

1 MINH TRAN, County Counsel  
(State Bar No. 179932)  
2 CARRIE R. GALLAGHER, Deputy  
(State Bar No. 222522)  
3 COUNTY OF NAPA  
1195 THIRD STREET, ROOM 301  
4 NAPA, CALIFORNIA 94559-3001  
(707) 253-4521

**ENDORSED**

JAN 09 2013

Clerk of the Napa Superior Court  
By: J. OLIVER  
Deputy

6 Attorneys for Napa County

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF NAPA

10 COUNTY OF NAPA,  
11 Plaintiff,  
12 v.  
13 JEP, LLC; and DOES 1 through 10, inclusive,  
14 Defendants.

Case No: 26-56838

**STIPULATION AND ORDER**  
Exempt from Filing Fees [Gov. Code §6103]

16 Plaintiff, Napa County, Defendant JEP, LLC, and their attorneys of record stipulate and agree as  
17 follows:

18 1. This action was filed on August 11, 2011. It contains two causes of action alleging  
19 noncompliance with Napa County Code and the California Building Code on the property located at 100  
20 Hennessey Ridge Road, Napa, California and having Assessor Parcel Number 025-440-007  
21 ("Property").

22 2. In order to avoid the time and expense of litigation, the Parties hereby agree and stipulate  
23 as set forth below.

24 3. Specific Terms and Conditions.

25 a. Defendant agrees to immediately cease occupancy of the replacement dwelling on the  
26 Property until a Certificate of Occupancy is issued by the Napa County Building  
27 Official.

28 ///

- 1           b. One year from signature of this Agreement by Defendant, Defendant shall obtain the  
2           use permit exception from Napa County Department of Planning, Building and  
3           Environmental Services (“PBES”) and any required California Department of Fish  
4           and Game (“DFG”) permit for any portion of the replacement dwelling to remain  
5           within applicable stream setback required pursuant to Chapter 18.108 of the Napa  
6           County Code. The “stream” as referenced throughout this Stipulation as applied to  
7           the use permit exception process is identified and displayed in Exhibit A, attached  
8           hereto, as the “Pond/Spillway” denoted in green.
- 9           c. Within 30 days from time of signature of this Stipulation, Defendant shall submit  
10          revised septic plans and proof of valid water supply to PBES for the Property that  
11          meets current Napa County Code requirements. In the alternative, if Defendant  
12          determines that it cannot submit Napa County Code compliant septic plans within 30  
13          days, Defendant shall apply to the DFG to modify the blue line stream setbacks as  
14          shown on the USGS map. If the DFG approves the modified stream setbacks,  
15          Defendant shall have 30 days from the DFG’s authorization to submit Napa County  
16          Code compliant septic system plans.
- 17          d. After December 30, 2013 or 30 days from the date of issuance of the use permit and  
18          DFG authorization, whichever date is earlier, Defendant shall submit an application  
19          for a building permit and a septic permit for the replacement dwelling on the  
20          Property.
- 21          e. Once Defendant obtains the building permit, Defendant shall have 90 days to obtain  
22          all necessary inspections and finalize the building and septic permits.
- 23          f. Once the building and septic permits are finalized, the Napa County Building Official  
24          shall, as soon as possible, issue a Certificate of Occupancy for the replacement  
25          dwelling on the Property.
- 26          g. If the DFG does not authorize the replacement dwelling in the stream setback and/or  
27          PBES does not grant the use permit, the dwelling must be removed and the area  
28          restored. After Defendant has exhausted all avenues for an appeal of the

1 determinations made by DFG and PBES and assuming that Defendant was  
2 unsuccessful in its appeals, Defendant shall have 60 days to provide a restoration plan  
3 prepared by a qualified biologist, apply for a demolition permit and obtain the  
4 necessary permits for demolition of the dwelling. Once the necessary permits are  
5 issued, Defendant shall have 60 days to demolish the dwelling and receive a final for  
6 the demolition permits. Once demolition is completed and finalized, Defendant shall  
7 have 60 days to restore the Property pursuant to the approved restoration plan.

8 h. The Napa County Building Official and the Director of PBES ("County Officials")  
9 may extend the deadlines for obtaining and finalizing permits as outlined above as the  
10 County Officials determine may be reasonable.

11 i. The Parties agree to work in good faith to revise the above deadlines should any  
12 unforeseen events that directly and exclusively result from the occurrence of causes  
13 that could not have been prevented by the exercise of foresight or caution occur that  
14 cause a delay.

15 j. Thirty one thousand four hundred eight six dollars and twenty seven cents  
16 (\$31,486.27) shall be paid by the Defendant to Napa County as set forth below:

17 i. On the date that this Stipulation is executed by Defendant, the first 25%  
18 (\$7871.56) shall be paid by Defendant to Napa County.

19 ii. By March 29, 2013, the second 25% (\$7871.57) shall be paid by Defendant to  
20 Napa County.

21 iii. By July 31, 2013, the third 25% (\$7871.57) shall be paid by Defendant to  
22 Napa County.

23 iv. By November 29, 2013, the final 25% (\$7871.57) shall be paid by Defendant  
24 to Napa County.

25 v. Acceptance of any one or more late payments by Napa County or anyone  
26 acting on Napa County's behalf shall not constitute a waiver or in any way  
27 prejudice Napa County's rights to receive and demand timely payments  
28 thereafter or to declare a default hereunder. Napa County, in its sole

1 discretion has the right to declare a default if any payment is not timely made,  
2 regardless of any previous failure to do so.

3 k. All payments listed in Section 3(j) above shall be mailed to or hand delivered to  
4 PBES, c/o Building Code Enforcement, 1195 Third Street, Ste. 210, Napa, CA, 94559  
5 by the deadlines set forth in Section 3(j).

6 4. Defendant shall obtain all necessary permits from PBES and DFG, and make all required  
7 corrections to the Property so that it is in compliance with all applicable Building Codes and Napa  
8 County Codes.

9 5. Entry onto the Property by Napa County representatives is necessary for the purpose of  
10 assisting Defendant in completing the terms of this Stipulation and Order, to monitor progress made in  
11 correcting the violations, and also to enforce the terms of the Stipulation and Order. Entry shall be  
12 permitted during regular business hours by Defendant. Napa County will provide 48-hour notice prior  
13 to any inspections of the Property, and agree that Defendant or its representative, must be present during  
14 such inspection.

15 6. Napa County shall reasonably cooperate with Defendant to timely review and process all  
16 of Defendants' applications, requests for inspections, and approvals.

17 7. In the event Defendant fails to pay any amount due under this Stipulation, it will be  
18 deemed a default and pursuant to the noticing requirements in Section 10, Napa County may declare the  
19 entire remaining balance, due and payable.

20 8. In addition to nonpayment, a default will be deemed to occur if Defendant is adjudicated  
21 bankrupt, seeks relief under the bankruptcy laws of any jurisdiction, or enter into any arrangement or  
22 plan with creditors, triggering the notice requirements as set forth in Section 10.

23 9. If it is necessary to either party to enforce this Stipulation, the prevailing party will be  
24 entitled to seek reasonable attorney fees and all other costs reasonably incurred in bringing a legal action  
25 to enforce the terms of this Stipulation.

26 10. Defendant shall be given no more than two rights to cure a default. Napa County will  
27 provide 15 days written notice to Defendant of any default. For purposes of this provision, it will be  
28 sufficient to constitute 15 days written notice if Napa County's counsel provides notice by fax with a

1 confirmation page and allows 15 days, or if Napa County's counsel provides notice by mail with proof  
2 of service and allows 20 days from the date of service to allow Defendant to cure the default.

3 The notice specified in this Section shall be mailed to the breaching party's attorney of record as  
4 follows:

5 Defendants

6 FARELLA BRAUN + MARTEL, LLP  
7 Attn: Jessica Nall  
8 235 Montgomery Street  
9 San Francisco, CA 94104  
10 Fax Number: (415) 954-4480

9 Napa County

10 Office of County Counsel  
11 Attn: Carrie R. Gallagher  
12 1195 Third Street, Ste. 301  
13 Napa, CA 94559  
14 Fax Number: (707) 253-6091

15 Either party may change its address or fax number by notifying the other party of the change in  
16 address in writing.

17 11. In the event that Defendant fails to cure a default within the time allowed by Section 10,  
18 or in the event that Defendant defaults a third time, Napa County or its counsel may apply to the Court  
19 for entry of judgment against Defendant on an expedited basis for the full relief prayed for in Napa  
20 County's complaint (as amended (if applicable)), including accrued interest and court costs, less credit  
21 for all payments received.

22 12. The signing of this Stipulation does not constitute an admission either of liability or that  
23 any claim or action is without merit by any Party.

24 13. Should any provision of this Stipulation be declared or be determined by any court of  
25 competent jurisdiction to be wholly or partially illegal, invalid, or unenforceable, the legality, validity,  
26 and enforceability of the remaining parts, terms or provision shall not be affected thereby, and said  
27 illegal, unenforceable and invalid part, term or provision shall be deemed not to be part of this  
28 Stipulation and Order.

14. This Stipulation shall be deemed to have been entered into in the State of California and  
shall be construed and interpreted in accordance with the laws of this state.

1           15.     The undersigned warrant and represent that each has the authority to execute this  
2 Stipulation for Judgment, and the authority to bind the respective Parties to the terms and conditions of  
3 this Stipulation for Judgment.

4           16.     The Parties, and each of them, acknowledge that they have been represented by legal  
5 counsel throughout all of the negotiations which preceded the execution of this Stipulation and that they  
6 have executed this Stipulation after seeking and receiving the advice of such counsel.

7           17.     The Parties agree to be bound as of the date of their signatures on this Stipulation, by the  
8 provisions of the Stipulation as though ordered by the Court, though the terms of the Stipulation cannot  
9 be enforced until on or after the date the Stipulation and Order is signed by the Court. Napa County  
10 shall serve by mail on Defendant's counsel the Stipulation and Order when it is filed and each of the  
11 Parties waives any further notice or service of the Stipulation and Order.

12           18.     The Stipulation and Order shall take effect immediately upon entry thereof.

13           19.     This Stipulation is the product of negotiation and preparation by and among each party  
14 hereto and its respective attorneys. The Parties, and each of them, acknowledge and agree that this  
15 Stipulation shall not be deemed to have been prepared or drafted by one party or another, and that it  
16 shall be construed accordingly. The Parties expressly waive the provisions of California Civil Code  
17 Section 1654.

18           20.     This Stipulation contains the entire understanding of the Parties with respect to the  
19 matters set forth herein. The Parties, and each of them, each warrant that, in deciding to enter into this  
20 Stipulation they are not relying upon any representation, warranty, promise, condition or term which is  
21 not explicitly and expressly set forth herein.


22           21.     The parties hereby waive the right to appeal, to attempt to set aside or vacate, or  
23 otherwise to attack, directly or collaterally, the Stipulation between the Parties entered pursuant to this  
24 Stipulation and Order. Such waiver shall have no effect upon the jurisdiction of the Superior Court to  
25 interpret and make further orders consistent with the intent and purpose of this Stipulation.

26           22.     The Court shall enter an Order incorporating the provisions of this Stipulation, and the  
27 Court shall retain jurisdiction to enforce the Stipulation until complete performance of the terms of this  
28 Stipulation, and at such time, this action shall be dismissed with prejudice upon request of either party.

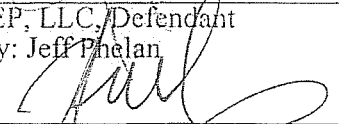
23. Each signatory hereto represents that he or she is authorized to execute this Stipulation so as to bind the Parties on whose behalf he or she is a signatory.

SO STIPULATED

Date: \_\_\_\_\_

  
\_\_\_\_\_  
JEP, LLC, Defendant  
By: Jeff Phelan

Date: 1-7-13

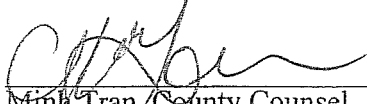
  
\_\_\_\_\_  
Hillary Gitelman, Director of PBES

APPROVED AS TO FORM:

Date: 12-26-2012

  
\_\_\_\_\_  
FARELLA BRAUN + MARTEL LLP  
By: Jessica K. Nall, Attorney for Defendant

Date: 1-7-13

  
\_\_\_\_\_  
Mink Tran, County Counsel  
By: Carrie R. Gallagher, Deputy

ORDER

Good cause appearing, IT IS HEREBY ORDERED that the Parties' Stipulation is approved, and the Parties are ordered to comply with its terms. The Court vacates the Mandatory Trial Settlement Conference on January 3, 2013, the Trial Management Conference on February 21, 2013 and the Trial starting on February 25, 2013.

*OSC re. dismissal set for 12/10/13 at 8:30 am in Dept. B.*

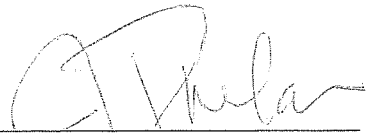
Dated: 1/8/13

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

23. Each signatory hereto represents that he or she is authorized to execute this Stipulation so as to bind the Parties on whose behalf he or she is a signatory.

SO STIPULATED

Date: 12/28/2012

  
\_\_\_\_\_  
JEP, LLC, Defendant  
By: Jeff Phelan

Date: \_\_\_\_\_

\_\_\_\_\_  
Hillary Gitelman, Director of PBES

APPROVED AS TO FORM:

Date: \_\_\_\_\_

\_\_\_\_\_  
FARELLA BRAUN + MARTEL LLP  
By: Jessica K. Nall, Attorney for Defendant

Date: \_\_\_\_\_

\_\_\_\_\_  
Minh Tran, County Counsel  
By: Carrie R. Gallagher, Deputy

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*OSC re: Dismissal set for  
12/10/13 at 8:30am in Dept. B*

Dated: 1/8/13

**DIANE M. PRICE**  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT



