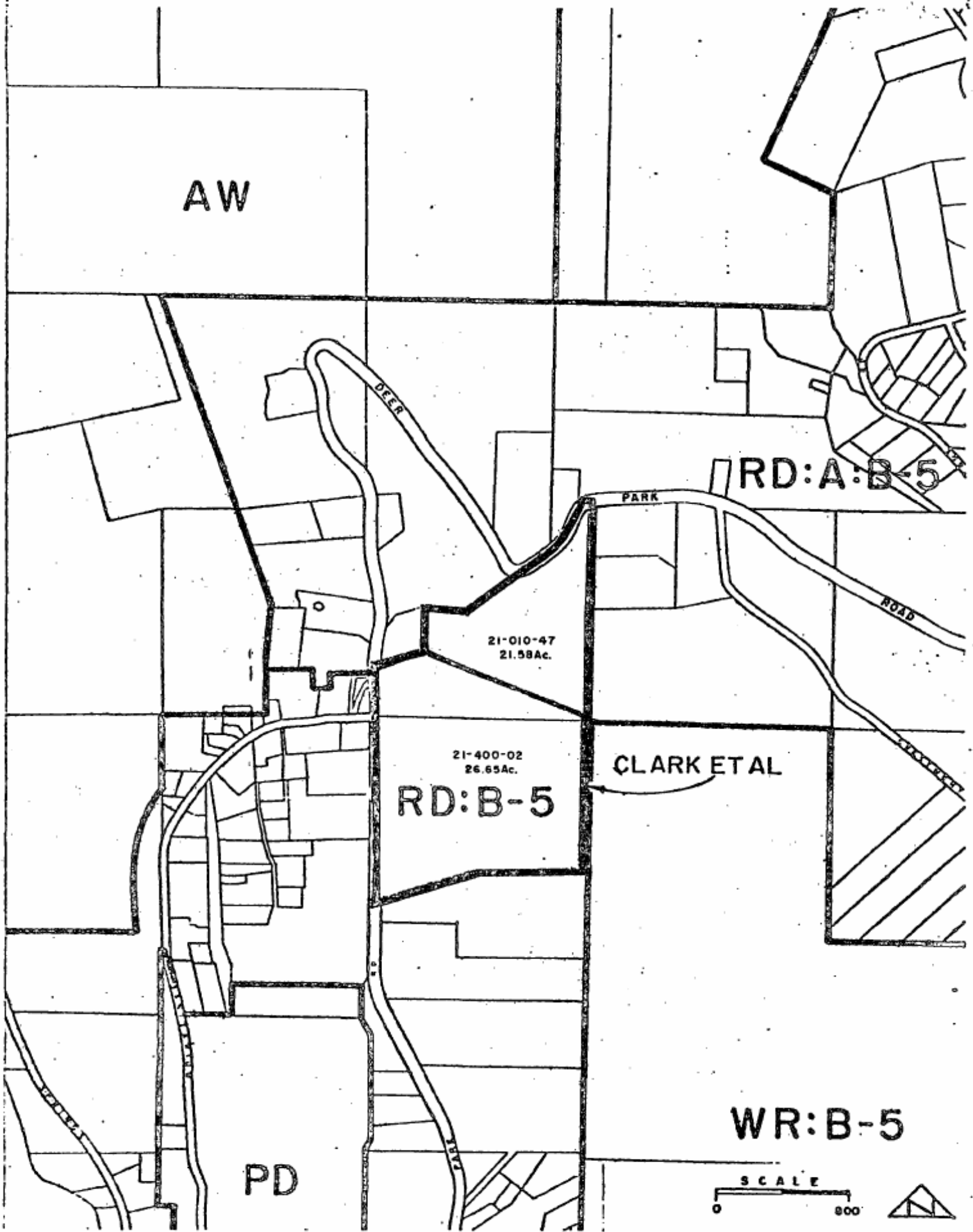
6. Do you recommend: Negative Declaration Environmental Impact Report
7. Have you previously reviewed an application on any portion of this project? Yes No
8. Name of contact person: Glen Davis Telephone: 707 545-0406

Response Prepared by: S. Davis
Title: Sec. Invest.
Date: 7/19/79

February 18, 1978

CLARK ET AL





AW

RD:A:B-5

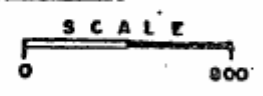
21-010-47
21.58Ac.

21-400-02
26.65Ac.
RD:B-5

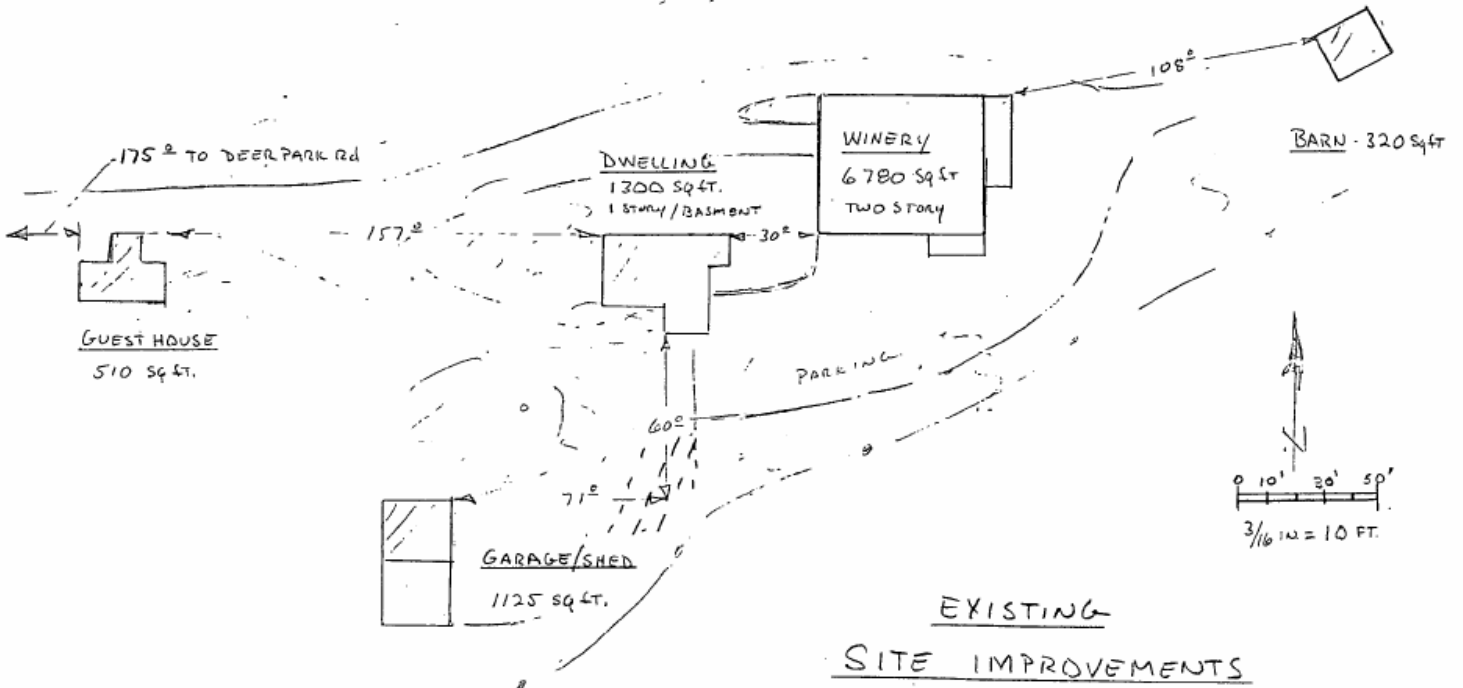
CLARK ET AL

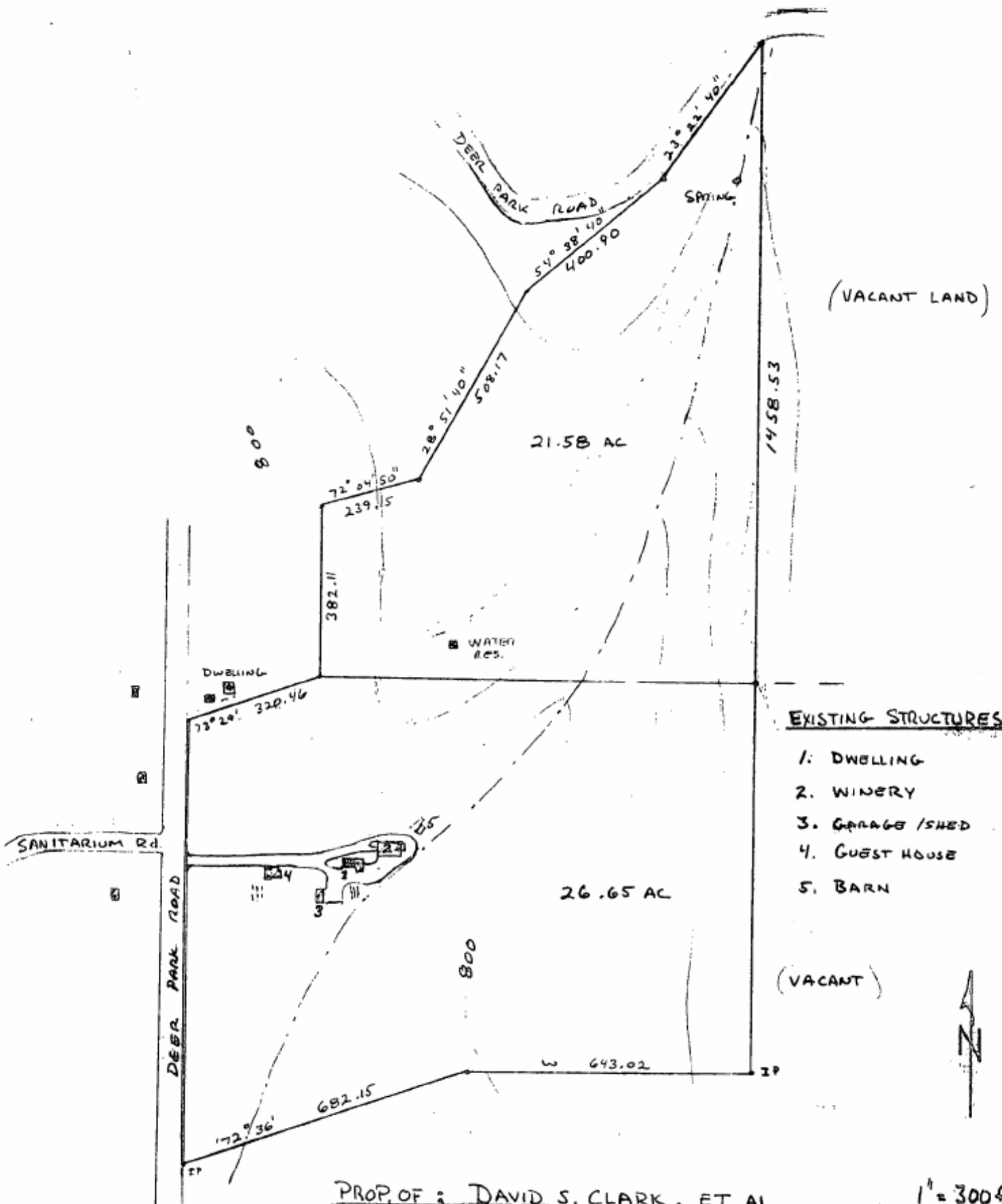
WR:B-5

PD



1-29-77





EXISTING STRUCTURES

- 1. DWELLING
- 2. WINERY
- 3. GARAGE / SHED
- 4. GUEST HOUSE
- 5. BARN

PROP. OF: DAVID S. CLARK, ET AL

1" = 300'

1000 DEER PARK ROAD
DEER PARK, CALIF.



HILLARY GITELMAN
Director

COUNTY *of* NAPA

CONSERVATION, DEVELOPMENT AND PLANNING

December 13, 2007

Bremer Family Winery
John and Laura Bremer
150 Pine Place
St. Helena, Ca 94574

Re: **Bremer Family Winery, MODIFICATION**
Minor Modification #P07-00654-MODMIN
Assessor's Parcel Number 021-400-002-000

Dear Mr. & Mrs. Bremer:

Please be advised that your request for a Minor Modification (file number P07-00654-MODMIN) to the Bremer Family Winery Use Permit U-697879 to construct an 11,685 square foot barrel storage cave has been **APPROVED** by the Director of Conservation, Development and Planning on December 13, 2007 based on the attached conditions of approval and applicable County regulations.

EXPIRATION DATE: December 13, 2009

Pursuant to Section 18.124.080 of the Napa County Code, this minor modification must be activated within two (2) years from the approval date, or it shall automatically expire and become void. This letter serves as the only notice you will receive regarding the expiration date of your minor modification permit. In addition, approval of this minor modification has no effect on the time limits in which to activate the original project use permit.

Please be advised that the Director of Conservation, Development and Planning has determined that this minor modification is **Categorically Exempt** from the provisions of CEQA, the California Environmental Quality Act. Pursuant to CEQA Section 15303, Class I, Existing Facilities and No Expansion of Use and Class 3, New Construction or Conversion of Small Structures, and Appendix B, Class 3, New Construction or Conversion of Small Structures of Napa County's Local Procedures for Implementing the California Environmental Quality Act, the project is not located in an environmentally sensitive area.

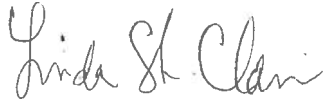
The modification is effective immediately unless an appeal is filed with the Napa County Board of Supervisors pursuant to Chapter 2.88 of the Napa County Code. You may appeal the conditions of approval. In the event an appeal is made to the Board by another, you will be noticed.

You are hereby further notified, pursuant to Government Code Sec.66020 (d)(1), that the 90-day period, in which you would have to protest imposition of any fees, dedications, reservations, or other exactions that may have been attached as conditions of approval, has begun.

Should you have any questions, please contact Linda St. Claire, Project Planner at (707)299-1348 or e-mail at lstclair@co.napa.ca.us.

Sincerely,

Hillary Gitelman
Director

A handwritten signature in cursive script that reads "Linda St. Claire".

By: Linda St. Claire
Planner

CONDITIONS OF APPROVAL

Bremer Family Winery Modification

File # P07-00654-MODMIN

APN: #021-400-002-000

1. SCOPE: The permit shall be limited to:

- Construct an 11,685 square foot cave for wine barrel storage.
- Removed cave spoils to be deposited at Winery site (5,690 cubic yards) and the nearby parcel (2,000 cubic yards) APN 025-370-058-000, in accordance with permit W07-00895.
- Any expansion or changes in use shall be approved in accordance with Section 18.124.130 of the Napa County Code and may be subject to the Use Permit modification process.
- The structures shall be designed in substantial conformance with the submitted site plan, elevation drawings, and other submittal materials and shall comply with all requirements of the Napa County Code. It is the responsibility of the applicant to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors and employees to ensure compliance is achieved. Any expansion or changes in use shall be approved in accordance with Section 18.124.130 of the Napa County Code and may be subject to the Use Permit modification process.

2. COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES:

The permittee shall comply with all applicable building codes, zoning standards, and requirements of County Departments and Agencies, including but not limited to:

Department of Public Works as stated in their letter of December 13, 2007

County Fire Department as stated in their letter of October 24, 2007

Department of Environmental Management in their letter of December 04, 2007

Napa County Building Department in their letter of October 14, 2007

The determination as to whether or not the permittee has substantially complied with the requirements of other County Departments and Agencies shall be determined by those Departments or Agencies. The inability to substantially comply with the requirements of other County Departments and Agencies may result in the need to modify the approved use permit.

3. INDEMNIFICATION

An indemnification agreement, in the form attached hereto, shall be signed and returned to the County within twenty (20) days of the granting of this approval.

4. PREVIOUS CONDITIONS:

The permittee shall comply with all previous conditions of approval for Use Permit 697879-UP dated August 24, 1979,

- 6,780 square foot winery
- 15,000 gallon annual maximum production capacity

- no public tours or tastings

except as modified by this action. To the extent there is a conflict between previous conditions of approval and these conditions of approval, these conditions shall control and supersede earlier ones.

5. MONITORING COSTS:

All staff costs associated with monitoring compliance with these conditions, previous permit conditions and project revisions shall be borne by the permittee and/or property owner. Costs associated with conditions and mitigation measures that require monitoring, including investigation of complaints, other than those costs related to investigation of complaints of non-compliance that are determined to be unfounded, shall be charged. Costs shall be as established by Board Resolution in accordance with the hourly consulting rate established at the time of the monitoring (\$136.27/hour as of July, 2007). Violations of conditions of approval or mitigations measures caused by the permittee's contractors, employees, and guests are the responsibility of the permittee.

The Planning Commission may implement an audit program if compliance deficiencies are noted. If evidence of compliance deficiencies is found to exist by the Planning Commission at some time in the future, the Planning Commission may institute the program at the applicant's expense (including requiring a deposit of funds in an amount determined by the Commission) as needed until compliance assurance is achieved. The Planning Commission may also use the data, if it is so warranted, to commence revocation hearings in accordance with section 18.124.120 of the County Code.



HILLARY GITELMAN
Director

COUNTY *of* NAPA

CONSERVATION, DEVELOPMENT AND PLANNING

February 26, 2008

Bremer Family Winery
975 Deer Park Road
St Helena Ca 94574

Re: **BREMER FAMILY WINERY – PORCH AND DECK ADDITION**
Very Minor Modification #P08-00088-MODVMIN
Assessor's Parcel Number 021-400-002-000

Please be advised that your request for a Very Minor Modification (file number P08-00088-MODVMIN) to the Bremer Family Winery Use Permit (file number #U697879-UP) has been **APPROVED** by the Director of Conservation, Development and Planning on February 14, 2008 based on the attached conditions of approval and applicable County regulations.

EXPIRATION DATE: February 14, 2010

Pursuant to Section 18.124.080 of the Napa County Code, this very minor modification must be activated within two (2) years from the approval date, or it shall automatically expire and become void. This letter serves as the only notice you will receive regarding the expiration date of your very minor modification permit. In addition, approval of this minor modification has no effect on the time limits in which to activate the original project use permit.

Please be advised that the Director of Conservation, Development and Planning has determined that this very minor modification is **Categorically Exempt** from the provisions of CEQA, the California Environmental Quality Act. Pursuant to CEQA Section 15301, Class 3, New Construction, and Appendix B, Class 1, Existing Facilities of Napa County's Local Procedures for Implementing the California Environmental Quality Act, the project consists of a minor repair and addition to the existing porch and deck to a previously approved project involving no expansion in marketing or production activities and is not located in an environmentally sensitive area.

The modification is effective immediately unless an appeal is filed with the Napa County Board of Supervisors pursuant to Chapter 2.88 of the Napa County Code. You may appeal the conditions of approval. In the event an appeal is made to the Board by another, you will be noticed.

You are hereby further notified, pursuant to Government Code Sec.66020 (d)(1), that the 90-day period, in which you would have to protest imposition of any fees, dedications, reservations, or other exactions that may have been attached as conditions of approval, has begun.

Should you have any questions, please contact Suzanne Gardner-Gambill, Project Planner at (707)299-1334 or e-mail at sgambill@co.napa.ca.us.

Sincerely,

Hillary Gitelman
Director

A handwritten signature in cursive script that reads "Suzanne Gardner-Gambill".

By: Suzanne Gardner-Gambill
Planning Technician

cc: John Tuter, Assessor

CONDITIONS OF APPROVAL

Bremer Family Winery

Repair and Addition to the Porch and Deck attached to the Winery Building

File # P08-00088-MODVMIN

APN: #021-400-002

1. **SCOPE:** The permit shall be limited to:

- Repair and Expansion of 572 square feet of porch and deck to the exterior of the winery building with no change to marketing plan or production activities.

2. **PREVIOUS CONDITIONS:**

The permittee shall comply with all previous conditions of approval for Use Permit #U-697879-UP and P07-00654, except as modified by this action. To the extent there is a conflict between previous conditions of approval and these conditions of approval, these conditions shall control and supersede earlier ones.

3. **COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES:**

The permittee shall comply with all applicable building codes, zoning standards, and requirements of County Departments and Agencies. The determination as to whether or not the permittee has substantially complied with the requirements of other County Departments and Agencies shall be determined by those Departments or Agencies. The inability to substantially comply with the requirements of other County Departments and Agencies may result in the need to modify the approved use permit.

4. **MONITORING COSTS:**

All staff costs associated with monitoring compliance with these conditions, previous permit conditions and project revisions shall be borne by the permittee and/or property owner. Costs associated with conditions and mitigation measures that require monitoring, including investigation of complaints, other than those costs related to investigation of complaints of non-compliance that are determined to be unfounded, shall be charged. Costs shall be as established by Board Resolution in accordance with the hourly consulting rate established at the time of the monitoring (\$134.00/hour as of July, 2007). Violations of conditions of approval or mitigations measures caused by the permittee's contractors, employees, and guests are the responsibility of the permittee.

The Planning Commission may implement an audit program if compliance deficiencies are noted. If evidence of compliance deficiencies is found to exist by the Planning Commission at some time in the future, the Planning Commission may institute the program at the applicant's expense (including requiring a deposit of funds in an amount determined by the Commission) as needed until compliance assurance is achieved. The Planning Commission may also use the data, if it is so warranted, to commence revocation hearings in accordance with section 18.124.120 of the County Code.



A Tradition of Stewardship
A Commitment to Service

Conservation, Development and Planning

1195 Third Street, Suite 210
Napa, CA 94559
www.co.napa.ca.us

Main: (707) 253-4417
Fax: (707) 253-4336

Hillary Gitelman
Director

June 4, 2009

John & Laura Bremer
Bremer Family Winery
150 Pine Place
St. Helena, CA 94574

RE: Very Minor Modification Request #P09-00178
(APN 021-400-002 / 975 Deer Park Road, St. Helena)

Dear John & Laura,

Please be advised that your request for a Very Minor Modification (file number P09-00178-MODVMIN) to the Bremer Family Winery as described in your submittal letter and at the location shown on the revised plans dated March 17, 2009, to revise their use permit to: **"Increase approved wine cave size from 11,685 square feet to 16,136 square feet."** has been **APPROVED** by the Director of Conservation, Development and Planning on June 4, 2009, based on the applicable County regulations and the following condition of approval.

EXPIRATION DATE: June 5, 2011

Pursuant to Section 18.124.080 of the Napa County Code, this minor modification must be activated within two (2) years from the approval date, or it shall automatically expire and become void. This letter serves as the only notice you will receive regarding the expiration date of your minor modification permit. In addition, approval of this minor modification has no effect on the time limits in which to activate the original project use permit.

Please be advised that the Director of Conservation, Development and Planning has determined that this minor modification is **Categorically Exempt** from the provisions of CEQA, the California Environmental Quality Act. Pursuant to CEQA Section 15304, Class 4, Minor Alterations to Land, and Appendix B, Class 1 Existing Facilities, paragraph 3. Minor Modifications of existing wineries as described in Sections 18.124.130 of the County Code, the project consists of a minor alteration to a previously approved project involving no expansion in production or marketing activities and is not located in an environmentally sensitive area.

The modification is effective immediately unless an appeal is filed with the Napa County Board of Supervisors pursuant to Chapter 2.88 of the Napa County Code. You may appeal the conditions of approval. In the event an appeal is made to the Board by another, you will be noticed.

Should you have any questions, please contact Linda St. Claire, Project Planner at (707)299-1348 or e-mail at lstclair@co.napa.ca.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda St. Claire". The signature is written in a cursive style with a long horizontal stroke at the end.

Linda St. Claire
Planner

Cc: Chron

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into as of this ^{6th} day of ^{February} ~~January~~, 2019, by and between Napa County, a political subdivision of the State of California (“County”), and John Alex Bremer and Laura Joyce Bremer, trustees of the Bremer Family 1995 Living Trust dated August 23, 1995 (the “Bremers”), and the Bremer Group, LLC (collectively, with the Bremers, “Defendants”). The County and Defendants will, from time to time hereinafter, be referred to individually as “Party” and collectively as “Parties.”

RECITALS

A. The Bremers are the owners of the real property commonly known as 975 Deer Park Road in unincorporated Napa County, California, and bearing Napa County Assessor’s Parcel Number 021-400-002 (“Property”). Defendants own and operate the Bremer Family Winery (the “Winery”) on the Property.

B. In or around August 2016, the County discovered that Defendants were allegedly operating the Winery in a manner that the County believed exceeded the scope of Defendants’ use permit. The Winery was permitted through Use Permit #U-697879 (the “Use Permit”), issued by the County to Defendants’ predecessor in interest in 1979. After an investigation, the County determined that, in its view, violations of the County’s Zoning Code, Building Code, and Conservation Regulations were present on the Property.

C. On or about January 19, 2017, in response to the County’s demands, Defendants submitted an application to modify the Use Permit to address the violations and increase permitted visitation to 40,320 visitors per year.

D. On August 4, 2017, the County filed a Complaint in the Napa County Superior Court, Case Number 17CV000884, (the “Complaint”) against Defendants instituting the present action (the “Action”). The Complaint requested an injunction against Defendants’ alleged non-compliant activity, recovery of costs of abatement and attorneys’ fees, and a civil penalty, pursuant to the Napa County Code.

E. The County alleged in its Complaint, inter alia, as follows (the “County’s Contentions”):

1. Defendants expanded their permitted visitation level without a use permit, allowing, on average, up to approximately 650 visitors per month (7,800 per year);
2. Defendants exceeded their hours and days of operation, operating the Winery on weekends and after 5:00 pm;

3. Defendants violated the Zoning Code by conducting winery operations outside the scope of the 6,780 square foot winery building;
4. Defendants violated the Zoning Code and Building Code by using a dwelling on the Property (the "Farmhouse") for Winery purposes;
5. Defendants violated the Zoning Code and Building Code by allowing wine tastings and other events in the wine storage cave;
6. Defendants violated the Zoning Code by renting the Winery for private parties, receptions, or other events;
7. Defendants violated the Zoning Code by allowing food service for wine tastings and events;
8. Defendants violated the Building Code by constructing walls, stairs, catwalks, and other structures without building permits; and
9. Defendants violated the Napa County Conservation Regulations by constructing or maintaining structures within a creek setback.

F. Defendants contend, inter alia, as follows ("Defendants' Contentions"):

1. Defendants operated the Winery with a good faith belief that their use was consistent with, and within the scope of, the Use Permit;
2. Any potential violation was unintentional and not a willful violation;
3. The Use Permit does not contain any limitation on private visitation, marketing, food service, or hours of operation;
4. Winery operations, including private visitation and the use of the Farmhouse, were established by the prior owner of the Property prior to the enactment of the Winery Definition Ordinance ("WDO") in 1990, and therefore are allowed to continue without a modification to the Use Permit;
5. Any events occurring at the Winery were marketing events, not private rental of the Property, and any improper use of the cave was isolated and not intentional; and
6. Some walls and other structures do not require building permits, nor do they violate the conservation regulations.

G. Over the course of the Action, Defendants provided information and evidence to the County showing the nature and extent of Winery operations prior to the enactment of the WDO in 1990:

1. Visitation levels at the Winery, at the enactment of the WDO, were 5,200 visitors per year;
2. The Winery operated seven days a week;
3. The office on the bottom floor of the Farmhouse was used for Winery purposes;
4. The second floor of the main Winery building was used for storage or production of wine and not visitation; and
5. The Winery employed more than three employees.

H. The County declines to accept or allow today the pre-WDO visitation level at the Winery set forth in Paragraph G.1, above. The County has instead negotiated and Defendants have agreed to reduced visitation as set forth in Paragraph 3, below. The Parties have entered into this Settlement Agreement based on the unique facts, circumstances, and evidence presented regarding the Use Permit, the Winery, and the Property. This Settlement Agreement is made as a compromise and settlement of disputed issues. The Parties and their representatives expressly covenant that the County's determination does not establish a precedent for consideration of the scope of entitlements on any other properties.

I. In addition to the claims made in the Action, the County has asserted that Defendants are in violation of the requirements of Napa County Code chapter 18.108 by exceeding the scope of Erosion Control Plan P11-0317-ECPA (the "ECP") on a separate parcel with Assessor's Parcel Number 021-400-005 (the "Vineyard Parcel") including, but not limited to, property line setbacks. Defendants have asserted that they have constructed the vineyard and used their property in good faith compliance with applicable requirements, and that any potential violation was unintentional and not willful. The County's claims regarding the ECP and the Vineyard Parcel shall be referred to below as the "ECP Claims." In November 2016, the Vineyard Parcel became the subject of a Notice of Violation issued by the San Francisco Regional Water Quality Control Board (the "State Water Board"). The State Water Board required the submission of a Corrective Action Workplan (the "CAW") to correct the violations of the California Water Code. The corrections contemplated by the CAW would also require an amendment to the ECP to ensure compliance with Napa County's conservation regulations. As of the execution of this Stipulation, the State Water Board has not approved a final CAW for the Vineyard Parcel; however, the Parties wish to, and hereby do, resolve any outstanding dispute as between the Parties regarding the ECP Claims in this Stipulation.

J. This Settlement Agreement and the proposed Stipulated Judgment attached hereto settle and conclude all issues, claims and defenses between the Parties as raised in the Action, all claims and defenses between them for civil penalties, costs, fees, and attorneys' fees relating to the allegations set forth in the Complaint in the Action, the County's Contentions, Defendants' Contentions, and all issues, claims and defenses as between the Parties regarding the ECP Claims. The Parties acknowledge that entry of Judgment will not and cannot affect the State Water Board's jurisdiction or authority regarding the CAW or the Notice of Violation issued by the State Water Board.

K. The Parties, without admitting any liability whatsoever and desiring to avoid any further claims, litigation, or controversies arising from the disputes referenced above and the matters alleged in the Complaint, have agreed to be bound by the terms of this Settlement Agreement.

NOW, THEREFORE, based on the foregoing, and for good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. The foregoing Recitals are incorporated herein by this reference.

2. Within fifteen (15) calendar days of full execution of this Settlement Agreement, the Parties shall execute and file the Proposed Stipulated Judgment (the "Judgment") attached hereto as Exhibit A, as well as a stipulation for entry of the Judgment if required by the Court. The Judgment shall fully and accurately reflect the terms of this Agreement. Each Party's trial counsel shall approve the Judgment as to form and facilitate compliance with this Paragraph.

Alleged Use Permit Violations

3. Immediately upon entry of Judgment pursuant to this Settlement Agreement, Defendants shall reduce and limit visitation at the Winery by members of the public to no more than 3,600 visitors per year. In addition to the annual limitation, Defendants shall also limit daily visitation to no more than 70 visitors on any given day. Defendants shall abide by these limits unless and until the County approves a Use Permit modification allowing greater levels of visitation. No hearing on a Use Permit modification pertaining to the Winery will occur prior to December 1, 2019. The limitation of December 1, 2019 does not apply to minor Use Permit modifications.

4. In addition to the visitation limits set forth above, immediately upon entry of Judgment pursuant to this Settlement Agreement, and unless and until authorized by a Use Permit modification that modifies one or more of the below restrictions, Defendants are hereby enjoined and ordered as follows:

- a. Defendants shall limit winery visitation to between the hours of 8:00 am and 5:00 pm Monday through Sunday.
- b. Defendants shall not use the main floor of the Farmhouse or the surrounding deck for winery purposes.
- c. Defendants shall not hold marketing events, as those events are defined in Napa County Code section 18.08.370.
- d. Defendants shall not rent the winery for private events.
- e. Defendants shall not serve food at the winery.
- f. Defendants shall not use the cave in a manner that is inconsistent with the Type II designation in their Use Permit, which prohibits Hosted Events, as defined in Napa County Code section 15.12.060(B).
- g. Defendants shall not use the bocce ball court, pizza oven, and tractor shed areas for winery purposes.

5. No later than the tenth calendar day of each month following the month in which the Judgment pursuant to this Settlement Agreement is entered, until such time as a Use Permit modification is granted that obviates the need for such reporting, Defendants shall provide to the County a declaration signed under penalty of perjury by Defendants or by their representative(s) who are authorized to bind Defendants attesting to the fact that they have complied with the conditions of Paragraphs 3 and 4, *supra*, including that their visitation levels are not on pace to exceed the annual limit set forth in Paragraph 3, *supra*. Such declarations shall attach logs or appointment books documenting the actual number of visitors.

6. Defendants may submit an application for a Use Permit Modification prior to December 1, 2019, and the County will process and review the application in the ordinary course of the County's business. Defendants expressly understand that if they submit an application prior to one year from entry of the Judgment pursuant to this Settlement Agreement, any environmental review by the County, as required by the California Environmental Quality Act (CEQA), will use the lesser of the permitted activities in Paragraphs 3 and 4, *supra*, or actual activities as determined from the declarations submitted pursuant to Paragraph 5, *supra*, as the baseline against which any potential environmental impacts will be assessed. The County does not and cannot make any representation or promise that any applications for use permit modifications submitted pursuant to the Judgment entered pursuant to this Settlement Agreement will be approved in whole or in part.

Alleged Building Code Violations

7. Within sixty (60) calendar days after entry of Judgment pursuant to this Settlement Agreement, Defendants shall submit complete applications for building permits for all of the following:
- a. To take all steps required by the County for a change in the permitted occupancy of the bottom floor of the Farmhouse to reflect winery occupancy.
 - b. To legalize or demolish the construction and installation of framing and electrical on the second floor of the winery building, provided the use of the second floor is limited to storage or an office.
 - c. To legalize or demolish the fermentation tanks and catwalks on the east side of the winery building.
 - d. To legalize or demolish the external stairs on the east side of the crush pad and on the west side of the winery building.
 - e. To legalize or demolish all handrails installed on the property, including those associated with the stairs identified in subparagraph 7(d), *supra*.
 - f. To legalize or demolish the plumbing to the outdoor sink.
 - g. To legalize or demolish any walls that are taller than four feet or that bear a surcharge.
8. Defendants shall diligently pursue all the permits required by Paragraph 7, *supra* by responding within fourteen (14) calendar days to any request by the County for corrections or modifications to the permit applications.
9. Upon issuance of any permit pursuant to Paragraph 7, *supra*, Defendants shall complete all authorized work and contact the County Planning, Building & Environmental Services for a final inspection within sixty (60) calendar days of permit issuance. If Defendants are unable to complete authorized work due to an occurrence beyond Defendants' reasonable control, including but not limited to an act of God or nature, Defendants shall immediately notify the County, and Defendants' 60-day deadline for performance hereunder shall be extended by the actual time of delay caused by such occurrence.

Alleged Conservation Regulation Violations and ECP Claims

10. Within sixty (60) calendar days after entry of Judgment pursuant to this Settlement Agreement, Defendants shall submit a complete application for an exception to the Conservation Regulations, as provided in Napa County Code section 18.108.040, to allow the walls and bridge structures within the creek setback. Defendants shall respond within fourteen

(14) days to any request by the County for corrections or modifications to the permit application. County staff shall reasonably recommend approval of the exception if it is consistent with the Napa County Code and will not result in any significant adverse environmental impact. Defendants shall complete any work authorized pursuant to this paragraph and shall contact County Planning, Building & Environmental Services for a final inspection within a reasonable time, using best efforts, of the approval.

11. Defendants shall work in good faith and with all deliberate speed to obtain a Final Corrective Action Workplan ("Final CAW") from the State Water Board by April 2019, so that corrective action may be undertaken in the spring and summer of 2019. Within sixty (60) calendar days after the State Water Board approves the Final CAW, Defendants shall submit a complete application for a modification to the ECP on the Vineyard Parcel, consistent with the Final CAW. Defendants shall respond to any request by the County for further information or documentation to support the application submitted pursuant to this Paragraph within fourteen (14) calendar days of receipt of any such request by the County. Defendants shall ensure that all work required to conform the Vineyard Parcel to the scope of any approved modification to the ECP is completed within one hundred eighty (180) calendar days from approval by the County.

Additional Terms

12. Defendants shall pay to the County, by checks made payable to "The County of Napa," \$271,464 as a compromised amount to partially reimburse the County for its attorneys' fees and costs incurred in the Action. Defendants shall pay this amount as follows. Defendants shall pay \$32,000 within thirty (30) calendar days after entry of Judgment pursuant to this Settlement Agreement. Defendants shall pay the remainder in two equal installments of \$119,732, with the first before July 1, 2019, and the second before December 31, 2019. The County shall not object to Defendants' characterization of these payments as tax-deductible business or similar expenses but makes no representation regarding the supportability of such characterization.

13. Within sixty (60) calendar days after entry of Judgment pursuant to this Settlement Agreement, to secure performance of Defendants' obligations in this Settlement Agreement, Defendants shall individually and jointly execute a promissory note to the County in the amount of \$320,658.00 secured by a deed of trust on the Property that Defendants shall promptly record. The form of promissory note to be executed by Defendants is attached hereto and incorporated herein by this reference as Exhibit B. The form of deed of trust to be executed and recorded by Defendants is attached hereto and incorporated herein by this reference as Exhibit C. The County's position shall be secured by no less than a second position security interest in the collateral. The sum of indebtedness cannot exceed 80% of the Property value. If on December 31, 2019, Defendants have complied with all the requirements of this Settlement Agreement, including Paragraphs 3, 4 and 5; have obtained all the permits and approvals

required by Paragraphs 7, 10 and 11 of this Settlement Agreement; and have completed all the work required by Paragraphs 9, 10 and 11 of this Settlement Agreement, then the promissory note shall be cancelled without any payment and the County shall execute any reasonable documents to clear title and reconvey the deed of trust on or shortly after December 31, 2019. If on December 31, 2019, Defendants have substantially complied with the requirements of this Settlement Agreement but have been unable to complete authorized work due to an occurrence beyond Defendants' reasonable control, including but not limited to an act of God or nature or unforeseen delay by the State Water Board, then the December 31, 2019 deadline for performance hereunder shall be extended by the actual time of delay caused by such occurrence, as determined in the County's sole discretion, and, upon performance, the promissory note shall be cancelled without any payment and the County shall execute any reasonable documents to clear title and reconvey the deed of trust. If on December 31, 2019, Defendants have not complied with the requirements of this Settlement Agreement and the delay in their compliance was not caused by an occurrence beyond Defendants' reasonable control, then the County shall enforce the secured promissory note.

14. Defendants shall make good faith efforts to educate their employees and contractors and ensure compliance with the Judgment entered into pursuant to this Settlement Agreement. Defendants shall ensure that the obligations and conditions in the Judgment are communicated to each existing or new agent, employee, officer, assign, servant, or representative, and shall specifically inform them of the limitations on daily and annual visitation set forth in Paragraph 3, and the limitations set forth in Paragraph 4. Defendants shall require all current and future employees to sign a notice acknowledging that they have received the executed Judgment and understand its contents.

15. The harm or injury to the County that would result from violation of any provisions of the Judgment pursuant to this Settlement Agreement is difficult to ascertain or generally not capable of calculation. Therefore, if Defendants violate any of the provisions set forth in the Judgment pursuant to the Settlement Agreement, the Parties agree to the following consequences:

- a. The County may reset the restriction on a hearing on a Use Permit Modification pertaining to the Winery, set forth in Paragraph 3, *supra*, from December 1, 2019, to one year from the date that the County provides notice of the material violation of the Judgment pursuant to this Settlement Agreement;
- b. In the event of a material violation, Defendants shall cease all operation of the Winery for a period of one (1) month from the date that the County provides notice of the material violation of the Judgment pursuant to this Settlement Agreement; and

- c. The County shall enforce the secured promissory note pursuant to Paragraph 13.
- d. For purposes of this paragraph, “material” violations shall include but not be limited to any violation of Paragraphs 3 and 4, *supra*, including the daily and annual visitation limits set forth in Paragraph 3.

16. Reasonable attorney’s fees will be awarded to the prevailing Party in any action or on any motion filed to enforce or interpret this Agreement or the Judgment pursuant to this Settlement Agreement.

17. The County and its officers, agents, or employees, or persons duly authorized to act on its behalf, may enter the Property during normal business hours upon two (2) days’ notice to Defendants, notifying them of the date and time of inspecting the Property for compliance with the Judgment pursuant to this Settlement Agreement. The Property shall not be locked and shall be accessible to the County at the date and time set forth in the notice. The Napa County Sheriff may send such deputies as staff deems appropriate to enforce this directive and to protect and supervise the County officers, agents, employees, and persons duly authorized to act on its behalf.

18. The Judgment pursuant to this Settlement Agreement shall be recorded against the Property. The Judgment pursuant to this Settlement Agreement, and the covenants and conditions contained therein, shall run with the land, apply to, be binding upon, and inure to the legatees, devisees, administrators, executors, legal representatives, assignees, successors in interest, buyers, and agents of the Parties hereto, and may not be altered, amended, modified, or otherwise changed except by a writing executed by County and Defendants.

19. Except as provided above, each Party shall bear its own attorneys’ fees and costs incurred in the Action.

20. This Agreement contains the entire agreement between the Parties regarding the matters set forth herein and any amendment must be in writing and signed by the Parties.

21. The Parties hereby waive the right to appeal, to attempt to set aside or vacate, or otherwise to attack, directly or collaterally, the Judgment entered pursuant to this Settlement Agreement.

22. The Parties, and each of them, acknowledge that they have either been advised to seek, or been represented by, legal counsel throughout all of the negotiations which preceded the execution of this Agreement and the Judgment, and that they have executed this Agreement after seeking and receiving the advice of such counsel, or have voluntarily waived seeking such advice.

23. The Bremers, individually and on behalf of their family trust, agree to be bound as of the date of their signatures on this Agreement, and the Bremer Group, LLC, agrees to be bound as of the date of its authorized signatory's signature on this Agreement, by the provisions of the proposed Stipulated Judgment as though ordered by the Court, though the terms of the proposed Judgment cannot be enforced until on or after the date the Judgment is entered by the Court. The County shall serve by mail on all Defendants the Judgment entered pursuant to this Settlement Agreement when it is filed and each of the Parties waives any further notice or service of the final Judgment.

24. The filing of this Settlement Agreement and the proposed Judgment may be made by the ex parte appearance of the County **without** further notice to Defendants.

25. This Agreement may be executed by facsimile signatures and in counterparts, which when taken together shall constitute one and the same Agreement.

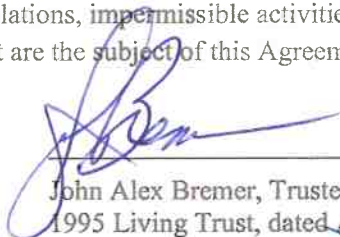
26. If any provision or part of any provision of this Agreement is for any reason held to be invalid, unenforceable or contrary to public policy, law, statute and/or ordinance, then the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

27. The Parties agree that any legal rule or maxim to the effect that ambiguities are to be resolved against the drafting Party shall not apply to any interpretation of this Agreement.

28. The Parties shall request that the Court retain jurisdiction to enforce the Judgment entered pursuant to this Settlement Agreement under Code of Civil Procedure section 664.6.


29. Nothing in this Agreement shall be construed as precluding the County from commencing future litigation or administrative enforcement actions against Defendants for any **unrelated existing** or future Code violations, **impermissible** activities, or occurrences that are not part of the County's Contentions that are the **subject** of this Agreement.

Date: 1-25-19



John Alex Bremer, Trustee of the Bremer Family
1995 Living Trust, dated August 23, 1995

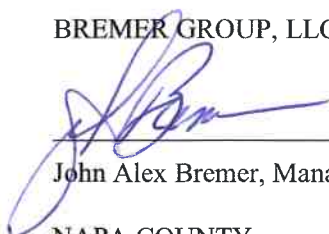
Date: 01/25/19



Laura Joyce Bremer, Trustee of the Bremer
Family 1995 Living Trust, dated August 23, 1995

Date: 1-25-19

BREMER GROUP, LLC



John Alex Bremer, Managing Member

Date: 2-6-19

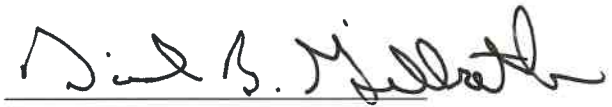
NAPA COUNTY



David Morrison, Director of Planning,
Building & Environmental Services

APPROVED AS TO FORM:

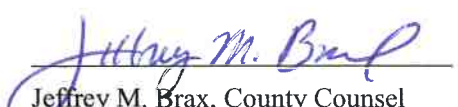
Date: 1/25/19



David B. Gilbreth
Counsel for Defendants

Date: 2/6/19

NAPA COUNTY COUNSEL



Jeffrey M. Brax, County Counsel
Attorneys for Plaintiff

EXHIBIT A

1 JEFFREY M. BRAX, County Counsel (Bar No. 218601)
JEFFREY M. RICHARD, Chief Deputy (Bar No. 105286)
2 JASON M. DOOLEY, Deputy (Bar No. 258570)
SHANA A. BAGLEY, Deputy (Bar No. 169423)
3 NAPA COUNTY
1195 Third Street, Suite 301
4 Napa, California 94559-3001
Telephone: 707 253 4521 / Facsimile: 707 259 8220
5 Email: Jason.Dooley@countyofnapa.org

6 ARTHUR F. COON (Bar No. 124206)
BASIL S. SHIBER (Bar No. 144260)
7 MILLER STARR REGALIA
A Professional Law Corporation
8 1331 N. California Blvd., Fifth Floor
Walnut Creek, California 94596
9 Telephone: 925 935 9400 / Facsimile: 925 933 4126
Email: arthur.coon@mrsrlegal.com
10 bill.shiber@mrsrlegal.com

11 Attorneys for Plaintiff NAPA COUNTY

12 *Exempt from Filing Fees Pursuant to Gov't Code § 6103*

13
14 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 IN AND FOR THE COUNTY OF NAPA

16 NAPA COUNTY,

17 Plaintiff,

18 v.

19 JOHN ALEX BREMER AND LAURA JOYCE
BREMER, TRUSTEES OF THE BREMER
FAMILY 1995 LIVING TRUST DATED
20 AUGUST 23, 1995;
BREMER GROUP, LLC, A CALIFORNIA
21 LIMITED LIABILITY COMPANY;
and DOES 1 through 10, inclusive,

22 Defendants.
23

Case No.: 17CV000884

**[PROPOSED]
JUDGMENT PURSUANT TO STIPULATION
OF PARTIES**

24
25 It appearing to the Court that all parties to the above-entitled action (the "Parties"), Plaintiff
26 NAPA COUNTY ("County"), on the one hand, and Defendants JOHN ALEX BREMER AND LAURA
27 JOYCE BREMER, Trustees of the Bremer Family 1995 Living Trust dated August 23, 1995 (the
28 "Bremers"), BREMER GROUP, LLC, (collectively with the Bremers, the "Defendants"), on the other

1 hand, have, in a Settlement Agreement filed with the Court and comprising and containing the Parties'
2 stipulation, stipulated and requested the Court in the above-entitled action to enter this Judgment
3 Pursuant to Stipulation, the Court having considered the Parties' Stipulation and the pleadings on file in
4 this action, and good cause appearing therefor;

5 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

6 1. The Court has jurisdiction over the subject matter hereof and of the Parties hereto.

7 2. The Court hereby incorporates by reference the terms of the Parties' Settlement
8 Agreement for Entry of Judgment, a true and correct copy of which is attached hereto and incorporated
9 herein by this reference as Exhibit "1" ("Settlement Agreement").

10 3. The Bremers have been, during all relevant time periods, the legal owners of that real
11 property located in the unincorporated area of Napa County identified as 975 Deer Park Road, in
12 unincorporated Napa County (bearing a St. Helena, California mailing address) and identified by
13 Assessor Parcel Number 021-400-002 (the "Property"), and one or more of the Defendants own and
14 operate the Bremer Family Winery (the "Winery") on the Property.

15 4. This action was filed by the County alleging various violations by Defendants of the
16 County Code and the California Building Code in their operation of the Winery on the Property and in
17 their construction and maintenance of certain structures or improvements on the Property.

18 5. The Parties, without admitting any liability whatsoever and desiring to avoid any further
19 claims, litigation, or controversies arising from the disputes referenced above and the matters alleged in
20 the complaint on file herein, have stipulated to the entry of this Judgment through the Settlement
21 Agreement.

22 6. The injunctive portions of this Judgment are applicable to all Defendants, and also to
23 each of their agents, servants, employees, representatives, partners, successors and assigns, and to all
24 persons, employees, and other entities who are acting in concert or participating with Defendants, with
25 actual or constructive notice of this Judgment.

26 **Alleged Use Permit Violations**

27 7. Immediately upon entry of this Judgment, Defendants shall reduce and limit visitation at
28 the Winery by members of the public to 3,600 visitors per year. In addition to the annual limitation,

1 Defendants shall also limit daily visitation to no more than 70 visitors on any given day. Defendants
2 shall abide by these limits unless and until the County approves a Use Permit modification allowing
3 greater levels of visitation. No hearing on a Use Permit modification pertaining to the Winery will occur
4 prior to December 1, 2019. The limitation of December 1, 2019 does not apply to minor Use Permit
5 modifications.

6 8. In addition to the visitation limits set forth above, immediately upon entry of this
7 Judgment, and unless and until authorized by a Use Permit modification that modifies one or more of the
8 below restrictions, Defendants are hereby enjoined and ordered as follows:

- 9 a. Defendants shall limit winery visitation to between the hours of 8:00 am and 5:00 pm
10 Monday through Sunday.
- 11 b. Defendants shall not use the main floor of the Farmhouse or the surrounding deck for
12 winery purposes.
- 13 c. Defendants shall not hold marketing events, as those events are defined in Napa County
14 Code section 18.08.370.
- 15 d. Defendants shall not rent the winery for private events.
- 16 e. Defendants shall not serve food at the winery.
- 17 f. Defendants shall not use the cave in a manner that is inconsistent with the Type II
18 designation in their Use Permit, which prohibits Hosted Events, as defined in Napa
19 County Code section 15.12.060(B).
- 20 g. Defendants shall not use the bocce ball court, pizza oven, and tractor shed areas for
21 winery purposes.

22 9. No later than the tenth calendar day of each month following the month in which the
23 Judgment is entered, until such time as a Use Permit modification is granted that obviates the need for
24 such reporting, Defendants shall provide to the County a declaration signed under penalty of perjury by
25 Defendants or by their representative(s) who are authorized to bind Defendants attesting to the fact that
26 they have complied with the conditions of Paragraphs 7 and 8, *supra*, including that their visitation
27 levels are not on pace to exceed the annual limit set forth in Paragraph 7, *supra*. Such declaration shall
28 attach logs or appointment books documenting the actual number of visitors.

1 10. Defendants may submit an application for a Use Permit Modification prior to December
2 1, 2019, and the County will process and review the application in the ordinary course of the County's
3 business. Defendants expressly understand that if they submit an application prior to one year from entry
4 of this Judgment, any environmental review by the County, as required by the California Environmental
5 Quality Act (CEQA), will use the lesser of the permitted activities in Paragraphs 7 and 8, *supra*, or
6 actual activities as determined from the declarations submitted pursuant to Paragraph 9, *supra*, as the
7 baseline against which any potential environmental impacts will be assessed. The County does not and
8 cannot make any representation or promise that any applications for use permit modifications submitted
9 pursuant to this Judgment will be approved in whole or in part.

10 **Alleged Building Code Violations**

11 11. Within sixty (60) calendar days after entry of this Judgment, Defendants shall submit
12 complete applications for building permits for all of the following:

- 13 a. To take all steps required by the County for a change in the permitted occupancy of the
14 bottom floor of the Farmhouse to reflect winery occupancy.
- 15 b. To legalize or demolish the construction and installation of framing and electrical on the
16 second floor of the winery building, provided the use of the second floor is limited to
17 storage or an office.
- 18 c. To legalize or demolish the fermentation tanks and catwalks on the east side of the
19 winery building.
- 20 d. To legalize or demolish the external stairs on the east side of the crush pad and on the
21 west side of the winery building.
- 22 e. To legalize or demolish all handrails installed on the property, including those associated
23 with the stairs identified in subparagraph 11(d), *supra*.
- 24 f. To legalize or demolish the plumbing to the outdoor sink.
- 25 g. To legalize or demolish any walls that are taller than four feet or that bear a surcharge.

26 12. Defendants shall diligently pursue all the permits required by Paragraph 11, *supra* by
27 responding within fourteen (14) days to any request by the County for corrections or modifications to
28 the permit applications.

1 13. Upon issuance of any permit pursuant to Paragraph 11, *supra*, Defendants shall complete
2 all authorized work and contact Planning, Building & Environmental Services for a final inspection
3 within sixty (60) days of permit issuance. If Defendants are unable to complete authorized work due to
4 an occurrence beyond Defendants' reasonable control, including but not limited to an act of God or
5 nature, Defendants shall immediately notify the County, and Defendants' 60-day deadline for
6 performance hereunder shall be extended by the actual time of delay caused by such occurrence.

7 **Alleged Conservation Regulation Violations and ECP Claims**

8 14. Within sixty (60) calendar days after entry of Judgment, Defendants shall submit a
9 complete application for an exception to the Conservation Regulations, as provided in Napa County
10 Code section 18.108.040, to allow the walls and bridge structures within the creek setback. Defendants
11 shall respond within fourteen (14) calendar days to any request by the County for corrections or
12 modifications to the permit application. County staff shall reasonably recommend approval of the
13 exception if it is consistent with the Napa County Code and will not result in any significant adverse
14 environmental impact. Defendants shall complete any work authorized pursuant to this paragraph and
15 shall contact County Planning, Building & Environmental Services for a final inspection within a
16 reasonable time, using best efforts, of the approval.

17 15. Defendants shall work in good faith and with all deliberate speed to obtain a Final
18 Correction Action Workplan ("Final CAW") from the State Water Board by April 2019, so that
19 corrective action may be undertaken in the spring and summer of 2019. Within sixty (60) calendar days
20 after the State Water Board approves the Final CAW, Defendants shall submit a complete application
21 for a modification to the ECP on the Vineyard Parcel, consistent with the Final CAW. Defendants shall
22 respond to any request by the County for further information or documentation to support the
23 application submitted pursuant to this Paragraph within fourteen (14) calendar days of receipt of any
24 such request by the County. Defendants shall ensure that all work required to conform the Vineyard
25 Parcel to the scope of any approved modification to the ECP is completed within one hundred eighty
26 (180) calendar days from approval by the County.

1 **Additional Terms**

2 16. Defendants shall pay to the County, by checks made payable to "The County of Napa,"
3 \$271,464 as a compromised amount to partially reimburse the County for its attorneys' fees and costs
4 incurred in the Action. Defendants shall pay this amount as follows. Defendants shall pay \$32,000
5 within thirty (30) calendar days after entry of this Judgment. Defendants shall pay the remainder in two
6 equal installments of \$119,732, with the first before July 1, 2019, and the second before December 31,
7 2019. The County shall not object to Defendants' characterization of these payments as tax-deductible
8 business or similar expenses but makes no representation regarding the supportability of such
9 characterization.

10 17. Within sixty (60) calendar days after entry of Judgment, to secure performance of
11 Defendants' obligations in this Judgment, Defendants shall individually and jointly execute a
12 promissory note to the County in the amount of \$320,658.00 secured by a deed of trust on the Property
13 that Defendants shall promptly record. The form of promissory note to be executed by Defendants is
14 attached hereto and incorporated herein by this reference as Exhibit 2. The form of deed of trust to be
15 executed and recorded by Defendants is attached hereto and incorporated herein by this reference as
16 Exhibit 3. The County's position shall be secured by no less than a second position security interest in
17 the collateral. The sum of indebtedness cannot exceed 80% of the Property value. If on December 31,
18 2019, Defendants have complied with all the requirements of this Judgment, including Paragraphs 7, 8
19 and 9; have obtained all the permits and approvals required by Paragraphs 11, 14 and 15 of this
20 Judgment; and have completed all the work required by Paragraphs 13, 14 and 15 of this Judgment, then
21 the promissory note shall be cancelled without any payment and the County shall execute any
22 reasonable documents to clear title and reconvey the deed of trust on or shortly after December 31,
23 2019. If on December 31, 2019, Defendants have substantially complied with the requirements of this
24 Judgment but have been unable to complete authorized work due to an occurrence beyond Defendants'
25 reasonable control, including but not limited to an act of God or nature or unforeseen delay by the State
26 Water Board, then the December 31, 2019 deadline for performance hereunder shall be extended by the
27 actual time of delay caused by such occurrence, as determined in the County's sole discretion, and, upon
28 performance, the promissory note shall be cancelled without any payment and the County shall execute
any reasonable documents to clear title and reconvey the deed of trust. If on December 31, 2019,

1 Defendants have not complied with the requirements of this Judgment and the delay in their compliance
2 was not caused by an occurrence beyond Defendants' reasonable control, then the County shall enforce
3 the secured promissory note.

4 18. Defendants shall make good faith efforts to educate their employees and contractors and
5 ensure compliance with this Judgment. Defendants shall ensure that the obligations and conditions in
6 this Judgment are communicated to each existing or new agent, employee, officer, assign, servant, or
7 representative, and shall specifically inform them of the limitations on daily and annual visitation set
8 forth in paragraph 7, and the limitations set forth in paragraph 8. Defendants shall require all current and
9 future employees to sign a notice acknowledging that they have received the executed Judgment and
10 understand its contents.

11 19. The harm or injury to the County that would result from violation of any provisions of
12 this Judgment is difficult to ascertain or generally not capable of calculation. Therefore, if Defendants
13 violate any of the provisions set forth in this Judgment, the Parties agree to the following consequences:

- 14 a. The County may reset the restriction on a hearing on a Use Permit Modification
15 pertaining to the Winery, set forth in Paragraph 7, *supra*, from December 1, 2019 to one
16 year from the date that the County provides notice of the material violation of this
17 Judgment;
- 18 b. In the event of a material violation, Defendants shall cease all operation of the Winery for
19 a period of one (1) month from the date that the County provides notice of the material
20 violation of this Judgment; and
- 21 c. The County shall enforce the secured promissory note pursuant to Paragraph 17.
- 22 d. For purposes of this paragraph, "material" violations shall include but not be limited to
23 any violation of Paragraphs 7 and 8, including the daily and annual visitation limits set
24 forth in Paragraph 7.

25 20. Reasonable attorneys' fees will be awarded to the prevailing Party in any action or on any
26 motion filed to enforce or interpret this Judgment.

27 21. The Court retains jurisdiction to enforce the terms of this Judgment pursuant to Code of
28 Civil Procedure section 664.6, which enforcement may be sought, if necessary, by any of the Parties by
ex parte application for appropriate relief consistent with the terms of this Judgment.

1 22. The County and its officers, agents or employees, or persons duly authorized to act on its
2 behalf, may enter the Property during normal business hours upon two (2) days' notice to Defendants,
3 notifying them of the date and time of inspecting the Property for compliance with this Judgment. The
4 Property shall not be locked and shall be accessible to the County at the date and time set forth in the
5 notice. The Napa County Sheriff may send such deputies as staff deems appropriate to enforce this
6 directive and to protect and supervise the County officers, agents, employees, and persons duly
7 authorized to act on its behalf.

8 23. This Judgment shall be recorded against the Property. This Judgment, and the covenants
9 and conditions contained herein, shall run with the land, apply to, be binding upon, and inure to the
10 legatees, devisees, administrators, executors, legal representatives, assignees, successors in interest,
11 buyers, and agents of the Parties hereto, and may not be altered, amended, modified, or otherwise
12 changed except by a writing executed by County and Defendants.

13 24. Except as provided above, each Party shall bear its own attorneys' fees and costs incurred
14 in this Action.

15 25. This Judgment shall take effect immediately upon entry thereof.

16
17 Date: _____

Judge of the Superior Court

EXHIBIT B

Do not destroy this original note

PROMISSORY NOTE SECURED BY DEED OF TRUST

\$320,658.00
Napa, California
_____, 2019

FOR VALUE RECEIVED, JOHN ALEX BREMER, AS TRUSTEE OF THE BREMER FAMILY 1995 LIVING TRUST, DATED AUGUST 23, 1995, LAURA JOYCE BREMER, AS TRUSTEE OF THE BREMER FAMILY 1995 LIVING TRUST, DATED AUGUST 23, 1995, and THE BREMER GROUP, LLC, (collectively "Promissors/Defendants") hereby promise to pay, on December 31, 2019 (the "Maturity Date"), to the order of NAPA COUNTY, a subdivision of the State of California ("Holder"), the principal sum of Three Hundred Twenty Thousand, Six Hundred, Fifty-Eight Dollars and No Cents (\$320,658.00). Promissors/Defendants also agree to pay any and all interest and other sums owed under this Promissory Note (the "Note") as and to the extent specified below. All sums owed under this Note shall be paid in lawful money at the office of Napa County Counsel located 1195 Third Street, Suite 301, Napa, CA 94559, or such other place as Holder from time to time designates in writing. As specified in the Settlement Agreement (as defined below), the Maturity Date may be extended, but only if evidenced by a writing signed by both Promissors/Defendants and Holder.

1. SECURED BY DEED OF TRUST. Promissors/Defendants' obligations under this Note are secured by that Deed of Trust With Assignment of Rents of even date herewith, duly executed and acknowledged by Promissors/Defendants, as trustors, for the benefit of Holder, and with Placer Title Company, as the trustee thereunder (the "Deed of Trust"). The Deed of Trust is or will be recorded against certain real property located in Napa County, California, and more fully described therein.
2. SETTLEMENT AGREEMENT AND CONDITIONAL OBLIGATION. This Note is being signed and delivered pursuant to that certain Settlement Agreement, dated _____, 2019, entered into by and between Holder and Promissors/Defendants (the "Settlement Agreement"). A true and correct copy of the Settlement Agreement is attached hereto and incorporated herein as Exhibit 1. As specified more fully in the Settlement Agreement, if the obligations of Promissors/Defendants thereunder have been fully performed on or before the Maturity Date (as the same may be extended as provided herein and in the Settlement Agreement), then this Note shall be deemed terminated and cancelled without any payment and Holder shall then take all steps necessary to clear title and cause the Deed of Trust to be reconveyed. In the event of any conflict between this Note and the Settlement Agreement, the Settlement Agreement shall control.
3. EVENT OF DEFAULT / DEFAULT. The failure of Promissors/Defendants to make any payment owed under this Note as and when the same becomes due and payable shall constitute a default by Promissors/Defendants hereunder, and shall entitle Holder to pursue and any and all remedies granted to it under applicable law, including, without limitation, as provided for in the Deed of Trust. No interest will be owed under this Note unless the Note is not paid in full by the Maturity Date (as the same may be extended as provided above and in the Settlement Agreement). From and after said Maturity Date, this Note shall bear interest on the unpaid principal amount hereof at a rate equal to the lesser of (x) seven percent (7%) per annum or (y) the highest rate allowed by law. All interest calculations under this Note shall be made on the basis of a three-hundred-sixty (360) day year and actual days elapsed. Daily interest shall consist of the product of the outstanding principal balance of this Note times the interest rate then in effect divided by 360, then multiplied by the number of days for which the daily interest calculation is made.
4. ATTORNEYS' FEES. In the event that suit be brought in connection with this Note, or an attorney be employed or expenses be incurred to compel payment of this Note or any portion of the indebtedness evidenced hereby, the non-prevailing party agrees to pay all such expenses and attorneys' fees incurred by the other party as a result thereof.

To Form
↔

5. **SEVERABILITY.** If any provision of this Note or any payments pursuant to the terms hereof shall be invalid or unenforceable to any extent, the remainder of this Note and any other payments hereunder shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.
6. **MODIFICATION.** No waiver of any breach of or event of default or failure of condition under the terms of this Note, the Settlement Agreement, and/or the Deed of Trust, or any obligations secured thereby, shall be implied from any failure of Holder to take, or any delay by Holder in taking action with respect to any concurrent or subsequent breach of or event of default or from any previous waiver of any similar or unrelated breach of or event of default. A waiver by Holder of any term of this Note, the Settlement Agreement or the Deed of Trust must be made in writing executed by Holder, shall be limited to the express written terms of such waiver, and shall not be construed as a waiver or release of any subsequent breach or event of default.
7. **JOINT AND SEVERAL OBLIGATIONS.** If this Note is executed by more than one person or entity as Promissors/Defendants, the obligations of each such person or entity shall be joint and several. No such person shall be a mere accommodation maker, and each such person shall be primarily and directly liable hereunder.
8. **HOLDER.** The term "Holder", as used herein, shall mean and include Holder and any successor or assign of Holder, and any holder of this Note shall, upon becoming such holder, be included in the term "Holder" wherever the same appears in this Note.
9. **GOVERNING LAW.** This Note shall be governed by and construed under the laws of the State of California.
10. **COMMERCIAL NOTE.** Promissors/Defendants represent and warrant to Holder that the indebtedness evidenced by this Note was not incurred for personal, family or household purposes.
11. **TIME.** Time is of the essence of this Note and each provision hereof. Whenever in this Note the term "day" is used, it means a calendar day.
12. **BINDING.** This Note shall be binding upon and its successors and assigns, and shall inure to the benefit of Holder and its successors and assigns.
13. **HEADINGS: GENDER.** The headings of the paragraphs of this Note are inserted for convenience only and shall not be deemed to constitute a part hereof. All words and phrases shall be taken to include the singular or plural number, and the masculine, feminine or neuter gender, as may fit the case.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Note as of the date and year first above written.

JOHN ALEX BREMER, TRUSTEE OF THE BREMER FAMILY
1995 LIVING TRUST, DATED AUGUST 23, 1995

LAURA JOYCE BREMER, TRUSTEE OF THE BREMER FAMILY
1995 LIVING TRUST, DATED AUGUST 23, 1995

THE BREMER GROUP, LLC

By: _____
John Alex Bremer, Managing Member



EXHIBIT C

RECORDING REQUESTED BY

Placer Title Company

When Recorded Mail To:

Napa County
C/O Napa County Counsel
Jeffrey M. Brax
1195 Third St., Ste 301
Napa, CA 94559

Order No. P-311235-LB

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEED OF TRUST WITH ASSIGNMENT OF RENTS
(With Acceleration Clause)**

This DEED OF TRUST, made _____, 2019, between

John Alex Bremer and Laura Joyce Bremer, Trustees of the Bremer Family 1995 Living Trust dated August 23, 1995, herein called TRUSTOR, whose address is 975 Deer Park Road, St. Helena, CA 94574.

Placer Title Company, a California corporation, herein called TRUSTEE, and **Napa County, a subdivision of the State of California**, whose address is 1195 Third Street, Napa CA 94559, herein called BENEFICIARY,

WITNESSETH: That Trustor grants to Trustee in Trust, with Power of Sale, that property described as:
The land described herein is situated in the State of California, County of Napa, unincorporated area, described as follows:

A portion of the Southeast quarter of the Southeast quarter of Section 12, and a portion of the Northeast quarter of the Northeast quarter of Section 13, all in Township 8 North, Range 6 West, M.D.B. & M., being in the Carne Humana Rancho, and more particularly described as follows:

BEGINNING at the northeast corner of said Section 13, and running thence along the East line thereof, South 0° 26' 15" West to an iron pipe marked "R.E. 8709", marking the northeast corner of the land described in the Deed to Melvin A. Nelson, et ux, et al, recorded in Book 624 at page 444 of Official Records of Napa County, said point being North 0° 26' 15" East 1702.52 feet from the southeast corner of said Section 13; running thence West 643.02 feet; thence South 72° 36' West 682.15 feet to an iron pipe on the easterly line of Deer Park County Road; thence northerly along said East line to its intersection with the southeast line of the land described in Deed to Otis J. Boyer, et ux, recorded in Book 509 at page 64 of Official Records of Napa County; thence along said southeast line, North 73° 29' East 320.46 feet; thence North 382.11 feet to an iron pipe at the northeast corner of said Boyer parcel; thence North 72° 04' 50" East 239.15 feet to an iron pipe; thence North 28° 51' 40" East 508.17 feet to a hub set by the County of Napa Engineer Station 47+88.93 of the survey of Deer Park Road dated January 19, 1961; thence North 54° 38' 40" East 400.90 feet; thence North 23° 22' 40" East 319.37 feet to an iron pipe on the east line of Section 12 of said Township and Range; thence along said East line southerly 1458.53 feet, more or less, to the point of commencement.

EXCEPTING THEREFROM all that portion contained in the Deed to the County of Napa, recorded May 7, 1980, in Book 1163 at page 225 of Official Records of Napa County.

APN: 021-400-002-000, 021-420-027-000

Together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

To Form
[Signature]

For the Purpose of Securing (1) Payment of the sum of **Three Hundred Twenty Thousand Six Hundred Fifty Eight Dollars and No Cents (\$320,658.00)** with interest thereon according to the terms of a promissory note or notes of even date herewith made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof, and (2) the performance of each agreement of Trustor incorporated by reference or contained herein (3) Payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

ACCELERATION CLAUSE: If the trustors shall sell, convey or alienate said property or any part thereof or any interest therein, or shall be divested of their title in any manner or way, whether voluntarily or involuntarily; any indebtedness or obligation secured hereby, irrespective of the maturity date expressed in any note evidencing the same, at the option of the holder hereof and without demand or notice, shall immediately become due and payable.

The undersigned Trustor requests that a copy of any Notice of Default and any Notice of Sale hereunder be mailed to Trustor at the address hereinbefore set forth.

A. To protect the security of this Deed of Trust, Trustor agrees:

- (1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumeration's herein not excluding the general.
- (2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
- (3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.
- (4) To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs; fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

- (5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.



B. It is mutually agreed:

- (1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided or disposition of proceeds of fire or other insurance.
- (2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.
- (3) That at any time or from time to time, without liability therefor and without notice, upon written request of beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof. That upon written request of Beneficiary stating all sums secured hereby have been paid, and surrender of this Deed and said Note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."
- (4) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
- (5) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of



title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

- (6) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.
- (7) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
- (8) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

[Remainder of Page Intentionally Left Blank]

Signature of Trustor(s)

John Alex Bremer and Laura Joyce Bremer, Trustees of the Bremer Family 1995 Living Trust dated August 23, 1995

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }
COUNTY OF NAPA }ss

On _____, before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public





A Tradition of Stewardship
A Commitment to Service

Planning, Building & Environmental Services

1195 Third Street, Suite 210
Napa, CA 94559
www.countyofnapa.org

David Morrison
Director

October 22, 2019

John Bremer
Bremer Group LLC
975 Deer Park Road
St. Helena CA 94574

**Re: Bremer Family Winery, Use Permit Exception to the Conservation Regulations #P19-00153
975 Deer Park Road, St. Helena, CA (APNs 021-40⁰-002 and 021-420-027)**

Dear Mr. Bremer,

Please be advised that Use Permit Exception to Conservation Regulations #P19-00153 was **APPROVED** by the Napa County Planning Commission (hereinafter, "Commission") on October 16, 2019, subject to the attached and adopted final conditions of approval (as revised by the Planning Commission), Napa County departmental comments, and all applicable Napa County regulations. In approving the above application, the Commission adopted Categorical Exemptions pursuant to the California Environmental Quality Act (CEQA).

This permit becomes effective immediately unless a timely appeal is filed with the Napa County Board of Supervisors consistent with Chapter 2.88 of the Napa County Code, including payment of applicable fees. You have the right to appeal the conditions of approval, and you will be notified should an appeal be filed by another party. You are hereby further notified that the 90-day period, established by California Government Code Section 66020(d)(1), in which to protest the imposition of any fees, dedications, reservations, or other exactions that may have been adopted as conditions of approval, has commenced.

Pursuant to Napa County Code Section 18.124.080, the approved Use Permit and Use Permit Exception to the Conservation Regulations must be activated within two years of the approval date, or it will automatically expire and become void. This letter serves as the only notice you will receive regarding the expiration of your permit.

**USE PERMIT EXCEPTION TO THE CONSERVATION REGULATIONS EXPIRATION DATE:
October 16, 2021**

Planning Division
(707) 253-4417

Building Division
(707) 253-4417

Engineering & Conservation
(707) 253-4417

Environmental Health
(707) 253-4471

Parks & Open Space
(707) 259-5933

If you have any questions about this letter, please contact me by telephone at (707) 299-1338 or by email at donald.barrella@countyofnapa.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donald Barrella".

Donald Barrella
Planner III

Enclosures: Adopted Conditions of Approval and Departmental Requirements

CC: David Morrison, Director, Planning Building and Environmental Services (via email)
 Brian Bordona, Deputy Director, Planning Building and Environmental Services (via email)
 Jeffery Brax, County Counsel (via email)
 John Bremer, 10490 Dawson Canyon Road, Corona CA 92883
 David B. Gilbreth, 1152 Hardman Avenue, Napa CA 94558

**REVISED
PLANNING COMMISSION HEARING – OCTOBER 16, 2019
CONDITIONS OF APPROVAL**

***Bremer Family Winery Site Improvements
Use Permit Exception to the Conservation Regulations
Application Number P19-00153-UP
975 Deer Park Road, St. Helena
(APNs 021-400-002 and 021-420-027)***

This permit encompasses and shall be limited to the project commonly known as *Bremer Family Winery Site Improvements Recognition and Retention*, located at 975 Deer Park Road, St. Helena. Part I encompasses the Project Scope and general conditions pertaining to statutory and local code references, project monitoring, and the process for any future changes or activities. Part II encompasses the ongoing conditions relevant to the operation of the project. Part III encompasses the conditions relevant to construction and the prerequisites for a Final Certificate of Occupancy. It is the responsibility of the permittee to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and guests of the winery to ensure compliance is achieved.

Where conditions are not applicable or relevant to this project, they shall be noted as "Reserved" and therefore have been removed.

When modifying a legally established entitlement related to this project, these conditions are not intended to be retroactive or to have any effect on existing vested rights except where specifically indicated.

PART I

1.0 PROJECT SCOPE

The permit encompasses and shall be limited to:

- 1.1 The recognition and approval of, the following existing site improvements, or portions thereof, in their existing configuration, that encroach into the minimum required stream setbacks pursuant to Napa County Code (NCC) Section 18.108.025(B) ranging from 45 feet to 65 feet from the top of bank of an unnamed blue-line stream, as depicted in Bremer Family Winery Stream Setback Exhibit 2 (RSA+, June 26, 2019).
 - a. An approximate 2,200 square foot agricultural storage building and associated water tank;
 - b. An approximate 800 square foot concrete pad and associated walls attached to the winery;
 - c. An approximate 150 square foot ground floor/story addition and second floor/story deck to the farmhouse/office building;
 - d. An approximate 100 square foot freestanding restroom;
 - e. Approximately 1,210 lineal feet of rock walls; and
 - f. Two pedestrian bridges over a blue-line stream.

The recognition of existing site improvements located within required stream setbacks shall be those that are in substantial conformance with the submitted site plan, elevation drawings, and other submittal materials and shall comply with all requirements of the Napa County Code (the County Code). It is the responsibility of the permittee to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and the general public to ensure compliance is achieved. Any expansion of or change in use or alternative locations for fire suppression or other types of water tanks shall be approved in accordance with the County Code and may be subject to the permit modification process.

2.0 STATUTORY AND CODE SECTION REFERENCES

All references to statutes and code sections shall refer to their successor as those sections or statutes may be subsequently amended from time to time.

3.0 MONITORING COSTS

All staff costs associated with monitoring compliance with these conditions, previous permit conditions, and project revisions shall be borne by the permittee and/or property owner. Costs associated with conditions of approval and mitigation measures that require monitoring, including investigation of complaints, other than those costs related to investigation of complaints of non-compliance that are determined to be unfounded, shall be charged to the property owner or permittee. Costs shall be as established by resolution of the Board of Supervisors in accordance with the hourly consulting rate established at the time of the monitoring and shall include maintenance of a \$500 deposit for construction compliance monitoring that shall be retained until issuance of a Final Certificate of Occupancy. Violations of conditions of approval or mitigation measures caused by the permittee's contractors, employees, and/or guests are the responsibility of the permittee.

The Planning Commission may implement an audit program if compliance deficiencies are noted. If evidence of a compliance deficiency is found to exist by the Planning Commission at some time in the future, the Planning Commission may institute the program at the applicant's expense (including requiring a deposit of funds in an amount determined by the Commission) as needed until compliance assurance is achieved. The Planning Commission may also use the data, if so warranted, to commence revocation proceedings in accordance with the County Code.

PART II

4.0 OPERATIONAL CHARACTERISTICS OF THE PROJECT

Permittee shall comply with the following during operation of the winery:

- 4.1 GENERAL PROVISIONS [RESERVED]
- 4.2 TOURS AND TASTINGS/VISITATION [RESERVED]
- 4.3 MARKETING [RESERVED]
- 4.4 ON-PREMISES CONSUMPTION [RESERVED]
- 4.5 RESIDENCE OR NON-WINERY STRUCTURES [RESERVED]

- 4.6 GRAPE SOURCE **[RESERVED]**
- 4.7 COMPLIANCE REVIEW **[RESERVED]**
- 4.8 RENTAL/LEASING **[RESERVED]**
- 4.9 GROUND WATER MANAGEMENT – WELLS **[RESERVED]**
- 4.10 AMPLIFIED MUSIC
There shall be no amplified sound system or amplified music utilized outside of approved, enclosed, winery buildings.
- 4.11 TRAFFIC **[RESERVED]**
- 4.12 PARKING **[RESERVED]**
- 4.13 BUILDING DIVISION – USE OR OCCUPANCY CHANGES **[RESERVED]**
- 4.14 FIRE DEPARTMENT – TEMPORARY STRUCTURES **[RESERVED]**
- 4.15 NAPA COUNTY MOSQUITO ABATEMENT PROGRAM **[RESERVED]**
- 4.16 GENERAL PROPERTY MAINTENANCE – LIGHTING, LANDSCAPING, PAINTING, OUTDOOR EQUIPMENT STORAGE, AND TRASH ENCLOSURE AREAS
- a. **[RESERVED]**.
 - b. **[RESERVED]**
 - c. The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation. The permittee shall obtain the written approval of the Planning Division prior to any change in paint colors that differs from the approved building permit. Highly reflective surfaces are prohibited.
 - d. Designated trash enclosure areas shall be made available and properly maintained for intended use.
- 4.17 NO TEMPORARY SIGNS
Temporary off-site signage, such as "A-Frame" signs, is prohibited.
- 4.18 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES – OPERATIONAL CONDITIONS
The attached project conditions of approval include all of the following County Divisions, Departments and Agencies' requirements. Without limiting the force of those other requirements which may be applicable, the following are incorporated by reference as enumerated herein:

- a. Fire Department operational conditions as stated in their Inter-Office Memo dated May 30, 2019.

The determination as to whether or not the permittee has substantially complied with the requirements of other County Divisions, Departments and Agencies shall be determined by those County Divisions, Departments or Agencies. The inability to substantially comply with the requirements of other County Divisions, Departments and Agencies may result in the need to modify this permit.

4.19 OPERATIONAL MITIGATION MEASURES **[RESERVED]**

4.20 OTHER CONDITIONS APPLICABLE TO THE OPERATIONAL ASPECTS OF THE PROJECT

- a. The owner/permittee shall annually provide the Planning Department the monitoring inspection reports required by the *Final Corrective Action Workplan (CAW) and Mitigation and Monitoring Plan (Clearwater Hydrology, February 14, 2019)* for the Bremer Family Winery Vineyard Cleanup and Abatement Order No. R2-2017-0025 issued by the California Regional Water Quality Control Board (CRWQCB), documenting the results of re-vegetation of off-channel planted areas (i.e. the Intermittent Channel Enhancement Plan: Section 6.1 and Plan Sheet 10 of the CAW). Inspection reports shall be submitted by September 1st of each year until the site is stable and revegetation targets have been met as determined by the CRWQCB. [Included by the Planning Commission at the October 16, 2019 hearing]

4.21 PREVIOUS CONDITIONS **[RESERVED]**

PART III

5.0 PREREQUISITE FOR ISSUANCE OF PERMITS

5.1 PAYMENT OF FEES

No building, grading or sewage disposal permits shall be issued or other permits authorized until all accrued planning permit processing fees have been paid in full. This includes all fees associated with plan check and building inspections, associated development impact fees established by County Ordinance or Resolution, and the Napa County Affordable Housing Mitigation Fee in accordance with County Code.

6.0 GRADING/DEMOLITION/ENVIRONMENTAL/BUILDING PERMIT/OTHER PERMIT PREREQUISITES

Permittee shall comply with the following with the submittal of a grading, demolition, environmental, building and/or other applicable permit applications.

6.1 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES – PLAN REVIEW, CONSTRUCTION AND PREOCCUPANCY CONDITIONS **[RESERVED]**

6.2 BUILDING DIVISION – GENERAL CONDITIONS

- a. A building permit shall be obtained for all construction occurring on the site not otherwise exempt by the California Building Code (CBC) or any State or local amendment adopted thereto.
- b. If there are any existing structures and/or buildings on the property that will need to be removed to accommodate construction activities, a separate demolition permit shall be required from the Building Division prior to removal. The permittee shall provide a "J" number from the Bay Area Air Quality Management District (BAAQMD) at the time the permittee applies for a demolition permit if applicable.
- c. All areas of newly designed and newly constructed buildings, facilities and on-site improvements must comply with the CBC accessibility requirements, as well as, American with Disability Act requirements when applicable. When alterations or additions are made to existing buildings or facilities, an accessible path of travel to the specific area of alteration or addition shall be provided as required per the CBC.

6.3 LIGHTING – PLAN SUBMITTAL **[RESERVED]**

6.4 LANDSCAPING – PLAN SUBMITTAL **[RESERVED]**

6.5 COLORS

The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation. The permittee shall obtain the written approval of the Planning Division in conjunction with building permit review and/or prior to painting the building. Highly reflective surfaces are prohibited.

6.6 OUTDOOR STORAGE/SCREENING/UTILITIES

- a. Details of outdoor storage areas and structures shall be included on the building and landscape plans. All outdoor storage of winery equipment shall be screened from the view of residences of adjacent properties by a visual barrier consisting of fencing or dense landscaping. No stored item shall exceed the height of the screening. Water and fuel tanks, and similar structures, shall be screened to the extent practical so as to not be visible from public roads and adjacent parcels.
- b. New utility lines required for this project that are visible from any designated scenic transportation route (see Community Character Element of the General Plan and the County Code) shall be placed underground or in an equivalent manner be made virtually invisible from the subject roadway.
- c. Exterior winery equipment shall be located, enclosed or muffled so as not to exceed noise thresholds in the County Code.

6.7 TRASH ENCLOSURES

Adequate area must be provided for collection and loading of garbage and recyclables generated by the project. The applicant must work with the franchised

garbage hauler for the service area in which they are located, in order to determine the area and the pedestrian and vehicle access needed for the collection site. The garbage and recycling enclosure shall meet the minimum enclosure requirements established by staff and the franchised hauler, which shall be included in the building permit submittal.

6.8 ADDRESSING [RESERVED]

6.9 HISTORIC RESOURCES [RESERVED]

6.10 DEMOLITION ACTIVITIES [RESERVED]

6.11 VIEWSHED – EXECUTION OF USE RESTRICTION [RESERVED]

6.12 PERMIT PREREQUISITE MITIGATION MEASURES [RESERVED]

6.13 PARCEL CHANGE REQUIREMENTS [RESERVED]

6.14 FINAL MAPS [RESERVED]

6.15 OTHER CONDITIONS APPLICABLE TO THE PROJECT PERMITTING PROCESS

- a. This Permit recognizes existing physical improvements located within stream setbacks. It does not authorize use of any of these areas or improvements for winery purposes. In the event the use of these improvements for winery related purposes have not been authorized by the existing Use Permit, use of these areas for winery related purposes shall be subject to the County's use permit modification process prior to use.

7.0 PROJECT CONSTRUCTION

Permittee shall comply with the following during project construction:

7.1 SITE IMPROVEMENTS [RESERVED]

7.2 ARCHEOLOGICAL FINDING [RESERVED]

7.3 CONSTRUCTION NOISE [RESERVED]

7.4 CONSTRUCTION MITIGATION MEASURES [RESERVED]

7.5 OTHER CONSTRUCTION CONDITIONS APPLICABLE TO THE PROJECT PROPOSAL [RESERVED]

8.0 TEMPORARY CERTIFICATE OF OCCUPANCY – PREREQUISITES [RESERVED]

9.0 FINAL CERTIFICATE OF OCCUPANCY – PREREQUISITES [RESERVED]



A Tradition of Stewardship
A Commitment to Service

Napa County Fire Department
Fire Marshal's Office
Hall of Justice, 2nd Floor
1125 3rd Street
Napa, CA 94559

Office: (707) 299-1461

Garrett Veyna
Fire Marshal

MEMORANDUM

TO:	Planning Department	DATE:	5/30/2019
FROM:	Adam Mone, Plans Examiner	PERMIT #	P19-00153
SUBJECT:	Bremer Family Winery	APN:	021-400-002-000

The Napa County Fire Marshal's Office has reviewed the submittal package for the above proposed project. The Fire Marshal approves as submitted and requires the following conditions to be incorporated as part of permit issuance.

1. Provide 100 feet of defensible space around all structures.
2. Provide 10 feet of defensible space fire hazard reduction on both sides of all roadways of the facility.

Please note that the comments noted above are based on a Fire Marshal's Office review only. There may be additional comments or information requested from other County Departments or Divisions reviewing this application submittal package. Napa County Fire Marshal's Office Development Guidelines can be found @ www.countyofnapa.org/firemarshal. Should you have any questions of me, contact me at (707)299-1466 or email at adam.mone@countyofnapa.org.

**BEFORE THE BOARD OF SUPERVISORS
OF NAPA COUNTY**

In the Matter of:

Consideration and possible action regarding an appeal filed by Michael Hackett to a decision by the Napa County Planning Commission on October 16, 2019 to approve a request from Bremer Group LLC/Bremer Family Winery for an exception to the Napa County Conservation Regulations in the form of a Use Permit (No. P19-00153-UP) to maintain, in their current configuration, the following existing improvements, or portions thereof, that encroach into the minimum required stream setbacks: (A) an approximate 2,200 square foot agricultural storage building and associated water tank that replaced an approximate 320 square foot barn; (B) an approximate 800 square foot pad located off the east side of the winery building; (C) an approximate 150 square foot ground floor/story addition and second floor/story deck to the main dwelling (a.k.a. farmhouse/office building); (D) an approximate 100 square foot freestanding restroom; (E) approximately 1,210 lineal feet of low decorative rock walls; and (F) two pedestrian bridges over a blue-line stream on an approximately 47.1-acre holding (Assessor's Parcel Nos. 021-400-002 and 021-420-027) at 975 Deer Park Road, St. Helena, California.

RESOLUTION NO. 2020-65

**FINDINGS OF FACT AND
DECISION ON APPEAL**

WHEREAS, on or about August 2017, as the result of a code compliance investigation, the County pursued litigation alleging that the Bremers were operating the Bremer Family Winery (the Bremer Winery or the Winery) in excess of their use permit, notably with regard to unpermitted visitation levels, days and hours of operation, and the location of winery operations; and

WHEREAS, the parties reached a settlement agreement and judgment was entered in February 2019 imposing restrictions on the Winery's visitation and operations. The settlement agreement required the Bremers to submit a complete application to the County for an Exception to the Conservation Regulations in the form of a use permit to legalize the existing decorative rock walls and pedestrian bridge structures; and

WHEREAS, on March 29, 2019, John Bremer on behalf of the Bremer Group, LLC (Applicant) submitted an application for an exception to the Conservation Regulations in the form of Use Permit No. P19-00153-UP (the Application) to maintain existing physical site improvements, or portions thereof, that encroach into the minimum required stream setbacks by recognition and approval of the following: (A) an approximate 2,200 square foot agricultural storage building and associated water tank that replaced an approximate 320 square foot barn; (B) an approximate 800 square foot pad located off the east side of the winery building; (C) an approximate 150 square foot ground floor/story addition and second floor/story deck to the main dwelling (a.k.a. farmhouse/office building) constructed and completed under Building Permit #B08-08-00074; (D) an approximate 100 square foot freestanding restroom constructed and completed under Building Permit #B08-0130; (E) approximately 1,210 lineal feet of low decorative rock walls; and (F) two pedestrian bridges over a blue-line stream (the Project). The existing structures described herein as (A) through (F) are shown on Exhibit "A" incorporated here by reference; and

WHEREAS, the settlement agreement explicitly provides that "The County does not and cannot make any representation or promise that any applications for use permit modifications submitted pursuant to the Judgment entered pursuant to this Settlement Agreement will be approved in whole or in part." The settlement agreement addressed the two Project structures described above as (E) and (F) but does not address and has no relevance to the Project structures described above as (A) through (D); and

WHEREAS, the Application was submitted in compliance with the settlement agreement and the County's Code Compliance Program (Resolution No. 2018-164). That resolution established procedures and policies regarding the processing of land use applications for properties that are the subject of County Code violations. The resolution established a deadline of March 29, 2019 for landowners to apply for permits to voluntarily remedy their violations; those that did not meet the deadline are now required to operate within their existing legal entitlements for at least one year from the date of the initial Notice of Violation before an application may be submitted;

WHEREAS, on May 14, 2019, Staff responded to Applicant's submittal with a comment letter describing additional project information and plan details that were needed to process the Application; and

WHEREAS, on May 24, 2019, a New Project Submittal Courtesy Notice (dated May 24, 2019) was mailed to all property owners within 1,000 feet of the subject property and emailed to those persons on the County's general California Environmental Quality Act (CEQA) document notification list; and

WHEREAS, on June 28, 2019, a resubmittal application with the additional requested information was provided. The Application was determined to be complete on July 28, 2019; and

WHEREAS, the Project site is located on an approximately 47.1-acre holding (Assessor's Parcel Nos. 021-400-002 and 021-420-027) at 975 Deer Park Road, St. Helena, California (the Property). The parcels are under common ownership, have a General Plan land use designation of Agriculture, Watershed and Open Space (AWOS) and are located in the Agricultural Watershed (AW) Zoning District; and

WHEREAS, after a preliminary review of the Project, the Planning, Building and Environmental Services (PBES) Department determined that because the Project consists of recognizing existing physical improvements and would not involve any construction or physical changes to the environment, that it qualified for various categorical exemptions under CEQA; and

WHEREAS, on September 5, 2019, the Public Notice for the Napa County Planning Commission (Planning Commission or Commission) hearing and Notice of Intent to adopt Categorical Exemptions was mailed to all property owners within 1,000 feet of the subject property as well as any other persons and agencies who had requested notice. (The County's noticing requirements exceed the State mandated minimum of noticing all owners within 300 feet). Notice was also provided to those persons on the County's general CEQA document notification list. The Notice was published in the Napa Valley Register on September 6, 2019; and

WHEREAS, on September 18, 2019, at a duly noticed public hearing, the Planning Commission opened the public hearing on the Project, heard and considered verbal and written testimony and continued the public hearing on the Project to October 16, 2019; and

WHEREAS, on October 16, 2019, at the continued public hearing and after considering additional public testimony and all evidence submitted, the Planning Commission closed the public hearing, deliberated, and voted (3:2 – AYES: Whitmer, Mazotti and Hansen; NOES: Cottrell and Gallagher) to approve Use Permit No. P19-00153-UP for an exception in the form of a use permit to allow and approve the requested existing structures labeled as (A) through (F) on Exhibit "A" located within required stream setbacks for the Bremer Winery subject to the recommended conditions of approval; and

WHEREAS, on October 28, 2019, subsequent to the Commission's decision and within the prescribed period, Michael Hackett (Appellant) submitted a timely Notice of Intent to Appeal the Planning Commission's decision to approve the Project and subsequently filed a timely Appeal Packet on November 12, 2019 (collectively the Appeal). The Appeal Packet specified the grounds on which the Appellant's Appeal is based, and are set forth with more particularity herein¹; and

WHEREAS, in accordance with Napa County Code (NCC) Section 2.88.080(A), a hearing on the Appeal was scheduled before the Board of Supervisors (the Board) for February 4, 2020, a date at least fifteen but no more than ninety days from the date of submittal of the Appeal; and

¹ The complete Appeal Packet is on file with the Clerk of the Board of Supervisors.

WHEREAS, on February 4, 2020, at a duly noticed public hearing on the Appeal, at the Applicant's and Staff's request, the Board continued the hearing on the Appeal to March 17, 2020. No testimony was taken on February 4, 2020; and

WHEREAS, on March 17, 2020, at a duly noticed continued public hearing on the Appeal, the Board heard and considered all evidence and testimony regarding the Appeal. The Board closed the public hearing and adopted a motion of intent to: (1) reject each of the grounds of the Appeal and deny the Appeal in its entirety; and (2) uphold the Planning Commission's approval of the decorative rock walls and two pedestrian bridges as further described as existing structures (E) and (F) on Exhibit "A". The Board took further action and remanded the four remaining existing structures described as (A) through (D) on Exhibit "A" to the Planning Commission to reconsider, each on its own merits, with greater scrutiny, and without further reference to the settlement agreement since they are not included; and

WHEREAS, the Board further directed County Counsel to prepare a resolution containing Findings of Fact and Decision on Appeal in support of its proposed decision to approve the two existing structures described as (E) and (F) on Exhibit "A" and to present those findings to the Board for consideration at its meeting on May 5, 2020; and

WHEREAS, the Board's decision on March 17, 2020, to remand to the four remaining existing structures described as (A) through (D) to the Planning Commission to reconsider, each on its own merits, was considered a final Board action on that date as to those four structures. Therefore, this Findings of Fact and Decision on Appeal only applies to the structures described as (E) and (F) on Exhibit "A"; and

WHEREAS, on May 5, 2020, a proposed resolution containing the Findings of Fact and Decision on Appeal was presented to the Board for possible adoption; and

WHEREAS, this proposed resolution containing the Findings of Fact and Decision on Appeal having been presented to the Board for possible adoption at a regular meeting of the Board on May 5, 2020, and interested persons having been given an opportunity to address the Board regarding the proposed resolution;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors finds, determines, concludes and decides as follows:

Section 1. Recitals.

The Board hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Conduct of Appeal.

A. NCC Section 2.88.090 (B) provides that if the hearing before the approving authority was recorded electronically or by a certified court reporter then upon request by the appellant or any interested party and upon a showing of good cause, the Board may permit

additional evidence to be presented which could have been presented at the time of the decision appealed from was made but was not presented. Here, the Planning Commission proceedings were recorded electronically and transcripts of the Planning Commission proceedings were provided to the Board.

B. Neither the Applicant nor Appellant made a “good cause” request that the Board hear the Project de novo. Likewise, since neither party submitted a timely “good cause” request to augment the Planning Commission record with new evidence, no new evidence was allowed or considered by the Board in connection with the Appeal.

Section 3. Findings of Fact and Conclusions of Law on Appeal.

The Board hereby makes the following findings of fact and conclusions of law in regards to each of the grounds for appeal as stated by Appellant in the Appeal²:

A. First Ground of Appeal.

Appellants’ Position: Appellant asserts that the Board of Supervisors cannot hear the appeal due to a common law conflict of interest that has and will deprive the public and Appellant the right to procedural due process. Appellant alleges that prior to the Planning Commission action, which is the subject of this appeal, the Board of Supervisors entered into a private settlement agreement in a lawsuit brought by the County against the Applicant in which an application for the use permit ultimately granted by the Planning Commission was required. Appellant alleges the Planning Commission limited its consideration of Applicant’s Application due to direction by the Board of Supervisors and misapplication of the settlement agreement. Appellant further asserts that the Board should recuse itself as the appellate body.

Findings and Decision: The Board finds and determines as follows:

No procedural due process violation occurred and there is no evidence that any member of the Board of Supervisors has a common law conflict of interest that warrants disqualification. The Planning Commission did not limit its consideration of Applicant’s project, as evidenced by two Commissioners voting to deny the request. The settlement agreement merely required the Applicant to submit an application. It did not require that the Commission approve that application.

The constitutional principle of procedural due process requires reasonable notice and opportunity to be heard before governmental deprivation of a significant property interest. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612.) Because Appellant has not asserted that it has a significant property interest or a significant deprivation of its property interest, there is no basis upon which Appellant could assert or a court could find a viable procedural due process claim. Staff pointed out this issue in a letter to Appellant’s counsel dated January 24, 2020. Neither Appellant nor Appellant’s counsel provided any response.

² This Resolution summarizes the grounds of appeal. For the complete text of the Appeal, please see the actual Appeal dated November 12, 2019.

A common law conflict of interest exists only in limited circumstances that do not exist here. (*See BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1233 [“We continue to be cautious in finding common law conflicts of interest. ... We reject the application of the doctrine in this case, assuming, arguendo, it exists”].) A common law conflict of interest requires proof of “an unacceptable probability of actual bias” on the part of the Board. (*Id.* at p. 1236.) “A mere suggestion of bias is not sufficient to overcome the presumption of integrity and bias.” (*Id.*) Bias is never implied, and Appellant’s “unilateral perception of an appearance of bias cannot be a ground for disqualification.” (*Id.* at p. 1237.) No evidence of a common law conflict of interest exists here. No Board member has demonstrated any actual bias against the Appellant, Applicant or any other party. No Board member has made any statements regarding the Application, and any such statements would not violate due process in any event. (*Fairfield v. Superior Court of Solano County* (1975) 14 Cal.3d 768, 772, 780-781.)

Appellant incorrectly alleges that the settlement agreement required approval of the Application. In fact, the settlement agreement has no relevance at all to four of the six improvements in the Application, and explicitly does not require approval of the other two. The settlement agreement does not mandate any outcome or require the Planning Commission or the Board to take any particular action on the Application. The agreement merely requires the Applicant to submit a complete application regarding the rock walls and bridge structures, which the Applicant has done.

No authority suggests that entry of a settlement agreement can constitute a common law conflict of interest or violation of procedural due process, and Appellant has cited to none. Staff pointed out these arguments in a letter to Appellant’s counsel dated January 24, 2020, but neither Appellant nor Appellant’s counsel provided any authority to the contrary.

Contrary to Appellant’s allegations, the Planning Commission thoughtfully considered the Application, the health of the watercourse, and whether the existing structures in the setback should be removed. The Commission was fully apprised of its discretion to either grant, deny or modify the Application and the record is replete with evidence of that fact, including but not limited to the Staff Reports, comments from Staff, and even testimony from Applicant’s counsel. Furthermore, nothing in the settlement agreement itself limited or mandated the Commission’s discretion. Section 10 of the settlement agreement simply states: “... Defendants shall submit a complete application for an exception to the Conservation Regulations, as provided in Napa County Code Section 18.108.040, to allow the walls and bridge structures within the creek setback.” Section 6 explicitly provides that “The County does not and cannot make any representation or promise that any applications for use permit modifications submitted pursuant to the Judgment entered pursuant to this Settlement Agreement will be approved in whole or in part.”

The September 18, 2019 Staff Report provided an eight-page analysis of the Application and explicitly identified the options before the Planning Commission, including to deny the requested use permit or redesign it “to identify what site improvements should be removed and the underlying areas restored.” (Planning Commission Meeting Staff Report September 18,

2019, pages 7-8.) The Staff Report belies any claim that the Planning Commission was directed to approve the Application.

The Planning Commission clearly understood it had the ability to approve, redesign, or deny the Application. Commissioner Hansen said that under the settlement agreement, the Planning Commission's options included "approve, redesign, or deny, or continue." (Certified Planning Commission Hearing Transcript, September 18, 2019, page 11:25.) The Project Planner confirmed that the Planning Commission could authorize the improvements to be retained, "or should you choose to have them remove some, we could look at that." (Certified Planning Commission Hearing Transcript, September 18, 2019, page 12:20-24.)

Deputy County Counsel reiterated the Commission's options, noting that "... the Planning Commission in its discretion reviews the project, reviews the findings and whether or not they can be made, and then we'll take action." (Certified Planning Commission Hearing Transcript, September 18, 2019, pages 26:25-28; 27:1-3.) Applicant's counsel even acknowledged the Commission's discretion: "You have to use your own judgment on this. If you believe there's damage to the watercourse, you shouldn't approve it." (Certified Planning Commission Hearing Transcript, September 18, 2019, page 34:20-21.)

The October 16th Staff Report again explained that the Planning Commission had multiple decision-making options, including denying the requested use permit or redesigning the project to identify which site improvements should be removed and underlying areas to be restored. (Planning Commission Meeting Staff Report, October 16, 2019, pages 5-6.) The Staff Report clearly states that although staff recommended approval, "that recommendation is not binding on the Commission. The Planning Commission retains its discretion on this project." (Planning Commission Meeting Staff Report, October 16, 2019, page 5 [emphasis added].)

The Planning Commission then exercised its discretion to approve the Project — with two Commissioners voting No. Appellant disproportionately relies on comments from those two Commissioners, but their No votes prove beyond any doubt that the Planning Commission was not limited or directed to approve the Application. Appellant's argument to the contrary ignores all of this record evidence and relies on a few selective comments that Appellant recites incorrectly or out of context. Appellant ignores the discussion surrounding these comments, which includes testimony that denial of the Application could result in non-compliant structures, a potential code compliance enforcement action, and a likely appeal to the Board, with the encroachments possibly being left in place for environmental reasons or possible removal and restoration. (Certified Planning Commission Hearing Transcript October 16, 2019, pages 41:4-28; 42:1-28.)

The Board did not direct the Planning Commission to limit its review or exercise its discretion in any particular way. No evidence exists to the contrary, and Appellant has pointed to none. Instead, multiple Commissioners asked if the Commission had authority to deny the Application, and what would happen if the Commission did so. Staff advised the Planning Commission that it had full authority to approve, deny, or condition the requested use permit. Staff explained that denial would result in non-compliant structures that would be subject to code enforcement and potential removal of the structures.

Counties have the fundamental power to control their own land use decisions, which derives from their inherent police power rather than any delegation of authority by the state. (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1151.) The County Code requires the Board to hear and decide on this appeal, and identifies no alternative source of decision. As a result, the Board's participation is legally required.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. The Board denies the First Ground of Appeal and upholds the Planning Commission's approval of the rock walls and bridges described as structures (E) and (F) on Exhibit "A". As to the four remaining structures described as (A) through (D), the Board remanded these structures to the Planning Commission on March 17, 2020, to reconsider, each on its own merits, with greater scrutiny, and without further reference to the settlement agreement since they are not included.

B. Second Ground of Appeal.

Appellant's Position: Appellant asserts that the Planning Commission failed to consider the public trust as required by applicable law in granting the Application.

Findings and Decision: The Board finds and determines as follows:

It is unclear on what basis the Planning Commission is alleged to have failed to consider the public trust. Appellant's appeal contains this assertion but did not articulate how the public trust has been violated. The Planning Commission meeting transcripts are equally uninformative. Appellant testified, "I am here representing the public trust, not the Bremers." (Certified Planning Commission Hearing Transcript, October 16, 2019, page 20:25.) Appellant further stated, "There is no statute of limitations on the public trust. Every day, the public is going to be allowed on this property, but I cannot see it. They are using public trust space to sell wine." (Certified Planning Commission Hearing Transcript, October 16, 2019, page 22:5-8.)

The public trust doctrine dates back to ancient Roman and English common law, and has been part of California law since the State's admission to the Union in 1850. (*Environmental Law Foundation v. State Water Resources Control Board* (2018) 26 Cal.App.5th 844, 856; *World Business Academy v. California State Lands Commission* (2018) 24 Cal.App.5th 476, 508.) The public trust doctrine is borne out of the concept "that the public rights of commerce, navigation, fishery and recreation are so intrinsically important and vital to free citizens that their unfettered availability to all is essential in a democratic society." (*Zack's Inc. v. City of Sausalito* (2008) 165 Cal.App.4th 1163, 1175.) The doctrine is an affirmation of state power to use public property for public purposes, and the state's duty to protect the people's common heritage of streams, lakes, marshlands and tidelands. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 441.)

The doctrine requires the state and its legal subdivisions to "consider," give "due regard," and "take the public trust into account" when considering actions that may adversely impact a navigable waterway. (*Environmental Law Foundation v. State Water Resources Control Bd.*

(2018) 26 Cal.App.5th 844, 861, 868; *San Francisco Baykeeper, Inc. v. State Lands Com.* (2018) 29 Cal.App.5th 562, 569.) There is no “procedural matrix” governing how an agency should consider public trust uses. (*Citizens for East Shore Parks v. State Lands Com.* (2011) 202 Cal.App.4th 549, 576.) Rather, the level of analysis “begins and ends with whether the challenged activity harms a navigable waterway and thereby violates the public trust.” (*Environmental Law Foundation*, 26 Cal.App.5th at p. 403.)

The courts have refused to impose factual evaluation requirements or procedural constraints on agencies considering the public trust. (*Citizens for East Shore Parks*, 202 Cal.App.4th at p. 577; *World Business Academy*, 24 Cal.App.5th at p. 509.) Evaluating project impacts within a regulatory scheme like CEQA is sufficient “consideration” for public trust purposes. (*Citizens for East Shore Parks*, 202 Cal.App.4th at pp. 576-577.)

The courts have upheld agency decisions when staff discussed public trust uses as part of the project evaluation. In *San Francisco Baykeeper*, for example, the court upheld leases to dredge sand in the San Francisco Bay where agency staff opined the dredging would not impair the public right to use the parcels for commerce, navigation, fishing, recreation, or other public trust uses. (29 Cal.App.5th at p. 573.) Likewise, the court in *World Business Academy* upheld a replacement lease for the Diablo Canyon nuclear power plant where the staff report “explicitly analyzed the public trust doctrine” and the commission considered the facts before it. (25 Cal.App.5th at p. 509.) In *Citizens for East Shore Parks*, the agency properly considered the public trust by engaging in the CEQA review process, which encompasses potential impacts to recreational and other public trust uses. (202 Cal.App.5th at p. 578.)

Here, too, the record contains substantial evidence that allowing the built improvements to remain in place would not adversely impact an unnamed blue-line stream that traverses the project site. The stream is not mapped as an environmentally sensitive resource for biotic vegetation groups, critical habitat, wetlands or vernal pools, or other resources. (Planning Commission Staff Report, September 18, 2019, page 6.) The record also contains professional biological evaluations that determined the stream would not be adversely impacted and that there are no anticipated threats to water quality as a result of the continued maintenance of the site improvements.

The stream and its ecological functions were evaluated by two biologists and a certified professional erosion and sediment control (CPESC) consultant. All three professionals opined that the stream is functioning normally and that the native vegetation present is typical for this part of the County. The CPESC consultant’s report noted that “overall stream health and riparian function in the upper reach by the winery are in good condition.” (Planning Commission Staff Report, September 18, 2019, Attachment E.) The Biological Report from FirstCarbon Solution found that, “The creek meanders through the property, uninterrupted, largely in its natural state and appears to be functioning as such. ... It is our biological professional opinion that the walls and improvements built within the creek corridor have not significantly changed the natural state of the ephemeral creek and there is no impairment of the vital ecological function of the creek.” (Planning Commission Staff Report, September 18, 2019, Attachment D.) These opinions were echoed in biologist Geoff Monk’s testimony: “the channel is functioning very well, fine. All the flows are well below any structure that has been constructed. There’s no constriction, there’s no sedimentation issues. It’s a very stable stream channel the way it is now.” (Certified Planning Commission Hearing Transcript, October 16, 2019, page 17:21-24.)

Based on this substantial record evidence, the Planning Commission appropriately found that the Application would not impact a public trust resource. The record is clear that leaving the improvements in place would not harm the stream, but it further reveals concern that “doing any kinds of modifications to that, pulling back, removing things, would probably create greater instability, and certainly a sediment source that hasn’t existed on the site for some time.” (Certified Planning Commission Hearing Transcript, September 18, 2019, page 24:20-24.) For all the reasons stated herein, the Planning Commission properly considered the Application’s impact on the stream and appropriately found no credible evidence that approval of the permit would harm the stream or a navigable waterway.

This substantial evidence and the limited nature of the project differentiate the Application from those circumstances in which courts have expressed public trust concerns. Those cases involve groundwater pumping that was partly responsible for decreased surface flows in a navigable waterway that allegedly injured local fish (*Environmental Law Foundation, supra*, 26 Cal.App.5th 844); an 1884 case in which a mining company impaired navigation by dumping sand and gravel into a non-navigable stream that flowed into the Sacramento River (*People v. Gold Run D. & M. Co.* (1884) 66 Cal. 138); and the City of Los Angeles’ practice of diverting water from non-navigable streams flowing into Mono Lake resulting in lake levels dropping and the surface area diminishing by one-third (*National Audubon Society, supra*, 33 Cal.3d 419.) None of those situations is remotely similar to this Application. Unlike those cases, here the analysis begins and ends with multiple qualified professional opinions finding that allowing the improvements to remain in the stream setback would not harm the blue line stream.

Here, the County complied with CEQA and prepared a five-page memorandum documenting how the various existing improvements built within the stream setback were categorically exempt. To support the exemptions, the County relied on opinions by environmental professionals that the improvements have not significantly changed the natural state of the stream or impaired its ecological functions. No grading has or would occur in the bed of the stream. Because the Application would approve existing improvements and have no change in the use of the stream, the public trust doctrine does not require the County to conduct any additional analysis or consideration. The County and Planning Commission fulfilled their obligations under the public trust doctrine.

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision. The Board denies the Second Ground of Appeal and upholds the Planning Commission’s approval of the rock walls and bridges described as structures (E) and (F) on Exhibit “A”. As to the four remaining structures described as (A) through (D), the Board remanded these structures to the Planning Commission on March 17, 2020, to reconsider, each on its own merits, with greater scrutiny, and without further reference to the settlement agreement since they are not included.

C. Third Ground of Appeal.

Appellant’s Position: Appellant asserts that the Planning Commission acted against the public interest by failing to conduct a fair and impartial hearing, thereby depriving the public,

including Appellant, of the right to procedural due process. Specifically, Appellant asserts that the Planning Commission acted at the direction of the Board of Supervisors to comply with the terms of a private settlement agreement without notice to or hearing on that direction or those terms at a public meeting as required by applicable law, including but not limited to the Ralph M. Brown Act, Government Code Section 54954, et seq.

Findings and Decision: The Board finds and determines as follows:

Appellant has also not alleged that it has a significant property interest subject to procedural due process. Please see Board findings, determination and conclusion as to Appeal Ground No. 1 above, incorporated here by reference.

The Planning Commission hearings on the Application were fair, impartial and afforded the public and the Appellant due process. Notice of the public hearing was mailed to all property owners within 1,000 feet of the subject property and published in the newspaper more than eleven days prior to the hearing. The Planning Commission meeting agendas were made available and posted to the County's website one week prior to the hearing dates. Appellant and the public had an opportunity to be heard on the Application as demonstrated by Appellant's and others' written and verbal testimony at the hearings. Because proper notice was given, Appellant and the public had ample opportunity to comment on the project and no due process violation occurred.

Furthermore, the Planning Commission did not act at the direction of the Board, and no direction was given by the Board to the Planning Commission regarding the settlement agreement or the Application. The only meetings that occurred were properly noticed before the Planning Commission in full compliance with the Brown Act's open and public meeting requirements.

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. The Board denies the Third Ground of Appeal and upholds the Planning Commission's approval of the rock walls and bridges described as structures (E) and (F) on Exhibit "A". As to the four remaining structures described as (A) through (D), the Board remanded these structures to the Planning Commission on March 17, 2020, to reconsider, each on its own merits, with greater scrutiny, and without further reference to the settlement agreement since they are not included.

D. Fourth Ground of Appeal.

Appellant's Position: Appellant asserts that the Planning Commission acted at the direction of the Board to comply with the terms of the private settlement agreement, which was itself arrived at on the basis of a draft tentative ruling by the Napa County Superior Court, which was provided to the parties to the lawsuit but withheld from the public.

Findings and Decision: The Board finds and determines as follows:

The Planning Commission did not act at the direction of the Board. The Board did not direct the Planning Commission to limit its review or exercise its discretion in any particular

way. No evidence exists to the contrary, and Appellant has pointed to none. Please see Board findings, determinations and conclusions as to Appeal Ground No. 1 incorporated here by reference.

The superior court did not issue a “draft tentative ruling.” Appellant appears to refer to a “case analysis” prepared by an early judge in the code enforcement litigation. (Appeal Packet, Exh. B, page 6:12.) That case analysis was preliminary and prepared by a judge who recused themselves from the case on October 9, 2018. The settlement agreement was executed approximately four months later, before an entirely different superior court judge. The “case analysis” was irrelevant, and remains irrelevant to this Appeal.

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision. The Board denies the Fourth Ground of Appeal and upholds the Planning Commission’s approval of the rock walls and bridges described as structures (E) and (F) on Exhibit “A”. As to the four remaining structures described as (A) through (D), the Board remanded these structures to the Planning Commission on March 17, 2020, to reconsider, each on its own merits, with greater scrutiny, and without further reference to the settlement agreement since they are not included.

E. Fifth Ground of Appeal.

Appellant’s Position: Appellant asserts that the Planning Commission acted against the public interest by failing to conduct a fair and impartial hearing, thereby depriving the public, including Appellant, of the right to procedural due process. Specifically, Appellant asserts that the Planning Commission limited action on Applicant’s Application to the terms of the private settlement agreement.

Findings and Decision: The Board finds and determines as follows:

Please see Board findings, determinations and conclusions as to Appeal Ground Nos. 1 through 3 incorporated here by reference.

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision. The Board denies the Fifth Ground of Appeal and upholds the Planning Commission’s approval of the rock walls and bridges described as structures (E) and (F) on Exhibit “A”. As to the four remaining structures described as (A) through (D), the Board remanded these structures to the Planning Commission on March 17, 2020, to reconsider, each on its own merits, with greater scrutiny, and without further reference to the settlement agreement since they are not included.

F. Sixth Ground of Appeal.

Appellant’s Position: Appellant asserts that the Planning Commission failed to provide documents regarding the Application in a timely manner in accordance with the Brown Act so that the public could participate in a meaningful manner in the public hearing on the Application.

Findings and Decision: The Board finds and determines as follows:

Neither the Appellant nor any member of the public were deprived of participating in a meaningful manner at the public hearings before the Planning Commission. All documents related to the Commission's action on the use permit were made available to the public, including the Appellant, well in advance of the September 18th and October 16th Commission meetings.

The Brown Act requires that the meeting agenda be available to the public 72-hours in advance of a regular meeting and that the meeting agenda include "a brief general description of each item of business to be transacted or discussed at the meeting." (Government Code Sections 54954.2(a)(1) and 54954.2(b).) The Act further prohibits an appointed body such as a planning commission from taking action on matters that are not listed on the posted agenda.

On September 11, 2019, the Planning Commission Meeting Agenda and materials related to the hearing on the Bremer Winery Application were posted on the County's website. Consistent with the Brown Act, the Planning Commission Meeting Agendas for September 18th and October 16th both identified the item of business to be transacted or discussed at the meeting as "Approval of a request for an exception to the Napa County Conservation Regulations, Napa County Code (NCC) Chapter 18.108, in the form of a Use Permit, in order to maintain" various existing site improvements located within stream setbacks. In addition to the Staff Report, the publicly available agenda materials included recommended findings, conditions of approval, the Application and submittal documents, the CEQA determination memorandum, site plans, a biological report, the prior use permit on the property, and supporting graphics. All of these materials were posted on the County's website and available for the public and the Appellant to review on September 11, 2019, six days in advance of the September 18th meeting, and well beyond the 72-hours mandated by the Brown Act.

Appellant has not identified what specific documents were not made available to the public in a timely manner. To the extent that Appellant is asserting that the unrelated settlement agreement should have been provided to the Commission and the public, it was. The action item before the Commission related only to the Use Permit Exception request and the CEQA determination, not the settlement agreement. Nevertheless, the agreement was provided for informational and background purposes on September 17, 2019. After taking public comment and in response to a request for continuance, the Planning Commission continued the hearing to October 18, 2019, giving the public and the Appellant more than one month of additional time to review all documents related to the Application and the unrelated settlement agreement.

The settlement agreement required the Applicant to apply for the use permit exception to allow the walls and bridge structures within the creek setback. Per the County Code, applications for an exception to the Conservation Regulations in the form of a use permit are heard and considered by the Planning Commission (County Code Section 18.108.040). As further discussed in the Board's findings, determinations and conclusions as to Appeal Ground Nos. 1 through 3 incorporated here by reference, the Commission retained and exercised its independent judgment. Neither the settlement agreement nor the Board usurped the Commission of its discretion.

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. The Board denies the Sixth Ground of Appeal and upholds the Planning Commission's approval of the rock walls and bridges described as structures (E) and (F) on Exhibit "A". As to the four remaining structures described as (A) through (D), the Board remanded these structures to the Planning Commission on March 17, 2020, to reconsider, each on its own merits, with greater scrutiny, and without further reference to the settlement agreement since they are not included.

Section 4. CEQA Determination.

The Board finds and determines that this type of project does not have a significant effect on the environment and is exempt from the CEQA. [See Section 15301, Class 1 Minor Alterations to Existing Facilities; and Section 15302, Class 2 Replacement or Reconstruction, which may be found in the guidelines for the implementation of the CEQA at 14 CCR Sections 15301 and 15302. This project has also been determined to be exempt pursuant to CCR Section 15061 in that the recognition, retention, and maintenance of existing site improvements has no possibility of causing a significant effect. This project is not on any lists of hazardous waste sites enumerated under Government Code Section 65962.5.

Section 5. Substantial Evidence.

Substantial evidence supporting each and every finding made herein is contained in the record of proceedings. All of the files and records that comprise the administrative record for the Project are incorporated herein by reference.

Section 6. Summary of Decision.

Based on the foregoing facts, findings, and determinations, the Board of Supervisors hereby:

- A. Denies the Appeal in its entirety;
- B. Adopts the following Categorical Exemptions pursuant to CEQA: Section 15301, Class 1 Minor Alterations to Existing Facilities and Section 15302, Class 2 Replacement or Reconstruction, which may be found in the guidelines for the implementation of the CEQA at 14 CCR Sections 15301 and 15302. The Board further finds this project exempt pursuant to CCR Section 15061 in that the recognition, retention, and maintenance of existing site improvements has no possibility of causing a significant effect;
- C. Upholds the Planning Commission's approval as to only the decorative rock walls and two pedestrian bridges described as existing structures (E) and (F) on Exhibit "A"; and
- D. Approves Use Permit No. P15-00307-MOD as to only the decorative rock walls and two pedestrian bridges subject to the Updated Conditions of Approval attached as Exhibit "B."

Section 7. Effective Date.

This resolution shall take effect in accordance with the provisions of NCC Section 2.88.090.

Section 8. Judicial Challenge.

Unless a shorter period applies, any judicial challenge to this decision is governed by California Code of Civil Procedure Section 1094.6.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Board of Supervisors of the County of Napa, State of California, at a regular meeting of said Board held on the 5th day of May, 2020, by the following vote:

AYES:	SUPERVISORS	PEDROZA, WAGENKNECHT, GREGORY RAMOS and DILLON
NOES:	SUPERVISORS	NONE
ABSTAIN:	SUPERVISORS	NONE
ABSENT:	SUPERVISORS	NONE

NAPA COUNTY, a political subdivision of the State of California

By: 
DIANE DILLON, Chair of the Board of Supervisors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Laura J. Anderson (e-sign)</u> Deputy County Counsel</p> <p>Date: <u>April 27, 2020</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: May 5, 2020 Processed By: <u></u> Deputy Clerk of the Board</p>	<p>ATTEST: JOSE LUIS VALDEZ Clerk of the Board of Supervisors</p> <p>By: <u></u> Date: <u>May 5, 2020</u></p>
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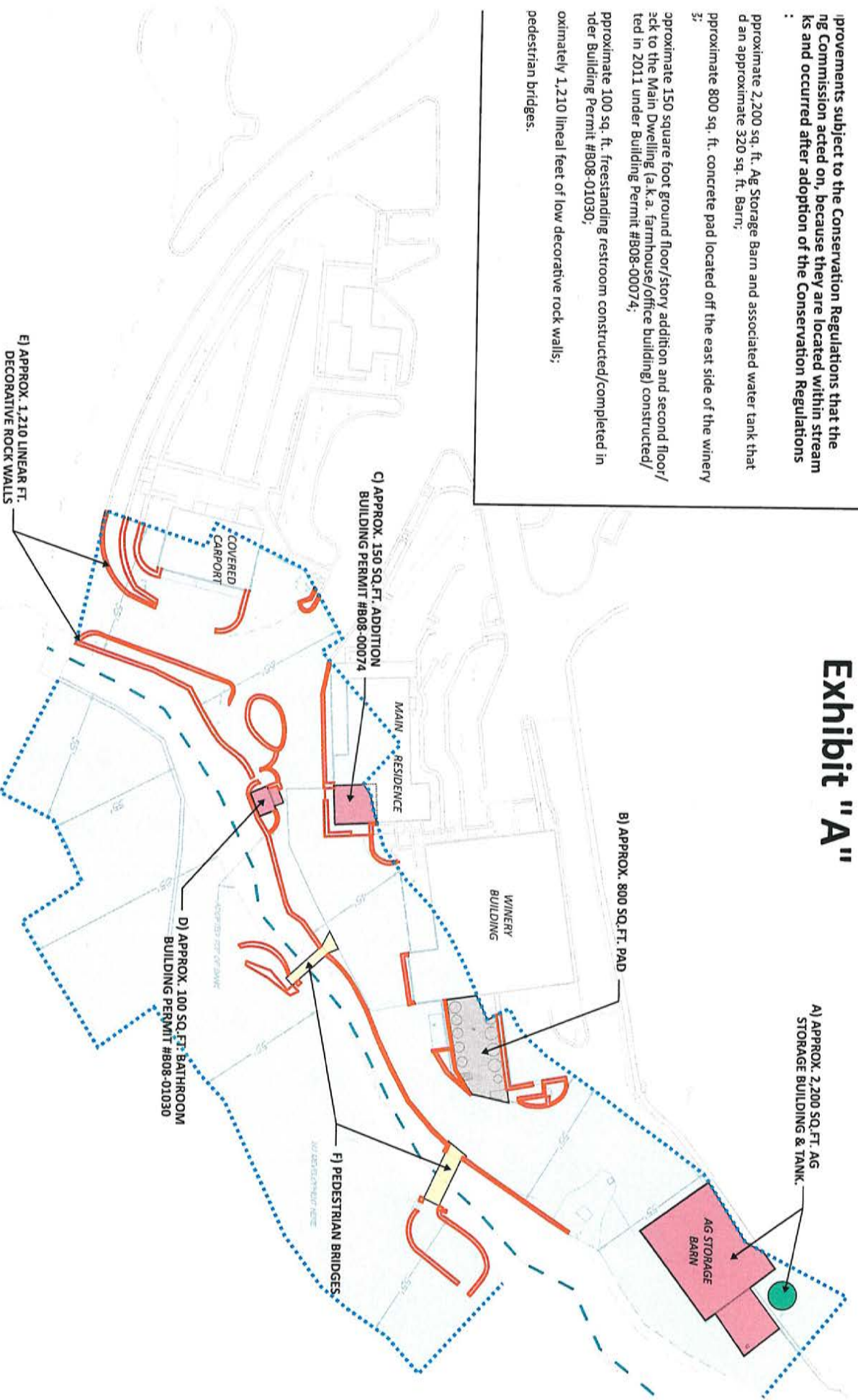
Attachment:

- Exhibit "A" – Map of Existing Site Improvements/Structure
- Exhibit "B" - Updated COA

Exhibit "A"

Improvements subject to the Conservation Regulations that the Planning Commission acted on, because they are located within stream banks and occurred after adoption of the Conservation Regulations:

- 1. Approximate 2,200 sq. ft. Ag Storage Barn and associated water tank that is located on an approximate 320 sq. ft. Barn;
- 2. Approximate 800 sq. ft. concrete pad located off the east side of the winery building;
- 3. Approximate 150 square foot ground floor/story addition and second floor/porch addition to the Main Dwelling (a.k.a. farmhouse/office building) constructed/under construction in 2011 under Building Permit #B08-00074;
- 4. Approximate 100 sq. ft. freestanding restroom constructed/completed in 2011 under Building Permit #B08-01030;
- 5. Approximately 1,210 linear feet of low decorative rock walls;
- 6. Pedestrian bridges.



A) APPROX. 2,200 SQ.FT. AG STORAGE BUILDING & TANK.

B) APPROX. 800 SQ.FT. PAD

C) APPROX. 150 SQ.FT. ADDITION BUILDING PERMIT #B08-00074

D) APPROX. 100 SQ.FT. BATHROOM BUILDING PERMIT #B08-01030

F) PEDESTRIAN BRIDGES.

E) APPROX. 1,210 LINEAR FT. DECORATIVE ROCK WALLS

SITE IMPROVEMENTS - Bremer Use Permit Exception - Exhibit "A"

~~REVISÉD UPDATÉD~~
~~PLANNING COMMISSION HEARING — OCTOBER 16, 2019~~
BOARD OF SUPERVISORS – MAY 5, 2020
CONDITIONS OF APPROVAL

Bremer Family Winery Site Improvements
Use Permit Exception to the Conservation Regulations
Application Number P19-00153-UP
975 Deer Park Road, St. Helena
(APNs 021-400-002 and 021-420-027)

This permit encompasses and shall be limited to the project commonly known as *Bremer Family Winery Site Improvements Recognition and Retention*, located at 975 Deer Park Road, St. Helena. Part I encompasses the Project Scope and general conditions pertaining to statutory and local code references, project monitoring, and the process for any future changes or activities. Part II encompasses the ongoing conditions relevant to the operation of the project. Part III encompasses the conditions relevant to construction and the prerequisites for a Final Certificate of Occupancy. It is the responsibility of the permittee to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and guests of the winery to ensure compliance is achieved.

Where conditions are not applicable or relevant to this project, they shall be noted as "Reserved" and therefore have been removed.

When modifying a legally established entitlement related to this project, these conditions are not intended to be retroactive or to have any effect on existing vested rights except where specifically indicated.

PART I

1.0 PROJECT SCOPE

The permit encompasses and shall be limited to:

- 1.1 The recognition and approval of, the following two existing site improvements, or portions thereof, in their existing configuration, that encroach into the minimum required stream setbacks pursuant to Napa County Code (NCC) Section 18.108.025(B) ranging from 45 feet to 65 feet from the top of bank of an unnamed blue-line stream, as depicted in Bremer Family Winery Stream Setback Exhibit 2 (RSA+, June 26, 2019).
 - ~~a. An approximate 2,200 square foot agricultural storage building and associated water tank;~~
 - ~~b. An approximate 800 square foot concrete pad and associated walls attached to the winery;~~
 - ~~c. An approximate 150 square foot ground floor/story addition and second floor/story deck to the farmhouse/office building;~~
 - ~~d. An approximate 100 square foot freestanding restroom;~~
 - ~~e-a.~~ Approximately 1,210 lineal feet of rock walls; and

f.b. Two pedestrian bridges over a blue-line stream.

The recognition of existing site improvements located within required stream setbacks shall be those that are in substantial conformance with the submitted site plan, elevation drawings, and other submittal materials and shall comply with all requirements of the Napa County Code (the County Code). It is the responsibility of the permittee to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and the general public to ensure compliance is achieved. Any expansion or change in use or alternative locations for fire suppression or other types of water tanks shall be approved in accordance with the County Code and may be subject to the permit modification process.

2.0 STATUTORY AND CODE SECTION REFERENCES

All references to statutes and code sections shall refer to their successor as those sections or statutes may be subsequently amended from time to time.

3.0 MONITORING COSTS

All staff costs associated with monitoring compliance with these conditions, previous permit conditions, and project revisions shall be borne by the permittee and/or property owner. Costs associated with conditions of approval and mitigation measures that require monitoring, including investigation of complaints, other than those costs related to investigation of complaints of non-compliance that are determined to be unfounded, shall be charged to the property owner or permittee. Costs shall be as established by resolution of the Board of Supervisors in accordance with the hourly consulting rate established at the time of the monitoring and shall include maintenance of a \$500 deposit for construction compliance monitoring that shall be retained until issuance of a Final Certificate of Occupancy. Violations of conditions of approval or mitigation measures caused by the permittee's contractors, employees, and/or guests are the responsibility of the permittee.

The Planning Commission may implement an audit program if compliance deficiencies are noted. If evidence of a compliance deficiency is found to exist by the Planning Commission at some time in the future, the Planning Commission may institute the program at the applicant's expense (including requiring a deposit of funds in an amount determined by the Commission) as needed until compliance assurance is achieved. The Planning Commission may also use the data, if so warranted, to commence revocation proceedings in accordance with the County Code.

PART II

4.0 OPERATIONAL CHARACTERISTICS OF THE PROJECT

Permittee shall comply with the following during operation of the winery:

4.1 GENERAL PROVISIONS [RESERVED]

4.2 TOURS AND TASTINGS/VISITATION [RESERVED]

4.3 MARKETING [RESERVED]

- 4.4 ON-PREMISES CONSUMPTION **[RESERVED]**
- 4.5 RESIDENCE OR NON-WINERY STRUCTURES **[RESERVED]**
- 4.6 GRAPE SOURCE **[RESERVED]**
- 4.7 COMPLIANCE REVIEW **[RESERVED]**
- 4.8 RENTAL/LEASING **[RESERVED]**
- 4.9 GROUND WATER MANAGEMENT – WELLS **[RESERVED]**
- 4.10 AMPLIFIED MUSIC **[RESERVED]**
~~There shall be no amplified sound system or amplified music utilized outside of approved, enclosed, winery buildings.~~
- 4.11 TRAFFIC **[RESERVED]**
- 4.12 PARKING **[RESERVED]**
- 4.13 BUILDING DIVISION – USE OR OCCUPANCY CHANGES **[RESERVED]**
- 4.14 FIRE DEPARTMENT – TEMPORARY STRUCTURES **[RESERVED]**
- 4.15 NAPA COUNTY MOSQUITO ABATEMENT PROGRAM **[RESERVED]**
- 4.16 GENERAL PROPERTY MAINTENANCE – LIGHTING, LANDSCAPING, PAINTING, OUTDOOR EQUIPMENT STORAGE, AND TRASH ENCLOSURE AREAS
 - a. **[RESERVED].**
 - b. **[RESERVED]**
 - c. **[RESERVED]**
 - d. Designated trash enclosure areas shall be made available and properly maintained for intended use.
- 4.17 NO TEMPORARY SIGNS
 Temporary off-site signage, such as “A-Frame” signs, is prohibited.
- 4.18 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES – OPERATIONAL CONDITIONS
 The attached project conditions of approval include all of the following County Divisions, Departments and Agencies’ requirements. Without limiting the force of those other requirements which may be applicable, the following are incorporated by reference as enumerated herein:

- a. Fire Department operational conditions as stated in their Inter-Office Memo dated May 30, 2019.

The determination as to whether or not the permittee has substantially complied with the requirements of other County Divisions, Departments and Agencies shall be determined by those County Divisions, Departments or Agencies. The inability to substantially comply with the requirements of other County Divisions, Departments and Agencies may result in the need to modify this permit.

- 4.19 OPERATIONAL MITIGATION MEASURES **[RESERVED]**
- 4.20 OTHER CONDITIONS APPLICABLE TO THE OPERATIONAL ASPECTS OF THE PROJECT **[RESERVED]**
- 4.21 PREVIOUS CONDITIONS **[RESERVED]**

PART III

5.0 PREREQUISITE FOR ISSUANCE OF PERMITS

5.1 PAYMENT OF FEES

No building, grading or sewage disposal permits shall be issued or other permits authorized until all accrued planning permit processing fees have been paid in full. This includes all fees associated with plan check and building inspections, associated development impact fees established by County Ordinance or Resolution, and the Napa County Affordable Housing Mitigation Fee in accordance with County Code.

6.0 GRADING/DEMOLITION/ENVIRONMENTAL/BUILDING PERMIT/OTHER PERMIT PREREQUISITES

Permittee shall comply with the following with the submittal of a grading, demolition, environmental, building and/or other applicable permit applications.

6.1 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES – PLAN REVIEW, CONSTRUCTION AND PREOCCUPANCY CONDITIONS **[RESERVED]**

6.2 BUILDING DIVISION – GENERAL CONDITIONS

- a. A building permit shall be obtained for all construction occurring on the site not otherwise exempt by the California Building Code (CBC) or any State or local amendment adopted thereto.
- b. If there are any existing structures and/or buildings on the property that will need to be removed to accommodate construction activities, a separate demolition permit shall be required from the Building Division prior to removal. The permittee shall provide a “J” number from the Bay Area Air

Quality Management District (BAAQMD) at the time the permittee applies for a demolition permit if applicable.

- c. All areas of newly designed and newly constructed buildings, facilities and on-site improvements must comply with the CBC accessibility requirements, as well as, American with Disability Act requirements when applicable. When alterations or additions are made to existing buildings or facilities, an accessible path of travel to the specific area of alteration or addition shall be provided as required per the CBC.

6.3 LIGHTING – PLAN SUBMITTAL **[RESERVED]**

6.4 LANDSCAPING – PLAN SUBMITTAL **[RESERVED]**

6.5 COLORS **[RESERVED]**

~~The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation. The permittee shall obtain the written approval of the Planning Division in conjunction with building permit review and/or prior to painting the building. Highly reflective surfaces are prohibited.~~

6.6 OUTDOOR STORAGE/SCREENING/UTILITIES **[RESERVED]**

- a. ~~Details of outdoor storage areas and structures shall be included on the building and landscape plans. All outdoor storage of winery equipment shall be screened from the view of residences of adjacent properties by a visual barrier consisting of fencing or dense landscaping. No stored item shall exceed the height of the screening. Water and fuel tanks, and similar structures, shall be screened to the extent practical so as to not be visible from public roads and adjacent parcels.~~
- b. ~~New utility lines required for this project that are visible from any designated scenic transportation route (see Community Character Element of the General Plan and the County Code) shall be placed underground or in an equivalent manner be made virtually invisible from the subject roadway.~~
- c. ~~Exterior winery equipment shall be located, enclosed or muffled so as not to exceed noise thresholds in the County Code.~~

6.7 TRASH ENCLOSURES

Adequate area must be provided for collection and loading of garbage and recyclables generated by the project. The applicant must work with the franchised garbage hauler for the service area in which they are located, in order to determine the area and the pedestrian and vehicle access needed for the collection site. The garbage and recycling enclosure shall meet the minimum enclosure requirements established by staff and the franchised hauler, which shall be included in the building permit submittal.

6.8 ADDRESSING **[RESERVED]**

- 6.9 HISTORIC RESOURCES [RESERVED]
- 6.10 DEMOLITION ACTIVITIES [RESERVED]
- 6.11 VIEWSHED – EXECUTION OF USE RESTRICTION [RESERVED]
- 6.12 PERMIT PREREQUISITE MITIGATION MEASURES [RESERVED]
- 6.13 PARCEL CHANGE REQUIREMENTS [RESERVED]
- 6.14 FINAL MAPS [RESERVED]
- 6.15 OTHER CONDITIONS APPLICABLE TO THE PROJECT PERMITTING PROCESS
 - a. This Permit recognizes two existing physical improvements located within stream setbacks. It does not authorize use of any of these areas or improvements for winery purposes. In the event the use of these improvements for winery related purposes have not been authorized by the existing Use Permit, use of these areas for winery related purposes shall be subject to the County's use permit modification process prior to use.

7.0 PROJECT CONSTRUCTION

Permittee shall comply with the following during project construction:

- 7.1 SITE IMPROVEMENTS [RESERVED]
 - 7.2 ARCHEOLOGICAL FINDING [RESERVED]
 - 7.3 CONSTRUCTION NOISE [RESERVED]
 - 7.4 CONSTRUCTION MITIGATION MEASURES [RESERVED]
 - 7.5 OTHER CONSTRUCTION CONDITIONS APPLICABLE TO THE PROJECT PROPOSAL [RESERVED]
- 8.0 TEMPORARY CERTIFICATE OF OCCUPANCY – PREREQUISITES [RESERVED]**
- 9.0 FINAL CERTIFICATE OF OCCUPANCY – PREREQUISITES [RESERVED]**



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A Commitment to Service

Planning, Building & Environmental Services

1195 Third Street, Suite 210
Napa, CA 94559
www.countyofnapa.org

David Morrison
Director

October 29, 2020

John Bremer
Bremer Group LLC
975 Deer Park Road
St. Helena CA 94574

**Re: Bremer Family Winery, Use Permit Exception to the Conservation Regulations #P20-00143-UP
975 Deer Park Road, St. Helena, CA (APNs 021-40-002 and 021-420-027)**

Dear Mr. Bremer,

Please be advised that Use Permit Exception to Conservation Regulations #P20-00143 for the following Site Improvements was **APPROVED** by the Napa County Planning Commission (hereinafter, "Commission") on July 15, 2020, subject to the attached adopted final conditions of approval (as revised by the Planning Commission's action), Napa County departmental comments, and all applicable Napa County regulations: the approximate 800 square foot pad attached to the winery (identified as site improvement B), and the approximate 150 square foot ground floor/story addition and second floor/story deck to the farmhouse/main-residence specific to Building Permit #B08-00079 (identified as Site Improvement C). In approving these Site Improvements specified in the above request record, the Commission adopted Categorical Exemptions pursuant to the California Environmental Quality Act (CEQA).

Also be advised the Planning Commission **DENIED** the following Site Improvements specified in the referenced request: the approximate 2,200 square foot agricultural storage building and associated water tank (identified as Site Improvement A), and an approximate 100 square foot freestanding restroom (identified as Site Improvement D).

This permit becomes effective immediately unless a timely appeal is filed with the Napa County Board of Supervisors consistent with Chapter 2.88 of the Napa County Code, including payment of applicable fees. As you are aware, Alicia Guerra of Buchalter filed an appeal on your behalf specific to the **DENIED** Site Improvements. The appeal hearing is scheduled to be heard on December 8, 2020.

Pursuant to Napa County Code Section 18.124.080, the approved Use Permit Exception to the Conservation Regulations must be activated within two years of the approval date, or it will automatically expire and become void. This letter serves as the only notice you will receive regarding the expiration of your permit.

**USE PERMIT EXCEPTION TO THE CONSERVATION REGULATIONS EXPIRATION DATE:
October 16, 2021**

If you have any questions about this letter, please contact me by telephone at (707) 299-1338 or by email at donald.barrella@countyofnapa.org.

Sincerely,



Donald Barrella
Planner III

Enclosures: Adopted Conditions of Approval and Departmental Requirements
 Attachment A: Map of Approved Site Improvements

CC: David Morrison, Director, Planning Building and Environmental Services (via email)
 Brian Bordona, Deputy Director, Planning Building and Environmental Services (via email)
 Jeffery Brax, County Counsel (via email)
 Laura Anderson, Deputy County Counsel (via e-mail)
 Bremer Family Winery, 1660 Chicago Ave. Suite M11, Riverside CA 92507-2033
 David B. Gilbreth, 1152 Hardman Avenue, Napa CA 94558 (via email)

**PLANNING COMMISSION HEARING – July 15, 2020
FINAL CONDITIONS OF APPROVAL**

**Bremer Family Winery Site Improvements
Use Permit Exception to the Conservation Regulations
Application Number P20-00143-UP
975 Deer Park Road, St. Helena
APNs 021-400-002 and 021-420-027**

This permit encompasses and shall be limited to the project commonly known as *Bremer Family Winery Site Improvements Recognition and Retention*, located at 975 Deer Park Road, St. Helena. Part I encompasses the Project Scope and general conditions pertaining to statutory and local code references, project monitoring, and the process for any future changes or activities. Part II encompasses the ongoing conditions relevant to the operation of the project. Part III encompasses the conditions relevant to construction and the prerequisites for a Final Certificate of Occupancy. It is the responsibility of the permittee to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and guests of the winery to ensure compliance is achieved.

Where conditions are not applicable or relevant to this project, they shall be noted as “Reserved” and therefore have been removed.

When modifying a legally established entitlement related to this project, these conditions are not intended to be retroactive or to have any effect on existing vested rights except where specifically indicated.

PART I

1.0 PROJECT SCOPE

The permit encompasses and shall be limited to:

- 1.1 The recognition and approval of, the following existing site improvements, or portions thereof, in their existing configuration, that encroach into the minimum required stream setbacks pursuant to Napa County Code (NCC) Section 18.108.025(B) ranging from 45 feet to 65 feet from the top of bank of an unnamed blue-line stream, as depicted in Attachment D Site Improvement - Bremer Use Permit Exception.
 - b. An approximate 800 square foot concrete pad and associated walls attached to the winery [Identified as Site Improvement B in Attachment D];
 - c. An approximate 150 square foot ground floor/story addition and second floor/story deck to the farmhouse/office building [Identified as Site Improvement C in Attachment D];

The recognition of the two existing site improvements located within required stream setbacks shall be those that are in substantial conformance with the submitted site plan, elevation drawings, and other submittal materials and shall comply with all requirements of the Napa County Code (the County Code). It is the responsibility of the permittee to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and the general public to ensure compliance is achieved. Any expansion of or change in use or alternative locations for fire suppression or other types of water tanks shall be approved in accordance with the County Code and may be subject to the permit modification process. The approval of the two site improvements within the required stream setbacks in no way authorizes their use for winery related purposes. Any use of these structures for winery related purposes would first require County approval of a use permit modification to the existing use permit.

2.0 STATUTORY AND CODE SECTION REFERENCES

All references to statutes and code sections shall refer to their successor as those sections or statutes may be subsequently amended from time to time.

3.0 MONITORING COSTS

All staff costs associated with monitoring compliance with these conditions, previous permit conditions, and project revisions shall be borne by the permittee and/or property owner. Costs associated with conditions of approval and mitigation measures that require monitoring, including investigation of complaints, other than those costs related to investigation of complaints of non-compliance that are determined to be unfounded, shall be charged to the property owner or permittee. Costs shall be as established by resolution of the Board of Supervisors in accordance with the hourly consulting rate established at the time of the monitoring and shall include maintenance of a \$500 deposit for construction compliance monitoring that shall be retained until issuance of a Final Certificate of Occupancy. Violations of conditions of approval or mitigation measures caused by the permittee's contractors, employees, and/or guests are the responsibility of the permittee.

The Planning Commission may implement an audit program if compliance deficiencies are noted. If evidence of a compliance deficiency is found to exist by the Planning Commission at some time in the future, the Planning Commission may institute the program at the applicant's expense (including requiring a deposit of funds in an amount determined by the Commission) as needed until compliance assurance is achieved. The Planning Commission may also use the data, if so warranted, to commence revocation proceedings in accordance with the County Code.

PART II

4.0 OPERATIONAL CHARACTERISTICS OF THE PROJECT

Permittee shall comply with the following during operation of the winery:

4.1 GENERAL PROVISIONS [RESERVED]

4.2 TOURS AND TASTINGS/VISITATION [RESERVED]

4.3 MARKETING [RESERVED]

- 4.4 ON-PREMISES CONSUMPTION **[RESERVED]**
- 4.5 RESIDENCE OR NON-WINERY STRUCTURES **[RESERVED]**
- 4.6 GRAPE SOURCE **[RESERVED]**
- 4.7 COMPLIANCE REVIEW **[RESERVED]**
- 4.8 RENTAL/LEASING **[RESERVED]**
- 4.9 GROUND WATER MANAGEMENT – WELLS **[RESERVED]**
- 4.10 AMPLIFIED MUSIC **[RESERVED]**
- 4.11 TRAFFIC **[RESERVED]**
- 4.12 PARKING **[RESERVED]**
- 4.13 BUILDING DIVISION – USE OR OCCUPANCY CHANGES **[RESERVED]**
- 4.14 FIRE DEPARTMENT – TEMPORARY STRUCTURES **[RESERVED]**
- 4.15 NAPA COUNTY MOSQUITO ABATEMENT PROGRAM **[RESERVED]**
- 4.16 GENERAL PROPERTY MAINTENANCE – LIGHTING, LANDSCAPING, PAINTING, OUTDOOR EQUIPMENT STORAGE, AND TRASH ENCLOSURE AREAS
 - a. **[RESERVED]**
 - b. **[RESERVED]**
 - c. The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation. The permittee shall obtain the written approval of the Planning Division prior to any change in paint colors that differs from the approved building permit. Highly reflective surfaces are prohibited.
 - d. Designated trash enclosure areas shall be made available and properly maintained for intended use.
- 4.17 NO TEMPORARY SIGNS
Temporary off-site signage, such as “A-Frame” signs, is prohibited.
- 4.18 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES – OPERATIONAL CONDITIONS
The attached project conditions of approval include all of the following County Divisions, Departments and Agencies’ requirements. Without limiting the force of those other requirements which may be applicable, the following are incorporated by reference as enumerated herein:

- a. Fire Department operational conditions as stated in their Inter-Office Memo dated May 30, 2019.

The determination as to whether or not the permittee has substantially complied with the requirements of other County Divisions, Departments and Agencies shall be determined by those County Divisions, Departments or Agencies. The inability to substantially comply with the requirements of other County Divisions, Departments and Agencies may result in the need to modify this permit.

4.19 OPERATIONAL MITIGATION MEASURES [RESERVED]

4.20 OTHER CONDITIONS APPLICABLE TO THE OPERATIONAL ASPECTS OF THE PROJECT [RESERVED]

4.21 PREVIOUS CONDITIONS [RESERVED]

PART III

5.0 PREREQUISITE FOR ISSUANCE OF PERMITS

5.1 PAYMENT OF FEES

No building, grading or sewage disposal permits shall be issued or other permits authorized until all accrued planning permit processing fees have been paid in full. This includes all fees associated with plan check and building inspections, associated development impact fees established by County Ordinance or Resolution, and the Napa County Affordable Housing Mitigation Fee in accordance with County Code.

6.0 GRADING/DEMOLITION/ENVIRONMENTAL/BUILDING PERMIT/OTHER PERMIT PREREQUISITES

Permittee shall comply with the following with the submittal of a grading, demolition, environmental, building and/or other applicable permit applications.

6.1 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES – PLAN REVIEW, CONSTRUCTION AND PREOCCUPANCY CONDITIONS [RESERVED]

6.2 BUILDING DIVISION – GENERAL CONDITIONS

- a. A building permit shall be obtained for all construction occurring on the site not otherwise exempt by the California Building Code (CBC) or any State or local amendment adopted thereto.
- b. If there are any existing structures and/or buildings on the property that will need to be removed to accommodate construction activities, a separate demolition permit shall be required from the Building Division prior to removal. The permittee shall provide a “J” number from the Bay Area Air Quality Management District (BAAQMD) at the time the permittee applies for a demolition permit if applicable.

- c. All areas of newly designed and newly constructed buildings, facilities and on-site improvements must comply with the CBC accessibility requirements, as well as, American with Disability Act requirements when applicable. When alterations or additions are made to existing buildings or facilities, an accessible path of travel to the specific area of alteration or addition shall be provided as required per the CBC.

6.3 LIGHTING – PLAN SUBMITTAL [RESERVED]

6.4 LANDSCAPING – PLAN SUBMITTAL [RESERVED]

6.5 COLORS

The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation. The permittee shall obtain the written approval of the Planning Division in conjunction with building permit review and/or prior to painting the building. Highly reflective surfaces are prohibited.

6.6 OUTDOOR STORAGE/SCREENING/UTILITIES

- a. Details of outdoor storage areas and structures shall be included on the building and landscape plans. All outdoor storage of winery equipment shall be screened from the view of residences of adjacent properties by a visual barrier consisting of fencing or dense landscaping. No stored item shall exceed the height of the screening. Water and fuel tanks, and similar structures, shall be screened to the extent practical so as to not be visible from public roads and adjacent parcels.
- b. New utility lines required for this project that are visible from any designated scenic transportation route (see Community Character Element of the General Plan and the County Code) shall be placed underground or in an equivalent manner be made virtually invisible from the subject roadway.
- c. Exterior winery equipment shall be located, enclosed or muffled so as not to exceed noise thresholds in the County Code.

6.7 TRASH ENCLOSURES

Adequate area must be provided for collection and loading of garbage and recyclables generated by the project. The applicant must work with the franchised garbage hauler for the service area in which they are located, in order to determine the area and the pedestrian and vehicle access needed for the collection site. The garbage and recycling enclosure shall meet the minimum enclosure requirements established by staff and the franchised hauler, which shall be included in the building permit submittal.

6.8 ADDRESSING [RESERVED]

6.9 HISTORIC RESOURCES [RESERVED]

6.10 DEMOLITION ACTIVITIES [RESERVED]

- 6.11 VIEWSHED – EXECUTION OF USE RESTRICTION **[RESERVED]**
 - 6.12 PERMIT PREREQUISITE MITIGATION MEASURES **[RESERVED]**
 - 6.13 PARCEL CHANGE REQUIREMENTS **[RESERVED]**
 - 6.14 FINAL MAPS **[RESERVED]**
 - 6.15 OTHER CONDITIONS APPLICABLE TO THE PROJECT PERMITTING PROCESS **[RESERVED]**
- 7.0 PROJECT CONSTRUCTION**
Permittee shall comply with the following during project construction:
- 7.1 SITE IMPROVEMENTS **[RESERVED]**
 - 7.2 ARCHEOLOGICAL FINDING **[RESERVED]**
 - 7.3 CONSTRUCTION NOISE **[RESERVED]**
 - 7.4 CONSTRUCTION MITIGATION MEASURES **[RESERVED]**
 - 7.5 OTHER CONSTRUCTION CONDITIONS APPLICABLE TO THE PROJECT PROPOSAL **[RESERVED]**
- 8.0 TEMPORARY CERTIFICATE OF OCCUPANCY – PREREQUISITES **[RESERVED]**
 - 9.0 FINAL CERTIFICATE OF OCCUPANCY – PREREQUISITES **[RESERVED]**



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A Commitment to Service

Napa County Fire Department
Fire Marshal's Office
Hall of Justice, 2nd Floor
1125 3rd Street
Napa, CA 94559

Office: (707) 299-1461

Garrett Veyna
Fire Marshal

MEMORANDUM

TO:	Planning Department	DATE:	5/30/2019
FROM:	Adam Mone, Plans Examiner	PERMIT #	P19-00153/P20-00143
SUBJECT:	Bremer Family Winery	APN:	021-400-002-000

The Napa County Fire Marshal's Office has reviewed the submittal package for the above proposed project. The Fire Marshal approves as submitted and requires the following conditions to be incorporated as part of permit issuance.

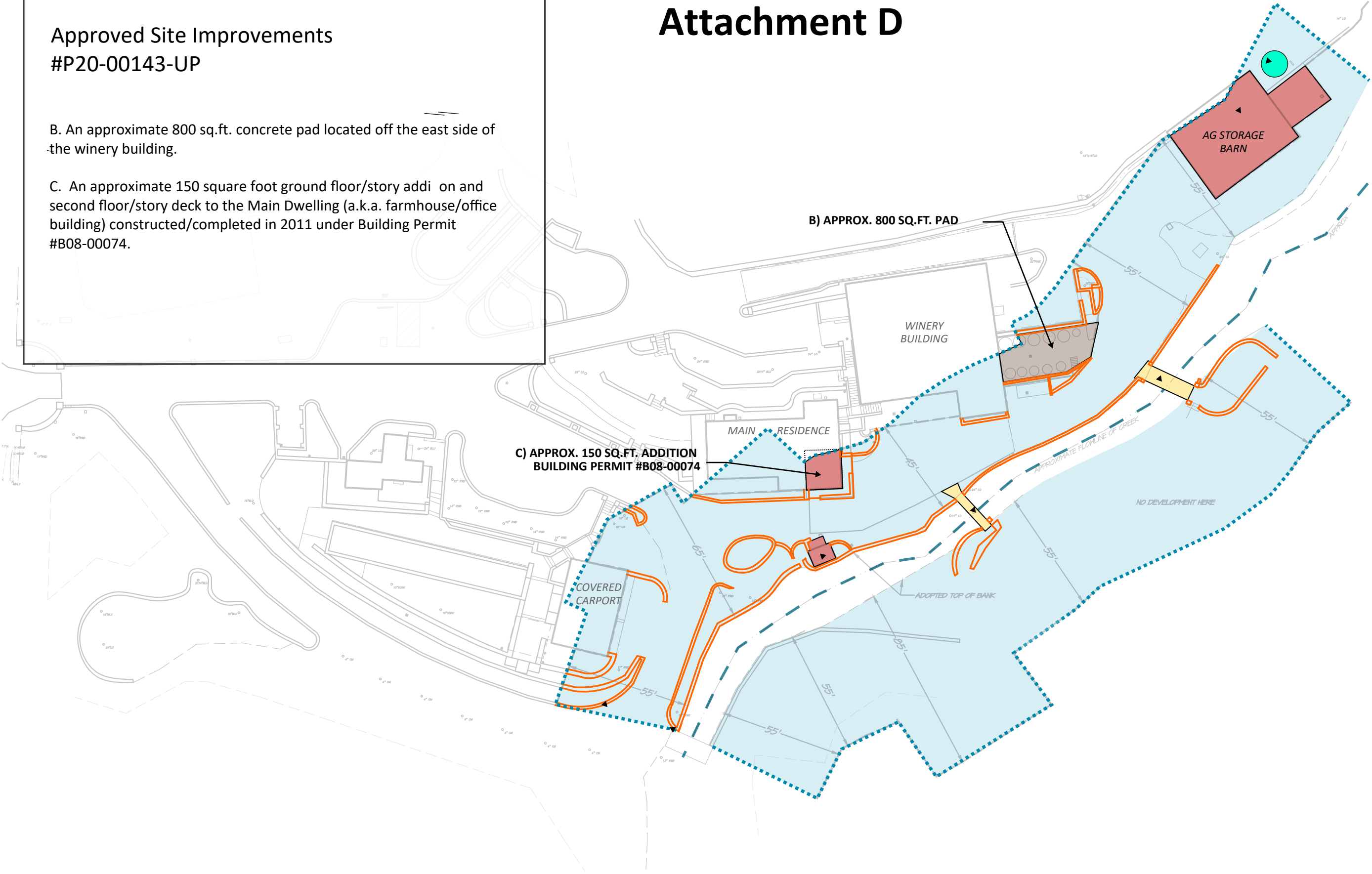
1. Provide 100 feet of defensible space around all structures.
2. Provide 10 feet of defensible space fire hazard reduction on both sides of all roadways of the facility.

Please note that the comments noted above are based on a Fire Marshal's Office review only. There may be additional comments or information requested from other County Departments or Divisions reviewing this application submittal package. Napa County Fire Marshal's Office Development Guidelines can be found @ www.countyofnapa.org/firemarshal. Should you have any questions of me, contact me at (707)299-1466 or email at adam.mone@countyofnapa.org.

Attachment D

Approved Site Improvements #P20-00143-UP

- B. An approximate 800 sq.ft. concrete pad located off the east side of the winery building.
- C. An approximate 150 square foot ground floor/story addition and second floor/story deck to the Main Dwelling (a.k.a. farmhouse/office building) constructed/completed in 2011 under Building Permit #B08-00074.



**BEFORE THE BOARD OF SUPERVISORS
OF NAPA COUNTY**

In the Matter of:

An appeal filed by Alicia Guerra, Esq. for John Bremer (Applicant/Appellant) on behalf of the Bremer Group, LLC, to a decision by the Napa County Planning Commission on July 15, 2020 to deny a request from Bremer Group, LLC/Bremer Family Winery for an exception to the Napa County Conservation Regulations in the form of a Use Permit (No. P20-00143-UP) to maintain, in their current configuration, the following existing physical site improvements, or portions thereof, that encroach into the minimum required stream setbacks: (1) an approximate 2,200 square foot agricultural storage building (“barn”) and associated water tank; and (2) an approximate 100 square foot freestanding restroom. The project is located on an approximately 47.1-acre holding (Assessor’s Parcel Nos. 021-400-002 and 021-420-027) at 975 Deer Park Road, St. Helena, California.

RESOLUTION NO. 2021-09

**FINDINGS OF FACT AND
DECISION ON APPEAL**

WHEREAS, on March 29, 2019, Bremer Group, LLC/Bremer Family Winery (Bremer Winery or the Winery) submitted an exception to the Conservation Regulations in the form of Use Permit Application No. P19-00153 requesting approval to maintain six existing physical site improvements, or portions thereof, that encroach into the minimum required stream setbacks as follows: (A) an approximate 2,200 square foot barn and associated water tank that replaced an approximate 320 square foot barn; (B) an approximate 800 square foot pad located off the east side of the winery building; (C) an approximate 150 square foot ground floor/story addition and second floor/story deck to the main dwelling (a.k.a. farmhouse/office building); (D) an approximate 100 square foot freestanding restroom; (E) approximately 1,210 lineal feet of low decorative rock walls; and (F) two pedestrian bridges over a blue-line stream. The six improvements requested under Use Permit Application No. P19-000153 are hereafter referred to as the Original Application; and

WHEREAS, the project site is located on an approximately 47.1-acre holding (Assessor’s Parcel Nos. 021-400-002 and 021-420-027) at 975 Deer Park Road, St. Helena, California with a General Plan land use designation of Agriculture, Watershed and Open Space; and

WHEREAS, the Planning Commission held two public hearings (September 18, 2019 and October 16, 2019) on the Original Application and ultimately approved the requested use

permit exception to the Conservation Regulations for all six improvements described above as (A) through (F); and

WHEREAS, on November 12, 2019, a timely appeal packet was submitted by Michael Hackett (the Hackett Appeal) to the Commission's decision to approve the Original Application (Use Permit No. P19-00153-UP); and

WHEREAS, on March 17, 2020, the Board heard and considered all evidence and testimony regarding the Hackett Appeal. The Board closed the public hearing and adopted a motion of intent to: (1) reject the Hackett Appeal in its entirety; and (2) uphold the Planning Commission's approval of the decorative rock walls and two pedestrian bridges as further described as existing structures (E) and (F) above. The Board took further action and remanded the following four remaining existing structures and site improvements: (A) an approximate 2,200 square foot barn and associated water tank that replaced an approximate 320 square foot barn; (B) an approximate 800 square foot pad located off the east side of the winery building; (C) an approximate 150 square foot ground floor/story addition and second floor/story deck to the main dwelling (a.k.a. farmhouse/office building); and (D) an approximate 100 square foot freestanding Americans with Disabilities Act (ADA) restroom to the Planning Commission to reconsider, each on its own merits, with greater scrutiny, and without further reference to the settlement agreement since they are not included therein. The four structures described as (A) through (D) that were remanded back to the Planning Commission are hereafter referred to as the Remanded Structures; and

WHEREAS, on or about May 22, 2020, Bremer Winery requested that the Remanded Structures be scheduled for a Planning Commission hearing. A new application was not required nor submitted because the Original Application included the Remanded Structures that were previously considered by the Commission. To avoid confusion and for housekeeping purposes, the Planning Department assigned a new permit number (P20-00143)(the Permit) to reflect the Remanded Structures; and

WHEREAS, on July 1, 2020, the Public Notice for the Planning Commission hearing on the Remanded Structures and Notice of Intent to Adopt Categorical Exemptions was mailed to all property owners within 1,000 feet of the subject property as well as any other persons who had requested notice. The Notice was published in the Napa Valley Register on July 1, 2020; and

WHEREAS, the Planning Commission held a public hearing on July 15, 2020 on the Remanded Structures and granted part of the use permit request and denied part of the request. The Commission approved the requested use permit exception and allowed an approximate 800 square foot pad (5:0) and an approximate 150 square foot ground floor/story addition and second floor/story deck to the main dwelling (a.k.a. farmhouse/office building)(3:2 –AYES: Whitmer, Mazotti, Dameron; NOES: Cottrell and Gallagher) to remain within required stream setbacks. The Commission denied the use permit exception for the freestanding ADA restroom (4:1-AYES: Whitmer, Gallagher, Cottrell, and Dameron; NOES: Mazotti) and an Agricultural Storage Building (i.e. barn) (4:1 AYES: Gallagher, Cottrell, Mazotti and Dameron; NOES: Whitmer) to remain in the stream setback; and

WHEREAS, on July 29, 2020, a timely Notice of Intent to Appeal was submitted by Alicia Guerra, Esq. for John Bremer on behalf of Bremer Group, LLC (Appellant) to the Planning Commission's decision to deny an exception to the Conservation Regulations in the form of a Use Permit No. P20-00143-UP for: (1) the freestanding ADA restroom; (2) the barn; and (3) the wine press, tanks and catwalks. On August 12, 2020, Appellant filed a timely appeal packet (the Appeal). Because the Planning Commission's decision only pertained to physical structures and not winery-related uses, on November 11, 2020 Appellant withdrew the wine press, tanks and catwalks from Appellant's grounds of appeal; and

WHEREAS, in accordance with Napa County Code (NCC) Section 2.88.080(A), a hearing on the Appeal was scheduled before the Board of Supervisors (the Board) for September 22, 2020, a date at least 15 but no more than 90 days from the date of submittal of the Appeal; and

WHEREAS, on September 11, 2020, public notice of this appeal hearing was mailed and provided to all parties who received notice of the Planning Commission hearing and was published in the Napa Valley Register the same day; and

WHEREAS, on September 22, 2020, at a duly noticed public hearing on the Appeal, at the Applicant's and Staff's request, the Board continued the hearing on the Appeal to December 8, 2020. No testimony was taken on September 22, 2020; and

WHEREAS, on December 8, 2020, at a duly noticed continued public hearing on the Appeal, the Board heard and considered all evidence and testimony regarding the Appeal. The Board closed the public hearing and adopted a motion of intent to: (1) uphold the grounds of the Appeal; (2) reverse the Planning Commission's decision; and (3) approve the Exception to the Conservation Regulations in the form of Use Permit No. P20-00143 to allow the barn and ADA restroom to remain in the stream setback subject to conditions of approval. The Board further directed County Counsel to prepare a resolution containing Findings of Fact and Decision on Appeal in support of its proposed decision and to present those findings to the Board for consideration at its meeting on February 2, 2021; and

WHEREAS, on February 2, 2021, this proposed resolution containing the Findings of Fact and Decision on Appeal was presented to the Board for possible adoption; and

WHEREAS, this proposed resolution containing the Findings of Fact and Decision on Appeal having been presented to the Board for possible adoption at a regular meeting of the Board on February 2, 2021, and interested persons having been given an opportunity to address the Board regarding the proposed resolution.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors finds, determines, concludes and decides as follows:

Section 1. Recitals.

The Board finds and determines that the foregoing recitals are true and correct.

Section 2. Conduct of Appeal.

A. NCC Section 2.88.090(B) provides that if the hearing before the approving authority was recorded electronically or by a certified court reporter then upon request by the Appellant upon a showing of good cause, the Board may permit additional evidence to be presented which could have been presented at the time of the decision appealed from was made but was not presented. Here, the Planning Commission proceedings were recorded electronically and a transcript of the Planning Commission proceeding was provided to the Board.

B. Appellant made a “good cause” request to supplement the record with new information. The Chair denied Appellant’s request as set forth in the Chair’s Good Cause Determination. Appellant then reserved the right to request that the full Board overrule the Chair’s Good Cause Determination but later withdrew the request. No supplemental information or new evidence was allowed or considered by the Board in connection with the Appeal.

Section 3. Findings of Fact and Conclusions of Law on Appeal.

The Board makes the following findings of fact and conclusions of law in regard to each of the grounds for appeal as stated by Appellant in the Appeal¹:

A. First Ground of Appeal.

Appellant’s Position: Appellant asserts that the barn has existed at the Winery for nearly a decade and County Staff acknowledged the existing improvement did not pose a threat to the stream. Specifically, Appellant asserts that Appellant’s predecessor obtained a building permit in 1979 to remodel the barn. Any construction by the Appellant on the barn was consistent with what the Appellant believed to be reasonable renovations to the existing structure on a pre-existing foundation. Now, the Appellant seeks to bring the barn back into compliance with County regulations. The Planning Commission Staff Report concluded that the barn was one of several site improvements that "are primarily a result of minor alterations, maintenance or replacement of historic site development and use, as shown in [the 1979 Use Permit] that has been done in a manner to complement preexisting development and thus "generally limited to the historic development envelope or areas immediately adjacent thereto." Appellant contends that the use permit exception for the barn (i.e., Ag Storage Barn) should be granted.

Findings and Decision: The Board finds and determines as follows:

The Board agrees with Appellant and the Staff recommendation to the Planning Commission that the use permit exception for the barn should be granted.

¹ This Resolution summarizes the grounds of appeal. For the complete text of the Appeal, please see the actual Appeal dated August 12, 2020.

While there is evidence in the record that Building Permit No. 25748 was issued in August 1979 to ‘*remodel a barn into a storage building,*’ there is no other evidence, such as building plans or other supporting documentation, that this permit was specific to the subject barn or what the remodel consisted of, including how much of the 320 square foot structure was increased in size.

Appellant’s representative acknowledged to the Planning Commission and to the Board at the Appeal hearing that the structure that is there today (i.e., Ag Storage Barn) was constructed in 2013 without building permits. As evident in historic aerial imagery, in May of 2012 there was an approximate 18’x40’ (720 square foot) structure or similar improvement/installation located at the ‘Barn’ site at the northwest end of the winery site. Between June and September/October 2013, that structure was removed, an approximate 46’x37’ (1,702 square foot) foundation and walls were constructed, and by May 2014, the current ‘Ag Storage Barn’ was completed. The replacement and expansion occurred within the historic development envelope and previously disturbed areas, and therefore did not result in any new disturbance or use closer to the stream than the original development envelope.

On April 9, 2019, Building Permit No. B19-00307 was issued for a retaining wall along the northern periphery of the winery site (located outside stream setbacks) that abuts the Ag Storage Barn to the north. County Staff and the Chief Building Official viewed this permit as specific to just the retaining wall and independent of the barn; however, the plans associated with Building Permit No. B19-00307 and photographs presented at the Appeal hearing show one entire wall of the barn and part of another wall of the barn are portions of the retaining wall. The Board also finds that that processing the retaining wall under a permissive building permit and the barn under a discretionary use permit (due to its location in the stream setback) likely created some confusion for Appellant regarding compliance.

A majority of the Board concurs with Staff’s recommendation to the Planning Commission and the opinions of Appellant’s biologists and erosion control specialist that the retention and maintenance of the existing site improvements would not have a deleterious effect on the stream. At the Appeal hearing, Appellant’s representatives informed the Board that although the property is 47 acres, the barn is in close proximity to the Winery improvements to complement other structural elements and uses of the Winery. The Board agrees with Appellant that allowing the barn to remain in its existing location will not increase disturbance to the stream and the encroachment into the setback is the minimum necessary to implement the project as required by NCC Section 18.108.040(A)(5) and that the other criteria of NCC Section 18.108.040 applicable to this structure are satisfied.

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Appeal in its entirety, reverse the Planning Commission’s decision to deny the Project and approve Use Permit No. P20-00143 to allow the existing barn to remain in the stream setback subject to the Conditions of Approval attached as Exhibit “A.”

B. Second Ground of Appeal.

Appellant's Position: Appellant asserts that the ADA restroom has existed at the Winery for nearly a decade and the Board acknowledged it did not pose a threat to the stream. Specifically, Appellant asserts that the County approved a building permit and performed a final inspection for the ADA restroom at its existing location. Appellant contends that the use permit exception for the ADA restroom should be granted.

Findings and Decision: The Board finds and determines as follows:

The Board concurs with Appellant. The ADA restroom was permitted through Building Permit #B08-01030 and received final approval by the Building Division on January 14, 2013. An Exception to the Conservation Regulations in the form of a use permit should have been required by Staff prior to the approval of the building permit; however, that requirement was not imposed by Staff in 2008 or when the restroom was constructed in 2012-13.

During the Planning Commission hearing, Commissioners questioned Staff as to why the use permit exception was not imposed in 2008 and inquired whether since then the Planning Department has implemented practices to prevent a similar mistake from happening again and ensure that building permit applications are more closely reviewed to determine if a structure triggers a use permit exception under the Conservation Regulations. In describing the preventative practices put in place, Staff informed the Commission that under the current application checklist, applicants and their contractors are responsible for showing all creeks on the site plan. As part of that discussion, Staff speculated that the Conservation Regulations exception for the restroom may not have been required because the stream was not readily shown or identifiable on the building permit site plan.

As a result of Staff's speculation, a majority of the Commission felt that Appellant's failure to disclose the stream on the building permit site plan was a contributing factor to the permit being issued without the requirement of a Conservation Regulations exception. Commissioners felt that because the stream was not disclosed on the building site plan, Staff may not have had sufficient information and that lack of disclosure undercuts the issuance of the building permit. The Staff Report provided to the Board for the Appeal hearing acknowledges that subsequent to the Planning Commission's decision, Staff learned that the site plans for Use Permit No. U-697879 (the Winery's original use permit) did show the creek, and show the area along the creek as winery parking and access. Because the restroom was proposed in an area that had been previously disturbed and used for winery operations, Staff in 2008 incorrectly assumed that subsequent work in previously disturbed areas that also contained winery use areas within stream setback was exempt from the Conservation Regulations and therefore intentionally did not require a use permit exception.

Staff knowingly issued the building permit in the stream setback based on a misinterpretation of the Conservation Regulations. Appellant obtained a building permit, showed the creek on the Winery's original use permit site plan and according to Staff and Appellant's biologists, more harm would result from removing the restroom than allowing it to

remain. A majority of the Board agrees with Appellant and with Staff's recommendation to the Commission that the ADA restroom should be approved.

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Appeal in its entirety, reverse the Planning Commission's decision to deny the Project, find that the criteria of NCC Section 18.108.040 applicable to this structure are satisfied and approve Use Permit No. P20-00143 to allow the existing ADA restroom to remain in the stream setback subject to the Conditions of Approval attached as Exhibit "A."

C. Third Ground of Appeal.

Appellant's Position: Appellant asserts that the Board determined that the barn and the restroom pose no environmental threat to the creek, a key finding required for approval of a Conservation Regulation exception. In April 2013, Appellant received approval for Erosion Control Plan (P11-00317-ECPA)(the ECPA) and documented the existing conditions related to various improvements in the vicinity of the stream. In connection with the ECPA, several biologists and engineers opined that "the stream is functioning normally," that "overall stream health and riparian function . . . are in good condition," that the stream travels through the Winery "uninterrupted, largely in its natural state," and that there is "no impairment of the vital ecological function of the creek." As such, Appellant contends that the exception for the barn and the restroom should be approved.

Findings and Decision: The Board finds and determines as follows:

The Board agrees with Appellant and Staff that the evidence is uncontroverted that the stream is generally in good condition and that removing the restroom and barn would result in greater environmental harm than allowing the structures to remain in place.

At the Appeal hearing, Appellant's representative informed the Board that the restroom is ADA accessible and needs to be in a location that not only is readily accessible to visitors to the Winery but also in proximity to other visitor serving improvements on the site rather than elsewhere on the 47-acre site. The restroom also connects to an existing septic system, and the restroom needs to be in close proximity to that system to avoid further disturbance to the site. The barn is located within the Winery's historic development envelope and complements other Winery structures. Although the barn was replaced and enlarged without benefit of a permit the expansion was within the historic winery development and use envelope and did not result in a greater encroachment into the stream setback. See also Findings and Determination to the First Ground of Appeal incorporated here by reference.

The Board finds that allowing the ADA restroom and barn to remain in their existing locations will not increase disturbances to the stream and that the encroachments into the setback are the minimum necessary to implement the project as required by NCC Section 18.108.040(A)(5).

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Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Appeal in its entirety, reverse the Planning Commission's decision to deny the Project and approve Use Permit No. P20-00143 to allow the ADA restroom and barn to remain in their existing locations in the stream setback subject to the Conditions of Approval attached as Exhibit "A."

D. Fourth Ground of Appeal.

Appellant's Position: Appellant contends that the Commission did not make any findings or explain why it denied the use permit exception despite considerable evidence supporting approval. Appellant further asserts that the decision was devoid of any analysis that supported why the Commission denied the use permit exception. When a reviewing body seeks to overrule and ignore the recommendation of its own department, "the reviewing agency should make supporting findings and explain the reasons why it totally ignores" that recommendation and set forth facts therein. (*Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183, 200.) A reviewing board must set forth findings when denying an action, regardless of whether a local ordinance requires that board to make findings. (*Topanga Assn. for a Scenic Comm. v. City of Los Angeles* (1974) 11 Cal.3d 506, 513-514.)

Findings and Decision: The Board finds and determines as follows:

The Commissioners reasonably and appropriately articulated on the record their reasons for denying the exception for the barn and restroom. However, the Napa County Board of Supervisors is the local government body charged by law with interpreting the County's land use policies and rendering the final determination on a project's consistency or lack thereof with those land use policies.² The Board is not bound by the Commission's determination that the project does not meet the required findings for issuance of a use permit exception per NCC Section 18.108.040(A).

A majority of the Board reasonably interpreted the applicable use permit findings in a manner similar to what Staff had recommended to the Planning Commission on two prior occasions. See also Findings and Determination to the First Ground of Appeal incorporated here by reference.

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Appeal in its entirety, reverse the Planning Commission's decision to deny the Project and approve Use Permit No. P20-00143 to allow the existing ADA restroom and barn to remain in the stream setback subject to the Conditions of Approval attached as Exhibit "A."

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² *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 668.

E. Fifth Ground of Appeal.

Appellant's Position: The Conservation Regulations expressly allow for a project to receive a use permit exception upon making the appropriate findings. Appellant claims that to deny the exception in spite of thorough analyses and findings by County Staff, and without any findings to the contrary, would defy the County's own ordinances and suggest that the Planning Commission acted arbitrarily in rejecting the use permit exception.

Findings and Decision: The Board finds and determines as follows:

The record is devoid of any evidence suggesting the Planning Commission acted arbitrarily in denying the use permit exception. The Planning Commissioners thoroughly and fairly reviewed the exception request and clearly articulated the reasons that they were unable to make all the findings required to approve the Conservation Regulations exception. A majority of the Commission found that Appellant had not met its burden of demonstrating that disturbance to streams and watercourses has been minimized, and that the encroachment was the minimum necessary to implement the Project, and therefore denied the barn and restroom.

At the Appeal hearing, Appellant's representatives for the first time articulated why the ADA restroom and barn encroachments into the setback are the minimum necessary to implement the Project including the need for these structures to be close to the Winery, accessible to Winery visitors and to complement other Winery improvements rather than located outside of the stream setback elsewhere on the 47-acre site.

Each Code Compliance application is evaluated independently with respect to each application's unique facts and circumstances. Although the Commission denied the exception, it does not mean that Appellant was treated unfairly or unjustly. Likewise, the Board's review of the evidence and reversal of the Commission's decision also does not mean Appellant or any other party was treated unfairly.

See also Findings and Determination to the First, Second, Third and Fourth Grounds of Appeal incorporated here by reference.

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Appeal in its entirety, reverse the Planning Commission's decision to deny the Project and approve Use Permit No. P20-00143 to allow the existing ADA restroom and barn to remain in the stream setback subject to the Conditions of Approval attached as Exhibit "A."

F. Sixth Ground of Appeal.

Appellant's Position: Appellant asserts that Bremer Family Winery has complied in good faith with the February 2019 Settlement Agreement. The court-approved Settlement Agreement required Appellant to submit the pending use permit exception application consistent with the County's Code Compliance Program (Compliance Program). Appellant asserts that the Agreement intended to "settle and conclude all issues, claims and defenses between" the County

and the Appellant, including all structures built within the stream setbacks.” Appellant contends this includes the barn and the restroom.

Findings and Decision: The Board finds and determines as follows:

Appellant is mistaken. The Settlement Agreement is irrelevant and unrelated to the structures that are the subject of this Appeal. The Agreement required Bremer to submit a complete application for an Exception to the Conservation Regulations in the form of a use permit (which Appellant has done) but it was to legalize the rock walls and bridge structures not the barn and the restroom. The Agreement has no bearing at all and does not address the barn and the restroom that Bremer seeks to legalize as part of this use permit application.

Section 10 of the Settlement Agreement specifically states: “... Defendants shall submit a complete application for an exception to the Conservation Regulations, as provided in Napa County Code Section 18.108.040, to allow the walls and bridge structures within the creek setback (*emphasis added*).” Section 6 explicitly provides that “The County does not and cannot make any representation or promise that any applications for use permit modifications submitted pursuant to the Judgment entered pursuant to this Settlement Agreement will be approved in whole or in part.”

Although the barn and the restroom were not covered by the Settlement Agreement, the Board acknowledges Appellant’s efforts to bring these structures into compliance by participating in the County’s Compliance Program to remedy outstanding violations.

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Appeal in its entirety, reverse the Planning Commission’s decision to deny the Project and approve Use Permit No. P20-00143 and allow the ADA restroom and barn to remain in the stream setback subject to the Conditions of Approval attached as Exhibit “A.”

G. Seventh Ground of Appeal.

Appellant’s Position: Appellant asserts that the Planning Commission ignored Bremer Family Winery’s efforts to comply with the Conservation Regulations and County Code. On multiple occasions, County Planning Staff has concluded that the improvements both qualify for resolution under the County’s Code Compliance Program and for exceptions to the Conservation Regulations. Staff has made the requisite findings, supported by the appropriate analysis. Appellant contends the Commission rejected these conclusions for reasons that had nothing to do with the findings required by the County Code Compliance Program and the Conservation Regulations. The Commission instead focused on whether Appellant furnished the County with the appropriate information in their application and whether County inspections were adequate for improvements that exist today. Neither the County Code Compliance Program nor the Settlement Agreement referred to the matters upon which the Planning Commission relied in rejecting the use permit exception for the barn and the restroom at issue. Appellant contends that scrutiny of matters other than the environmental considerations is irrelevant and improper when considering an exception to the Conservation Regulations.

Findings and Decision: The Board finds and determines as follows:

The Planning Commission denied the exception request for the barn and restroom because it was unable to find that those structures were appropriately located on the property. Specifically, a majority of the Planning Commission found that per NCC Section 18.108.040(A)(5), Appellant had failed to demonstrate that disturbance to streams and watercourses had been minimized, and the encroachment was the minimum necessary to implement the Project and therefore denied the barn and restroom. The Planning Commission also believed that Appellant's failure to disclose the stream on the building permit plans for the ADA restroom may have contributed to the permit being issued without an exception.

The Staff Report prepared for the Appeal hearing informed the Board that the building permit for the restroom was intentionally issued with knowledge of its proximity to the stream but based on a misinterpretation of the Conservation Regulations. At the Appeal hearing, the Board also heard and considered testimony from Appellant's representative regarding the restroom and barn in their existing location rather than elsewhere on the property. See also Findings and Determination to the First, Second, Third and Fourth Grounds of Appeal incorporated here by reference.

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Appeal in its entirety, reverse the Planning Commission's decision to deny the Project and approve Use Permit No. P20-00143 to allow the existing ADA restroom and barn to remain in the stream setback subject to the Conditions of Approval attached as Exhibit "A."

H. Eighth Ground of Appeal.

Appellant's Position: Appellant contends that the failure to provide Appellant with the same compliance benefits afforded to neighboring properties in the County, and as outlined in the Settlement Agreement, supports a conclusion that the Planning Commission has not complied with the Settlement Agreement in good faith.

Findings and Decision: The Board finds and determines as follows:

Appellant is wrong on both counts. The Settlement Agreement has no relevance to the barn and the restroom and Appellant has been afforded the same compliance benefits as other participants in the County's Compliance Program.

The Settlement Agreement was not specific to the improvements that are the subject of this Appeal (i.e. restroom and barn). The Agreement was specific to the walls and bridge structures within the creek setback. As such, the Agreement is irrelevant and unrelated to this Appeal. See also Findings and Determination to the Sixth Ground of Appeal incorporated here by reference.

Appellant has been afforded the same compliance benefits as other participants in the County's Code Compliance Program. Specifically, Appellant was afforded an opportunity to apply for a Conservation Regulations exception to legitimize the unpermitted restroom and barn rather than remove the unpermitted structures and/or face a code enforcement action. Appellant also received the benefit of the County applying the existing CEQA environmental baseline to the barn and restroom structures. Finally, Appellant has been able to continue to use the barn and restroom (constructed without benefit of a Use Permit Exception) while the exception request has been processed, considered and acted upon by the decision-makers for the past several years.

A majority of the Board recognizes that as part of the Settlement Agreement Appellant paid a compromised amount to partially reimburse the County for its attorneys' fees and costs. When Appellant learned that the barn is not covered by the Settlement Agreement, Appellant voluntarily submitted the pending use permit application under the County's Compliance Program in an effort to become fully compliant with County rules and regulations.

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Appeal in its entirety, reverse the Planning Commission's decision and approve Use Permit No. P20-00143 to allow the ADA restroom and barn to remain in the stream setback subject to the Conditions of Approval attached as Exhibit "A."

I. Ninth Ground of Appeal.

Appellant's Position: Testimony at the July 15, 2020 Planning Commission meeting asserted that the County had no knowledge of the location of the stream and the restroom. Appellant contends that the Planning Commission therefore concluded that the County could not properly enforce the stream setback ordinance. Appellant asserts that this statement is without merit, given the Winery's use permit site plan, communication with County Staff, and repeated visits by County Staff to the Winery for necessary inspections over more than a decade. At the very least, the County knew about and approved the ADA restroom, notwithstanding its proximity to the stream.

Findings and Decision: See Findings and Determination to the First, Second, Third, Fourth and Fifth Grounds of Appeal incorporated here by reference.

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Appeal in its entirety, reverse the Planning Commission's decision to deny the Project and approve Use Permit No. P20-00143 to allow the existing ADA restroom and barn to remain in the stream setback subject to the Conditions of Approval attached as Exhibit "A."

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J. Tenth Ground of Appeal.

Appellant's Position: Appellant asserts that the use permit that governs the use of the Winery and its attached site plan clearly depicts the stream. The Winery is still governed by the 1979 Use Permit which "reactivated" the historic winery and vineyard located on the site. That use permit additionally included a site plan, which mapped "Existing Site Improvements" on the property. According to Appellant, included among the structures are a dwelling, the Winery and adjacent concrete pads, as well as the barn and the stream is depicted running adjacent to the structures and site improvements. An additional parcel-scale map shows the aforementioned structures abutting a dotted and dashed line that is commonly used to signify or otherwise identify a stream, the map also identifies a "Spring" accompanying this dashed line. This is the only dashed line drawn through the property, a clear depiction of the watercourse running through the site.

Findings and Decision: The Board finds and determines as follows:

The Board agrees with Appellant that the site plans associated with Use Permit #U-697879 (the original Winery use permit) shows existing site improvements and the stream.

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Appeal in its entirety, reverse the Planning Commission's decision and approve Use Permit No. P20-00143 to allow the existing ADA restroom and barn to remain in the stream setback subject to the Conditions of Approval attached as Exhibit "A."

K. Eleventh Ground of Appeal.

Appellant's Position: Appellant contends that since the 1979 Use Permit still governs the use of the present-day Winery, the County is reasonably apprised of the stream's location in the context of the other structures. The ADA restroom was constructed in 2013 pursuant to Building Permit No. B08-01030. Appellant asserts that the County's reasonable review of improvement applications, at the very least, begins with a review of the site plan and the effective use permit for the property. This approach would allow the County to confirm the existence of the stream prior to an inspector having to set foot upon the property. Appellant contends that the County has conceded this error. Appellant never sought to conceal the true location of the improvements and was always forthright with each improvement's location. Appellant asserts that the County should have confirmed that a use permit exception was required before issuance of Building Permit No. B08-01030. It did not and Appellant proceeded in reliance on the 1979 Use Permit and the Building Permit as authorizing the ADA restroom improvements in its current location.

Findings and Decision: See Findings and Determination to the Second, Third, Fourth and Fifth Grounds of Appeal incorporated here by reference.

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Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Appeal in its entirety, reverse the Planning Commission’s decision and approve Use Permit No. P20-00143 to allow the existing ADA restroom and barn to remain in the stream setback subject to the Conditions of Approval attached as Exhibit “A.”

L. Twelfth Ground of Appeal.

Appellant’s Position: Appellant contends that County officials issued building permits, and inspected and approved the restroom, notwithstanding the location of the stream. Appellant never initially intended to construct the ADA restroom. The County only noted this requirement during an inspection of the wine cave. Appellant expressed its concern in a May 25, 2012 email to the County Deputy Planning Director John McDowell, explaining that the Winery is located "between two hillsides with a creek running along the side, that there are few options where the restroom may be located, and that [it] needs the County's assistance "as soon as is possible to explore where [they] can place this bathroom." Appellant asserts that Mr. McDowell referred Ms. Bremer to previous County Building Official Darrell Mayes to address the matter. Appellant claims that further consultation with these officials led Appellant to conclude that the current site of the ADA restroom complied with the County Code. Appellant did not obtain an Exception to the Conservations Regulations in the form of a use permit or a modification to the winery permit because Napa County did not require it." The County approved the building permit for the ADA Restroom in the proposed location.

Findings and Decision: See Findings and Determination to the First, Second, Third, Fourth and Fifth Grounds of Appeal incorporated here by reference.

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Appeal in its entirety, reverse the Planning Commission’s decision and approve Use Permit No. P20-00143 to allow the existing ADA restroom and barn to remain in the stream setback subject to the Conditions of Approval attached as Exhibit “A.”

M. Thirteenth Ground of Appeal.

Appellant’s Position: Appellant contends that County inspections failed to identify any purported stream setback inconsistency between 2007 and 2012. The County inspected various permitted projects at the Winery, and the barn and the restroom at least 26 times and at no time did it raise a concern about the stream setback or require a use permit exception to the Conservation Regulations. The County did not issue its first Notice of Violation until 2016.

Findings and Decision: The Board incorporates the Findings and Determination to the First, Second, Third, Fourth and Fifth Grounds of Appeal here by reference.

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Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Appeal in its entirety, reverse the Planning Commission’s decision and approve Use Permit No. P20-00143 and allow the ADA restroom and barn to remain in the stream setback subject to the Conditions of Approval attached as Exhibit “A.”

N. Fourteenth Ground of Appeal.

Appellant’s Position: Appellant asserts that by denying the use permit exception for the barn and the bathroom, the Planning Commission chose to penalize Appellant for the errors of the County’s own inspectors and officials.

Findings and Decision: The Board finds and determines as follows:

Appellant has provided no evidence that the Planning Commission denied the exception to penalize the Owner/Appellant because of County Staff errors.

The Staff Report provided to the Board acknowledges that a building permit for the ADA restroom was issued and received final approval in 2013 based on a misinterpretation of the Conservation Regulations. Because a permit had been issued, Staff recommended that the Planning Commission approve the restroom. The Board concurs with the Staff’s recommendation to the Commission and agrees that since the building permit was issued and received final approval seven years ago, the restroom should remain in its existing location.

A majority of the Board further recognizes that as part of the Settlement Agreement Appellant paid a compromised amount to partially reimburse the County for its attorneys’ fees and costs. When Appellant learned that the Settlement Agreement did not cover the barn, Appellant voluntarily submitted the use permit application under the Compliance Program to become fully compliant with County rules and regulations. The Board adopted the Compliance Program in 2018 to afford property owners an opportunity to come into compliance, remedy outstanding violations and change the historic culture in the County of property owners seeking forgiveness after the fact for violating County regulations rather than proactively obtaining permission first. Appellant’s participation in the Compliance Program and the Board’s approval of Use Permit No. P20-00143-UP will bring the property into compliance consistent with the Compliance Program goals.

The Board also incorporates the Findings and Determination to the First, Second, Third, Fourth and Fifth Grounds of Appeal here by reference.

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Appeal in its entirety, reverse the Planning Commission’s decision and approve Use Permit No. P20-00143 to allow the existing ADA restroom and barn to remain in the stream setback subject to the Conditions of Approval attached as Exhibit “A.”

Section 4. Use Permit and Use Permit Conservation Regulations Exception Findings.

The Board has reviewed the use permit major modification request in accordance with the requirements of the NCC Section 18.124.070 and the exception to the Conservation Regulations in accordance with NCC Section 18.108.040 (A) and makes the following findings:

1. The Board (on appeal) has the power to issue a Use Permit under the Zoning Regulations in effect as applied to the property.

Analysis: Exceptions to the County’s Conservation Regulations are subject to a Use Permit, and Use Permits are subject to review by the Commission (NCC Sections 18.108.040 and 18.124.010) or the Board on appeal. The project site is located in the Agricultural Watershed (AW) zoning district. The recognition and retention of two existing site improvements (an approximate 2,200 square foot barn and associated water tank and an approximate 100 square foot ADA restroom) are intended for winery and agricultural uses and are permitted in the AW District. The Project, as conditioned, complies with the requirements of the Zoning Code as applicable.

2. The procedural requirements for a Use Permit set forth in Chapter 18.124 of the Napa County Code (zoning regulations) have been met.

Analysis: The application for a Conservation Regulation Use Permit Exception has been appropriately filed, and notice and public hearing requirements of NCC Section 18.136.040 and CEQA have been met. On July 1, 2020, notice of public hearing and intent to adopt a Categorical Exemption was published in the Napa Valley Register, posted with the Napa County Clerk, mailed via first class mail to owners of property within 1,000 feet of the subject parcel, and mailed via first class mail or electronic mail to the applicant, and posted on the County’s website.

3. The grant of the Use Permit, as conditioned, will not adversely affect the public health, safety or welfare of the County of Napa.

Analysis: Granting the Conservation Regulation Use Permit Exception for the Project, as proposed and conditioned, will not adversely affect the health, safety or welfare of the County. The Project includes the recognition, retention and maintenance of two existing site improvements that serve the site’s existing winery and agricultural uses: no new construction or grading would occur as part of the Permit. No new or expanded uses or development are proposed or considered in the Permit that would generate new vehicle trips on the road network in the vicinity of the site. Additionally, the Use Permit Exception is conditioned to ensure the protection of the public health, safety, and welfare.

4. The proposed use complies with applicable provisions of the Napa County Code and is consistent with the policies and standards of the Napa County General Plan and any applicable specific plan.

Analysis: The proposed Use Permit Exception will recognize and allow two existing site improvements that encroach into the stream setback required pursuant to NCC Section 18.108.025, to be retained and maintained. The County's Conservation Regulations (NCC Section 18.108.040) identify the Use Permit as the appropriate mechanism for allowing exceptions to the standard stream setbacks. The project site is located in the AW zoning district which allows agricultural and winery uses. Recognizing, retaining and maintaining the ADA restroom for winery related uses and the barn for agricultural uses would not be inconsistent with the sites zoning designation and current use limitations. The proposed Exception would not result in tree removal, consistent with General Plan Goal CON-6 which encourages the preservation of woodlands for their environmental and open space value. The Exception will not impact or cause removal of any vegetation along or within the stream, significantly change the natural state of the stream, or impair the vital ecological functions of the creek. The Project is consistent with the General Plan.

EXCEPTION TO CONSERVATION REGULATIONS:

5. Roads, driveways, buildings and other man-made structures have been designed to complement the natural landform and to avoid excessive grading.

Analysis: The Permit is to recognize and maintain two existing site improvements, located within required stream setbacks, in their current configurations. No new construction or grading, or new use or use modifications are included or considered with the Permit. The barn was enlarged in a previously developed area further away from the stream and done in a manner to complement pre-existing development (such as through the use of natural stone and low walls) and the restroom was constructed in a previously developed area. The structures are generally limited to the historic development envelope or areas immediately adjacent thereto, in a manner that minimized grading necessary for the improvements and were designed to complement existing and natural features as evident in the field and Exhibits within the subject application (Attachment D of the Napa County Planning Commission July 15, 2020 Staff Report).

6. Primary and accessory structures employ architectural and design elements which in total serve to reduce the amount of grading and earthmoving activity required for the project including the following elements: a) multiple-floor levels which follow existing, natural slopes; b) foundation types such as poles, piles, or stepping levels which minimize cut and fill and the need for retaining walls; c) fence lines, walls, and other features which blend with the existing terrain rather than strike off at an angle against it.

Analysis: As above, the Permit is to recognize and maintain two existing site improvements located within required stream setbacks in their current configurations and use limitations. No new construction or grading, or new use or use modifications are included or considered with this Permit. Additionally because the two site improvements subject to the Permit are primarily a result of minor alterations, maintenance or replacement of past/historic site development, that have been done in a manner to complement the character of pre-existing development (such as through the use of natural

stone and low walls) and are generally limited to the past/historic development envelope or areas immediately adjacent thereto, that minimized grading, the site improvements were designed to complement and blend with existing and natural features and site development as evident in the field and Exhibits within the subject application (Attachment D of the Napa County Planning Commission July 15, 2020 Staff Report). Furthermore, these site improvements are approximately 400 feet or further from Deer Park Road and are oriented to the roadway in a manner that intervening vegetation and terrain partially screen the site.

7. The development project minimizes removal of existing vegetation, incorporates existing vegetation into the final design plan, and replacement vegetation of appropriate size, quality and quantity is included to mitigate adverse environmental effects.

Analysis: The Permit is to recognize and maintain two existing site improvements located within required stream setbacks in their current configurations and use limitations: no new grading or vegetation removal is included or considered with this Permit and existing vegetation and site conditions will remain unchanged. Based on historic aerial image review and interpretation it does not appear that any significant vegetation has been removed within the stream setback area since the Bremer's have acquired the property in 2002.

8. Adequate fire safety measures have been incorporated into the design of the proposed development.

Analysis: Because the Permit is limited to the recognition and maintenance of two existing site improvements located within required stream setbacks in their current configurations and use limitations, and no new construction or uses are being proposed or considered under the Permit, new or expanded fire safety measures are not necessitated. Additionally, the existing access is anticipated to provide adequate emergency ingress and egress to the site, and any future request to modify existing use limitations or introduce a new conditional use will necessitate compliance with the County Road and Street Standards.

9. Disturbance to streams and watercourses shall be minimized, and the encroachment if any, is the minimum necessary to implement the project.

Analysis: The Permit is to recognize, retain and maintain existing site improvements located within required stream setbacks in their current configurations, many of which occurred as a result of maintenance or alteration of past/historic site development as shown in #U-697879. No new stream encroachments are proposed or considered under this Permit: improvements within the stream setback that are subject to the Permit are existing and will remain unchanged. No new construction or grading, new or modified uses, or disturbance of the stream are included or considered with the Permit. Furthermore, the existing walls and improvements built within the stream corridor have not significantly changed the natural state of the stream and that there is no impairment of the vital ecological functions of the creek (FirstCarbon Solutions Environmental Consulting, Biological Report, March 2019).

10. The Project does not adversely impact threatened or endangered plant or animal habitats as designated by state or federal agencies with jurisdiction and identified on the County's environmental sensitivity maps.

Analysis: No new construction, grading or site development, or modification or existing use limitations, is included in the Permit. The stream and its ecological functions were evaluated by two biologists and a certified professional erosion and sediment control (CPESC) consultant. All three professionals opined that the stream is functioning normally and that the native vegetation present is typical for this part of the County.

Additional sources including the Napa County Geographic Information Sensitivity maps/layers Sensitive biotic vegetation groups, US Fish & Wildlife Critical Habitat, California Natural Diversity Database (CNDDDB), Owl habitat CNDDDB, and Wetlands and Vernal Pools; Kjeldsen Biological Consulting November 2011; and, Theodore Wooster, Consulting Biologist, March and December 2011 further substantiate the project site and unnamed blue line stream which traverses the site are not mapped as an environmentally sensitive resource.

11. An erosion control plan, or equivalent NPDES stormwater management plan, has been prepared in accordance with NCC Section 18.108.080 and has been approved by the Director or designee.

Analysis: The site is currently covered by an Industrial Stormwater Pollution Prevention Plan pursuant to NCC Section 16.28.100: WDID# 2-28I027266 (Application ID#488948).

Section 5. CEQA Determination.

The Board finds and determines that this type of project does not have a significant effect on the environment and is exempt from the CEQA under Categorical Exemptions Class 1, 3 and 4. [See Section 15301, Class 1 Minor Alterations to Existing Facilities; Section 15303 Class 3 New Construction or Conversion of Small Structures; and Section 15304, Class 4 Minor Alterations to Land, which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR Sections 15301, 15303 and 15304.] This Project has also been determined to be exempt pursuant to CCR Section 15061 in that the recognition, retention, and maintenance of existing site improvements has no possibility of causing a significant effect. This Project is not on any lists of hazardous waste sites enumerated under Government Code Section 65962.5.

Section 6. Substantial Evidence.

Substantial evidence supporting every finding made herein is contained in the record of proceedings. All of the files and records that comprise the administrative record for the Project are incorporated herein by reference.

Section 7. Summary of Decision.

Based on the foregoing facts, findings, and determinations, the Board of Supervisors hereby:

- A. Upholds the Appeal in its entirety;
- B. Adopts the following Categorical Exemptions pursuant to CEQA: Section 15301, Class 1 Minor Alterations to Existing Facilities; Section 15303, Class 3 New Construction or Conversion of Small Structures; and Section 15304, Class 4 Minor Alterations to Land, which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR Sections 15301, 15303 and 15304. The Board further finds this Project exempt pursuant to CCR Section 15061 in that the recognition, retention, and maintenance of existing site improvements has no possibility of causing a significant effect; and
- C. Approves the Project and the exception in the form of Use Permit No. P20-00143 to allow the ADA restroom and barn to remain in their existing locations in the stream setback subject to the Conditions of Approval attached as Exhibit "A."

Section 8. Effective Date.

This resolution shall take effect in accordance with the provisions of NCC Section 2.88.090.

Section 9. Judicial Challenge.

Unless a shorter period applies, any judicial challenge to this decision is governed by California Code of Civil Procedure Section 1094.6.

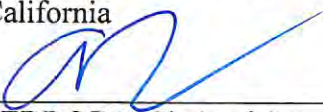
THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED

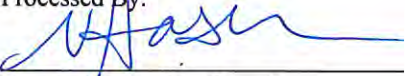

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by the Board of Supervisors of the County of Napa, State of California, at a regular meeting of said Board held on the 2nd day of February, 2021, by the following vote:

AYES: SUPERVISORS RAMOS, GREGORY and PEDROZA
 NOES: SUPERVISORS WAGENKNECHT and DILLON
 ABSENT: SUPERVISORS NONE
 ABSTAIN: SUPERVISORS NONE

NAPA COUNTY, a political subdivision of the State of California

By: 
 ALFREDO PEDROZA, Chair of the Board of Supervisors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Laura J. Anderson (e-sign)</u> Deputy County Counsel</p> <p>Date: <u>January 26, 2021</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: February 2, 2021 Processed By:  Deputy Clerk of the Board</p>	<p>ATTEST: JOSE LUIS VALDEZ Clerk of the Board of Supervisors</p> <p>By: </p>
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Attachment:

Exhibit "A" – Conditions of Approval

BOS/APPEALS-PC/BREMER/BREMER RESO FF REVISED.DOC

EXHIBIT "A"

BOARD OF SUPERVISORS APPEAL HEARING –JANUARY 26, 2021 FINAL CONDITIONS OF APPROVAL

Bremer Family Winery Site Improvements Use Permit Exception to the Conservation Regulations Permit Number P20-00143-UP 975 Deer Park Road, St. Helena APNs 021-400-002 and 021-420-027

This permit encompasses and shall be limited to the project commonly known as *Bremer Family Winery Site Improvements Recognition and Retention*, located at 975 Deer Park Road, St. Helena. Part I encompasses the Project Scope and general conditions pertaining to statutory and local code references, project monitoring, and the process for any future changes or activities. Part II encompasses the ongoing conditions relevant to the operation of the project. Part III encompasses the conditions relevant to construction and the prerequisites for a Final Certificate of Occupancy. It is the responsibility of the permittee to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and guests of the winery to ensure compliance is achieved.

Where conditions are not applicable or relevant to this project, they shall be noted as "Reserved" and therefore have been removed.

When modifying a legally established entitlement related to this project, these conditions are not intended to be retroactive or to have any effect on existing vested rights except where specifically indicated.

PART I

1.0 PROJECT SCOPE

The permit encompasses and shall be limited to:

- 1.1 The recognition and approval of, the following existing site improvements, or portions thereof, in their existing configuration, that encroach into the minimum required stream setbacks pursuant to Napa County Code (NCC) Section 18.108.025(B) ranging from 45 feet to 65 feet from the top of bank of an unnamed blue-line stream, as depicted in Attachment A Site Improvement - Bremer Use Permit Exception P20-00226-UP.
 - a. An approximate 2,200 gross square foot agricultural storage building ("barn") and associated water tank [Identified as Site Improvement A in Attachment A; and
 - b. An approximate 100 square foot freestanding ADA restroom [Identified as Site Improvement D in Attachment A;

The recognition of the two existing site improvements located within required stream setbacks shall be those that are in substantial conformance with the submitted site plan, elevation drawings, and other submittal materials and shall comply with all requirements of the Napa County Code (the County Code). It is the responsibility of the permittee to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and the general public to ensure compliance is achieved. Any expansion of or change in use or alternative locations for fire suppression or other types of water tanks shall be approved in accordance with the County Code and may be subject to the permit modification process. The approval of the two site improvements within the required stream setbacks in no way authorizes their use for winery related purposes. Any use of these structures for winery related purposes would first require County approval of a use permit modification to the existing use permit.

2.0 STATUTORY AND CODE SECTION REFERENCES

All references to statutes and code sections shall refer to their successor as those sections or statutes may be subsequently amended from time to time.

3.0 MONITORING COSTS

All staff costs associated with monitoring compliance with these conditions, previous permit conditions, and project revisions shall be borne by the permittee and/or property owner. Costs associated with conditions of approval and mitigation measures that require monitoring, including investigation of complaints, other than those costs related to investigation of complaints of non-compliance that are determined to be unfounded, shall be charged to the property owner or permittee. Costs shall be as established by resolution of the Board of Supervisors in accordance with the hourly consulting rate established at the time of the monitoring and shall include maintenance of a \$500 deposit for construction compliance monitoring that shall be retained until issuance of a Final Certificate of Occupancy. Violations of conditions of approval or mitigation measures caused by the permittee's contractors, employees, and/or guests are the responsibility of the permittee.

The Planning Commission may implement an audit program if compliance deficiencies are noted. If evidence of a compliance deficiency is found to exist by the Planning Commission at sometime in the future, the Planning Commission may institute the program at the applicant's expense (including requiring a deposit of funds in an amount determined by the Commission) as needed until compliance assurance is achieved. The Planning Commission may also use the data, if so warranted, to commence revocation proceedings in accordance with the County Code.

PART II

4.0 OPERATIONAL CHARACTERISTICS OF THE PROJECT

Permittee shall comply with the following during operation of the winery:

4.1 GENERAL PROVISIONS [RESERVED]

4.2 TOURS AND TASTINGS/VISITATION [RESERVED]

4.3 MARKETING [RESERVED]

- 4.4 ON-PREMISES CONSUMPTION **[RESERVED]**
- 4.5 RESIDENCE OR NON-WINERY STRUCTURES **[RESERVED]**
- 4.6 GRAPE SOURCE **[RESERVED]**
- 4.7 COMPLIANCE REVIEW **[RESERVED]**
- 4.8 RENTAL/LEASING **[RESERVED]**
- 4.9 GROUND WATER MANAGEMENT – WELLS **[RESERVED]**
- 4.10 AMPLIFIED MUSIC **[RESERVED]**
- 4.11 TRAFFIC **[RESERVED]**
- 4.12 PARKING **[RESERVED]**
- 4.13 BUILDING DIVISION – USE OR OCCUPANCY CHANGES
Please contact the Building Division with any questions regarding the following:

In accordance with the California Building Code (CBC), no change shall be made in the use of occupancy of an existing building unless the building is made to comply with the requirements of the current CBC for a new building.
- 4.14 FIRE DEPARTMENT – TEMPORARY STRUCTURES **[RESERVED]**
- 4.15 NAPA COUNTY MOSQUITO ABATEMENT PROGRAM **[RESERVED]**
- 4.16 GENERAL PROPERTY MAINTENANCE – LIGHTING, LANDSCAPING, PAINTING, OUTDOOR EQUIPMENT STORAGE, AND TRASH ENCLOSURE AREAS
 - a. **[RESERVED]**
 - b. **[RESERVED]**
 - c. The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation. The permittee shall obtain the written approval of the Planning Division prior to any change in paint colors that differs from the approved building permit. Highly reflective surfaces are prohibited.
 - d. Designated trash enclosure areas shall be made available and properly maintained for intended use.
- 4.17 NO TEMPORARY SIGNS
Temporary off-site signage, such as “A-Frame” signs, is prohibited.
- 4.18 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES – OPERATIONAL CONDITIONS

The attached project conditions of approval include all of the following County Divisions, Departments and Agencies' requirements. Without limiting the force of those other requirements which may be applicable, the following are incorporated by reference as enumerated herein:

- a. Fire Department operational conditions as stated in their Inter-Office Memo dated May 30, 2019.

The determination as to whether or not the permittee has substantially complied with the requirements of other County Divisions, Departments and Agencies shall be determined by those County Divisions, Departments or Agencies. The inability to substantially comply with the requirements of other County Divisions, Departments and Agencies may result in the need to modify this permit.

4.19 OPERATIONAL MITIGATION MEASURES [RESERVED]

4.20 OTHER CONDITIONS APPLICABLE TO THE OPERATIONAL ASPECTS OF THE PROJECT [RESERVED]

4.21 PREVIOUS CONDITIONS [RESERVED]

PART III

5.0 PREREQUISITE FOR ISSUANCE OF PERMITS

5.1 PAYMENT OF FEES

No building, grading or sewage disposal permits shall be issued or other permits authorized until all accrued planning permit processing fees have been paid in full. This includes all fees associated with plan check and building inspections, associated development impact fees established by County Ordinance or Resolution, and the Napa County Affordable Housing Mitigation Fee in accordance with County Code.

6.0 GRADING/DEMOLITION/ENVIRONMENTAL/BUILDING PERMIT/OTHER PERMIT PREREQUISITES

Permittee shall comply with the following with the submittal of a grading, demolition, environmental, building and/or other applicable permit applications.

6.1 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES – PLAN REVIEW, CONSTRUCTION AND PREOCCUPANCY CONDITIONS [RESERVED]

6.2 BUILDING DIVISION – GENERAL CONDITIONS

- a. A building permit shall be obtained for all construction occurring on the site not otherwise exempt by the California Building Code (CBC) or any State or local amendment adopted thereto.
- b. If there are any existing structures and/or buildings on the property that will need to be removed to accommodate construction activities, a separate demolition permit shall be required from the Building Division prior to removal. The permittee shall provide a "J" number from the Bay Area Air

Quality Management District (BAAQMD) at the time the permittee applies for a demolition permit if applicable.

- c. All areas of newly designed and newly constructed buildings, facilities and on-site improvements must comply with the CBC accessibility requirements, as well as, American with Disability Act requirements when applicable. When alterations or additions are made to existing buildings or facilities, an accessible path of travel to the specific area of alteration or addition shall be provided as required per the CBC.

6.3 LIGHTING – PLAN SUBMITTAL [RESERVED]

6.4 LANDSCAPING – PLAN SUBMITTAL [RESERVED]

6.5 COLORS

The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation. The permittee shall obtain the written approval of the Planning Division in conjunction with building permit review and/or prior to painting the building. Highly reflective surfaces are prohibited.

6.6 OUTDOOR STORAGE/SCREENING/UTILITIES

- a. Details of outdoor storage areas and structures shall be included on the building and landscape plans. All outdoor storage of winery equipment shall be screened from the view of residences of adjacent properties by a visual barrier consisting of fencing or dense landscaping. No stored item shall exceed the height of the screening. Water and fuel tanks, and similar structures, shall be screened to the extent practical so as to not be visible from public roads and adjacent parcels.
- b. New utility lines required for this project that are visible from any designated scenic transportation route (see Community Character Element of the General Plan and the County Code) shall be placed underground or in an equivalent manner be made virtually invisible from the subject roadway.
- c. Exterior winery equipment shall be located, enclosed or muffled so as not to exceed noise thresholds in the County Code.

6.7 TRASH ENCLOSURES

Adequate area must be provided for collection and loading of garbage and recyclables generated by the project. The applicant must work with the franchised garbage hauler for the service area in which they are located, in order to determine the area and the pedestrian and vehicle access needed for the collection site. The garbage and recycling enclosure shall meet the minimum enclosure requirements established by staff and the franchised hauler, which shall be included in the building permit submittal.

6.8 ADDRESSING [RESERVED]

6.9 HISTORIC RESOURCES [RESERVED]

6.10 DEMOLITION ACTIVITIES [RESERVED]

- 6.11 VIEWSHED – EXECUTION OF USE RESTRICTION **[RESERVED]**
- 6.12 PERMIT PREREQUISITE MITIGATION MEASURES **[RESERVED]**
- 6.13 PARCEL CHANGE REQUIREMENTS **[RESERVED]**
- 6.14 FINAL MAPS **[RESERVED]**
- 6.15 OTHER CONDITIONS APPLICABLE TO THE PROJECT PERMITTING PROCESS **[RESERVED]**

7.0 PROJECT CONSTRUCTION

Permittee shall comply with the following during project construction:

- 7.1 SITE IMPROVEMENTS **[RESERVED]**
 - 7.2 ARCHEOLOGICAL FINDING **[RESERVED]**
 - 7.3 CONSTRUCTION NOISE **[RESERVED]**
 - 7.4 CONSTRUCTION MITIGATION MEASURES **[RESERVED]**
 - 7.5 OTHER CONSTRUCTION CONDITIONS APPLICABLE TO THE PROJECT PROPOSAL **[RESERVED]**
- 8.0 TEMPORARY CERTIFICATE OF OCCUPANCY – PREREQUISITES **[RESERVED]**
 - 9.0 FINAL CERTIFICATE OF OCCUPANCY – PREREQUISITES **[RESERVED]**



A Tradition of Stewardship
A Commitment to Service

Napa County Fire Department
Fire Marshal's Office
Hall of Justice, 2nd Floor
1125 3rd Street
Napa, CA 94559

Office: (707) 299-1461

Garrett Veyna
Fire Marshal

MEMORANDUM

TO:	Planning Department	DATE:	5/30/2019
FROM:	Adam Mone, Plans Examiner	PERMIT #	P19-00153/P20-00143
SUBJECT:	Bremer Family Winery	APN:	021-400-002-000

The Napa County Fire Marshal's Office has reviewed the submittal package for the above proposed project. The Fire Marshal approves as submitted and requires the following conditions to be incorporated as part of permit issuance.

1. Provide 100 feet of defensible space around all structures.
2. Provide 10 feet of defensible space fire hazard reduction on both sides of all roadways of the facility.

Please note that the comments noted above are based on a Fire Marshal's Office review only. There may be additional comments or information requested from other County Departments or Divisions reviewing this application submittal package. Napa County Fire Marshal's Office Development Guidelines can be found @ www.countyofnapa.org/firemarshal. Should you have any questions of me, contact me at (707)299-1466 or email at adam.mone@countyofnapa.org.



A Tradition of Stewardship
A Commitment to Service

Planning, Building & Environmental Services

1195 Third Street, Suite 210
Napa, CA 94559
www.countyofnapa.org

David Morrison
Director

October 20, 2021

John Bremer
Bremer Group LLC
1660 Chicago Avenue, Suite M11
Riverside CA 92507-2033

Re: **Bremer Family Winery, Winery Administrative Permit No. P21-00038-WADM
975 Deer Park Road, St. Helena, CA (APNs 021-400-002 and 021-420-027)**

Dear Mr. Bremer,

The application for a Winery Administrative Permit (P21-00038-WADM) to the Bremer Family Winery (formally David S. Clark Etal.) (No. U697879, No. P07-00654-MOD, No. P09-00178-VMM, and Settlement Agreement Napa County Superior Court Judgement dated February 6, 2019: Case No. 17CV000884) has been considered by the Planning, Building, & Environmental Services Director on October 20, 2021.

The request includes all of the following changes:

1. The placement and use of a wine press, eleven wine tanks, and associated tank tie downs and catwalk (with no increase in production).
2. Reconfiguration of open storage on the second level of the winery building to offices, tasting/visitation areas, employee lounge and restrooms.
3. A change in the occupancy of the existing wine cave to allow visitation (with no increase in visitation or marketing).
4. The use of two outdoor visitation and tasting areas (encompassing approximately 1,132 square feet) located off the south side of the winery building (with no increase in visitation or marketing).
5. The change in the number of parking spaces and the alignment of internal roads and driveways as shown in the subject/application site plans, with no increase in impervious area.

These changes are depicted in the Statement of Request and on the Site and Floor plans dated October 3, 2021, prepared by Hugh Linn (RPE #52509) of RSA+.

It has been determined that this project can be considered under the Use Permit Administrative Permit procedures adopted for wineries, specifically Napa County Code Sections 18.126.065 (A), (H), (K), (Q) and (R). Therefore, please be advised that this request has been **APPROVED**.

All previous Use Permit or Modification conditions, or Settlement Agreement terms, not in conflict with this modification will still apply. A building or grading permit may be required to implement this approval. No building, grading or sewage disposal permits shall be issued or other permits authorized until all accrued planning permit processing fees have been paid in full. This includes all fees associated

with plan check and building inspections, associated development impact fees established by County Ordinance or Resolution, and the Napa County Affordable Housing Mitigation Fee in accordance with County Code.

Please be reminded that improvements made pursuant to this WADM which are subject to building permits, will require an Occupancy Separation Plan and Accessibility Plan be included with the building permit application. These plans will need to address issues of accessibility to the second level of the winery, and the lower outdoor tasting areas. Additionally for the cave occupancy change the plans will need to show that travel distances and path of travel meet applicable code requirements. Building permit issuance will also be subject to the Napa County Road and Street Standards (RSS) as applicable.

Additionally, please note that General Waste Discharge Requirements for Winery Process Water have been adopted by the State Water Quality Control Board (General Order). The General Order is available for review on the state's website, *Winery Order California State Water Resources Control Board*. The permittee will be required to comply with the General Order, information regarding compliance will be provided as soon as it is available. It is advised the permittee start measuring the amount of process water generated from wine making activities. They may consult with their wastewater engineer to determine the best way to gather this data.

This Winery Administrative Permit has been deemed ministerially exempt from the requirements of CEQA, pursuant to Sections 15022 and 15268 of the State CEQA Guidelines and Appendix A, 32 of the Napa County's Local Procedures for implementing the California Environmental Quality Act.

This modification is effective immediately and is not subject to the appeal process pursuant to Chapter 2.88 of the Napa County Code.

Pursuant to Napa County Code §18.124.080, and authorization of this modification is not subject to an expiration provided that the Use Permit for the winery use has been activated or has been deemed used.

Should you have any questions, please contact Donald Barrella at 707-299-1338 or e-mail at donald.barrella@countyofnapa.org.

Sincerely,



David Morrison

Director

By: Donald Barrella, Planner III

CC: David Morrison, Director, Planning Building and Environmental Services (via email)
Brian Bordona, Deputy Director, Planning Building and Environmental Services (via email)
Jeffery Brax, County Counsel (via email)
David B. Gilbreth, 1152 Hardman Avenue, Napa CA 94558