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Planning, Building & Environmental Services

1195 Third Street, Suite 210

Napa, CA 94559 www.countyofnapa.org

Planning Commission Mtg.
OCTOBER 16 2019
Agenda Item # 7A

David Morrison
Director

CERTIFIED MAIL

November 4, 2015

Laura Bremer
John Bremer
c/o Bremer Family Winery 975 Deer Park Road

St. Helena CA 94574-9527

NOTICE OF NONCOMPLIANCE
NOTICE OF VIOLATION

Re: **Agricultural Erosion Control Plan (ECPA) #P11-00317-ECPA**
881 and 975 Deer Park Road
APNs 021-400-002, -004, -005, 021-420-027, and 025-370-057, and -058

Dear Mr. and Mrs. Bremer:

The purpose of this notice is to follow up on site and winterization inspections conducted on October 26, 2015 by the Napa County Resource Conservation District (RCD) and County Conservation Division staff and follow up inspection conducted by County Conservation Division Staff on November 3, 2015 of the referenced project site. This notice also provides follow up on the County's March 3, 2015 letter and subsequent conversations with you regarding Conditions of Approval #1 and #2, and Mitigation Measure #BR-4 of the subject ECPA. The following details the specific items associated with this **notice**.

NOTICE of NONCOMPLIANCE
Incomplete / Incorrect implementation of Erosion Control Plan

As indicated a winterization field inspection of the vineyard associated with project #P11-00317-ECPA was conducted by RCD and Conservation Division staff on October 26, 2015 to verify that the required erosion control measures were properly installed and maintained by the October 15th winterization deadline.

Based upon the site inspection, it was determined that some of the required erosion control plan measures specified in #P11-00317-ECPA have not been implemented as approved. A copy of RCD's winterization inspection memo is attached, which identifies that the required permanent cover crop has not been established in the blocks that were developed in 2014, Block LM has been altered from the approved plan

layout and some of the diversions and subsurface drainage within the block have not been implemented as approved, and some areas were lacking the specified levels of straw mulch and erosion control measures. Furthermore, the November 3rd inspection identified several diversions had failed resulting in uncontrolled surface follows and rill erosion, as well as rill erosion occurring in the roadside ditches along Block LM.

Given you did not implement the erosion control measures as designed and approved, and that improvements are needed to the application and installation of winterization measures to provide adequate

_ Planning Division Space (707) 253-4417	Building Division (707) 253-4417	Engineering & Conservation (707) 253-4417	Environmental Health (707) 253-4471	Parks & Open (707) 259-5933
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soils coverage and runoff protection, your project engineer, Drew Aspegren, will need to design interim erosion control measures to address the inconsistencies and changes you have made on the ground relative to the approved plan. Those proposed measures are required to be submitted for County and RCD review and implemented no later than **November 16, 2015**. Alternately, you may construct and install the approved measures, weather and conditions permitting. Regardless, an inspection of the interim measures or the approved measures will be conducted on **November 17, 2015**, by the County and/or RCD in conjunction with your engineer to verify proper installation. A formal inspection report required pursuant to Napa County Code (NCC) Section 18.108.135(a) (Oversight and operation) will need to be prepared by your engineer to verify the proper installation of required and interim measures to ensure the site will remain stable and retain sediment throughout the winter season. The report shall be stamped and signed by your engineer and be provided to the County no later than the date of the November 16, 2015 inspection.

It is critical that you install and maintain all the elements of the approved plan to help ensure impacts related to erosion and water quality are minimized. The components and layout of the plan were designed specifically to accommodate the existing site characteristics combined with your desired vineyard management preferences. The County's approval of your plan relied on the basis of the winterization measures being fully implemented. Please carefully review the attached winterization inspection report, which identifies these deficiencies and provides guidance on how to remedy some of them.

Please be reminded that the approval of your plan was conditioned such that the Permittee must adhere "throughout the duration of the project to the Oversight and Operation regulations specified in County Code Section 18.108.135, which deal with among other things installation oversight, erosion control measure maintenance, monitoring, failure response, and non-compliance;" and, that they must strictly conform "to all provisions of approved Agricultural Erosion Control Plan # P11-00317-ECPA and maintaining the cover crop as specified in the plan and narrative." The approval letter states that "any changes or modifications to the approved plan will necessitate that you file a plan revision with the Conservation Division prior to implementing the desired changes.". Therefore, no later than **December 30, 2015**, you will need to submit a revised plan showing all proposed modifications to the approved plan including supporting documentation demonstrating that modifications would protect against erosion and sedimentation to an equal or greater degree than the approved plan of record for review and authorization by the County.

NOTICE OF VIOLATION
Water tanks installed in required Creek Setbacks

Based on site inspections conducted on October 26, and November 3, 2015 by County Conservation Division staff, and subsequent ECPA, aerial imagery, and County sensitivity map research, the two water tanks that have been installed along the frontage of the referenced property sometime between 2014 and 2015, are located within the required 45 foot stream setback as identified below and within #P11-00317-ECPA.

This action is a violation of the County Conservation Regulations (Napa County Code Chapter 18.108) as specifically identified below:

- Violation of Section 18.108.025(B) and 18.108.025(B)(1) Setback Requirements. In addition to any requirements of the floodway and floodplain regulations set forth in Title 16, construction of main or accessory structure, earthmoving activity, grading or removal of vegetation or agricultural uses of land as defined by Section 18.08.040 shall be prohibited with the stream setback areas established by 18.108.025(B)(1) unless specifically permitted in subsection (E) of this section, exempt pursuant to Section 18.108.050, or authorized by the commission through the granting of an exception in the form of a use permit pursuant to Section 18.108.040.

As such, Pursuant to Section 18.108.140(B) you are ordered to correct this violation through the following actions:

1. **Within 10 days of the date of this Notice of Violation (i.e. by November 14th),** remove said tanks from the required stream setback and install temporary remedial erosion and runoff control measures to prevent uncontrolled erosion and runoff and adequately winterize the area disturbed by installation and removal of said tanks. Said measures shall include Best Management Practices found within the Regional Water Quality Control Board Storm Water Best Management Practice Handbooks for Construction and for New Development and Redevelopment, and the Erosion and Sediment Control Field Manual.
2. **Submit within 30 days of the date of this Notice of Violation (i.e. by December 4th),** a restoration plan prepared by a qualified biologist/ecologist for review and approval by this department, for the area identified above that has been cleared in violation, which restores the subject areas to preproject conditions. The restoration plan shall be composed of the same species of native plants found on-site and shall include an implementation and monitoring schedule, planting notes and details, a management plan, and performance standards that ensure the success of restoration efforts. The restoration plan and work will need to be initiated after April 1, of 2016 and completely installed by November 15, 2016.

NOTICE OF NONCOMPLIANCE

Conditions of Approval #1 and #2, and Mitigation Measure #BR-4: #P11-00317-ECPA

As you are aware through the approved plan, the County's March 3, 2015 letter, and subsequent conversations on this matter portions of Vineyard Block A-1 and B-2, as identified on the approved ECPA, encroach into required stream setbacks, and that the encroaching vines are required to be removed and

underlying area restored as specified in approved ECPA #P11-00317 and supporting documentation¹ to establish conforming stream setbacks as part of the project.

Based on a June 4, 2015 site inspection of these vines it was determined that the vines you removed (or otherwise rendered unproductive) and the additional vines that you flagged for removal observed the required setback except for the following: within Block A-1 in Vinerows 5 through 11 and in Vinerow 16, additional vines that need to be removed to meet the required setback were identified. The additional vines that need to be removed were marked with orange spray paint.

At your request the stream setback and top-of-bank were re-inspected on November 3rd under your assertion that the vines identified above were wrongly identified as encroaching because the top-of-bank should be consistent with the low flow channel (or at the point in the surface soils where evidence of erosion from flowing water is visible). Within the approved plan a 35 foot setback is identified because the slope as measured from TOB is less than 1%. Taking a setback measurement from the low flow channel limit would increase the slope above 1% which would result in a 45 foot minimum setback and additional vine removal. Furthermore, taking the measurement from the low flow channel limit is not consistent with NCC Section 18.108.025. Therefore, the vines identified above will need to be removed to establish conforming stream setbacks consistent with the approved plan.

Pursuant to Mitigation Measure BR-4 implementation of vineyard removal and associated restoration/re-vegetation shall commence in conjunction with development of vineyard specified under #P1100317-ECPA once the re-vegetation plan associated with this vineyard removal was approved by the County.

The County approved the re-vegetation plan on June 4, 2013 and vineyard development had commenced by June 18, 2013. Therefore, the subject vineyard development is still not wholly compliant with Mitigation Measure BR-4 and associated conditions of approval.

As such, the removal of said vines and associated vineyard infrastructure shall be accomplished between **April 1, 2016 and May 1, 2016**, and re-vegetation/restoration of the encroachment area pursuant to the approved re-vegetation plan shall be completely installed by **October 15, 2016**. As a reminder no portions of the vineyard, including vineyard avenues and turnarounds, can occur within the setbacks identified in the approved plan. The County will be conducting an inspection of the subject vineyard by **May 1, 2016**, to verify compliance with required vine removal and setback establishment has occurred.

It is the County's desire to assist you in addressing these violations and compliance matters and bring the property into compliance with the approved ECPA and County Code. However, please be reminded that failure to act will result in further code enforcement actions pursuant to Chapter 1.28 of the County Code, which would include the filing of complaint for injunctive relief and a request for substantial civil penalties and attorney's fees, or referral to the District Attorney. Furthermore, the County may be obligated to also refer this matter to the Regional Water Quality Control Board (RWQCB) if compliance is not achieved or if the development poses a threat to water quality.

¹ Bremer Family Winery Vineyard, Agricultural Erosion Control Plan #P11-00317, Final Initial Study and Mitigated Negative Declaration, Certified April 10, 2013, SCH #2012082023: signed Project Revision Statement dated July 31, 2012; Mitigation Monitoring and Reporting Program dated April 9, 2013; #P11-00317-ECPA Approval letter #P11-00317 dated April 10, 2013; #P11-00317-ECPA Approved plans dated April 10, 2013; and Re-vegetation plan approved June 4, 2013.

As an active project, you are responsible for all Napa County monitoring, oversight, and compliance costs associated with implementation and development of this project. Currently there is a balance due of \$381.14 (see attached statement); therefore it is requested that \$5000 be deposited into the project account by **November 20, 2015**, to cover the balance due and costs associated with, but not limited to, ongoing winterization and compliance review and inspections and review of any proposed modifications of the approved ECPA.

Upon receipt and review of this notice please contact me at (707) 299-1338 or by e-mail at donald.barrella@countyofnapa.org or Brian Bordona at (707) 259-5935 or brian.bordona@countyofnapa.org with any questions or to discuss this matter or required actions further.

Respectfully,



Donald Barrella
Planner III

Enclosures: 2015 Winterization Inspection Report
County Letter dated March 3, 2015
Project Account Statement

cc: David Morrison, Director, Planning Building and Environmental Services (w/o enclosures)
Laura Anderson, Deputy County Counsel (w/o enclosures)
Brian Bordona, Supervising Planner, Conservation Division (w/o enclosures)
Bill Birmingham, Napa County RCD 1303 Jefferson St Suite 500B, Napa, Ca 94559 (w/o enclosures)
Drew Aspegren, Napa Valley Vineyard Engineering, 176 Main Street, Suite B, St. Helena CA 94574
John and Laura Bremer, 975 Deer Park Road, St. Helena CA 94574-9527
Chron./File

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

CLEANUP AND ABATEMENT ORDER No. R2-2017-00XX

FOR:

BREMER FAMILY WINERY VINEYARD
NAPA COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the Water Board), finds that:

1. John and Laura Bremer and Maryann and Gregory Nowell (Dischargers) are named as dischargers under this Cleanup and Abatement Order (Order) because they own the Bremer Family Winery Vineyard (Site) and caused or allowed waste to be discharged to waters of the State and United States (referred to collectively as waters of the State hereafter), or to a location where it could discharge to waters of the State, as described herein.
2. The Site is a 156-acre property located on the east side of Deer Park Road at its northern intersection with Sanitarium Road, in St. Helena (Assessor's Parcel Numbers 021-400-002, -004, -005, 021-420-027, and 025-370-057 and -058).
3. The Site is located in the Canon Creek watershed, tributary to Napa River. Canon Creek discharges to the Napa River approximately two miles southwest of the Site. An unnamed creek bisects the northern portion of the Site and continues along the western property boundary before joining Canon Creek approximately 0.75 mile south of the Site. A second unnamed creek bisects the southern portion of the Site before joining the first unnamed creek along the western boundary of the Site. The second unnamed creek is referred to hereafter as the "Creek".
4. On September 19, 2016, Water Board staff inspected the Site to assess site conditions after receiving complaints related to construction of a vineyard. During the inspection, Water Board staff observed unauthorized fill in the Creek and evidence of unauthorized construction activities including installation of culverts, placement of rock fill below ordinary high water extending up into the adjacent floodplain and riparian area, and removal of riparian vegetation. Appendix A to this Order is a copy of the inspection report and photographs taken during the inspection.
5. The Dischargers failed to apply for or obtain proper authorizations and permits from the Water Board for the work at the Site. In addition, based on conversations with California Department of Fish and Wildlife (CDFW) and U.S. Army Corps of Engineers (Corps) staff, there is no record that the Dischargers obtained proper authorizations or permits from either CDFW or the Corps.
6. The Creek is a water of the State and United States and is a tributary to the Napa River.
7. The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) defines the existing and potential beneficial uses for waters within the Region. The beneficial uses of any

designates the following existing and potential beneficial uses for the Napa River: agricultural supply; municipal and domestic supply; groundwater recharge; commercial and sport fishing; cold freshwater habitat; fish migration; preservation of rare and endangered species; fish spawning; warm freshwater habitat; wildlife habitat; water contact recreation; noncontact water recreation; and navigation (Water Board, 2015).

8. The Dischargers have unreasonably affected or threaten to affect water quality and beneficial uses by placing fill in the Creek and performing unauthorized construction activities as described herein.
9. The Dischargers' unauthorized construction activities at the Site are in violation of California Water Code (CWC) sections 13260 and 13264, CWA sections 301 and 401, and the Basin Plan, as described below:
 - a. CWC section 13260 requires that any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the State, shall file with the appropriate Regional Water Board a Report of Waste Discharge (ROWD). CWC section 13264 further provides that no person shall initiate any new discharge of waste, or make any material changes in any discharge, prior to the filing of the ROWD required by CWC section 13260. The Dischargers have not filed a ROWD with the Water Board for the unauthorized construction activities at the Site, which could adversely impact the quality of waters of the State. Accordingly, the Dischargers are in violation of CWC sections 13260 and 13264.
 - b. Clean Water Act section 301 prohibits the discharge of any pollutant by any person.
 - c. Clean Water Act section 404 requires a permit before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from section 404 regulations. Clean Water Act section 401 requires the applicant to obtain a related certification from the state in which the discharge originates or construction occurs, certifying (with or without additional conditions) that the activity is consistent with a number of specifically identified Clean Water Act provisions. Title 23 of the California Code of Regulations, section 3855, requires that "an application for water quality certification shall be filed with the regional board executive officer." The Dischargers have not filed an application for a Clean Water Act section 401 Water Quality Certification for the unauthorized activities that resulted in a discharge of fill to waters of the State. Accordingly, the Dischargers are in violation of Clean Water Act section 401.
 - d. Chapter 4, Table 4-1 of the Basin Plan, Discharge Prohibition No. 9, prohibits the discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters or to unreasonably affect or threaten to affect beneficial uses. The Dischargers' unauthorized installation of culverts, placement of rock fill below ordinary high water extending up into the adjacent floodplain and riparian area, and removal of riparian vegetation has resulted in the discharge and/or threatened discharge of soil and other earthen materials into the Creek and down-gradient receiving waters including the Napa River, thereby unreasonably

sediment-impaired water body due to excessive erosion and fine sediment discharges and the resulting adverse impacts to fish habitat. Fine sediment clogs spawning gravels and degrades rearing habitat, contributing to the decline of salmon and steelhead in the Napa River watershed. Accordingly, the Dischargers' unauthorized activities at the Site are in violation of the Basin Plan.

10. CWC section 13304 requires that any person who has discharged or discharges waste into waters of the State in violation of any waste discharge requirement or other order or prohibition issued by a Regional Water Board or the State Water Resources Control Board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into waters of the State and creates, or threatens to create, a condition of pollution or nuisance, shall, upon order of the Water Board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.
11. Based on the above findings, the Water Board finds that the Dischargers have caused or permitted waste to be discharged, or deposited where it has been discharged, into waters of the State, and created or threatens to create a condition of pollution. As such, pursuant to Water Code sections 13267 and 13304, this Order requires the Dischargers to submit technical reports and undertake corrective action to clean up the waste discharged and abate its effects. The burden of preparing technical reports required pursuant to section 13267, including costs, bears a reasonable relationship to the need for the reports and the benefits to be obtained from the reports, namely the restoration of beneficial uses at the Site.
12. Issuance of this Order is an action to enforce the laws and regulations administered by the Water Board and for the protection of the environment. As such, this action is categorically exempt from CEQA (Public Resources Code section 21000 *et seq.*), pursuant to section 15321, subdivision (a)(2), of title 14 of the California Code of Regulations. This Order generally requires the Dischargers to submit plans for approval prior to implementation of cleanup activities at the Site. Submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment or is an activity that cannot possibly have a significant effect on the environment. CEQA review at this time would be premature and speculative, as there is not enough information concerning the Dischargers' proposed remedial activities and possible associated environmental impacts. If the Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment, the Water Board will conduct the necessary and appropriate environmental review prior to the Executive Officer's approval of the applicable plan. The Dischargers will bear the costs, including the Water Board's costs, of determining whether implementing any plan required by this Order will have a significant effect on the environment, and, if so, in preparing and handling any documents necessary for environmental review.
13. Pursuant to CWC section 13304, the Dischargers are hereby notified that the Water Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.

IT IS HEREBY ORDERED, pursuant to Water Code sections 13267 and 13304, that the Dischargers shall submit the required technical reports and clean up the waste discharged, abate its effects, and take other remedial actions as follows:

Prohibitions

1. No unauthorized construction-related materials or wastes shall be allowed to enter into or be placed where they may be discharged into waters of the State.
2. The discharge of sediment, waste products, hazardous materials, or other materials that will degrade, or threaten to degrade, water quality, or adversely affect, or threaten to adversely affect existing or potential beneficial uses of waters of the State is prohibited.
3. The discharge of sediment into waters of the State resulting from failure to provide effective erosion and sediment control measures is prohibited.
4. Removal of riparian vegetation in a manner that impacts water quality in any creek, or other water of the State is prohibited.
5. The take, or incidental take, of any special status species is prohibited. The Dischargers shall use the appropriate protocols, as approved by CDFW, the U.S. Fish and Wildlife Service, and National Marine Fisheries Service, to ensure that activities do not impact the beneficial use of preservation of rare and endangered species or violate the California or federal Endangered Species Acts.

Provisions

1. No later than May 22, 2017, the Dischargers shall submit, acceptable to the Water Board Executive Officer, the following:
 - a. A technical report providing a description of the recent unauthorized construction activities at the Site and an assessment of the impacts to the Creek and associated riparian habitat. This technical report shall describe in detail the nature and extent of the unauthorized fill and vegetation clearing activities by: providing a map illustrating the extent of unauthorized construction activities at the Site; calculations quantifying the acreage of land disturbance and linear footage of Creek impacts; calculations of the volume and types of fill placed; a detailed qualitative description of the overall project purpose and design; as-built plans for the constructed project; a jurisdictional delineation of the extent of federal and State waters at the Site prior to and following the constructed project; and all other necessary information. The impact assessment shall be completed by a licensed professional geologist or civil engineer with expertise in fluvial geomorphology and/or creek restoration, and shall, at a minimum, include a description of the pre-disturbance channel morphology, soil conditions, hydrology, and characterization of the impacted Creek and riparian habitat, as well as supporting documentation (e.g., aerial photographs, photographs, reports, topographic maps, and drawings). The technical report, including the impact assessment, shall serve as the basis for the Corrective Action Workplan described below.

Dischargers shall initiate implementation in accordance with the accepted implementation time schedule within 60 days of written acceptance of the MMP by the Executive Officer.

4. No later than January 31 of each year following initiation of the corrective actions and continuing until the corrective actions are successfully achieved, the Dischargers shall submit annual monitoring reports, acceptable to the Executive Officer, evaluating the progress of implementation and success of the corrective actions in accordance with the approved implementation time schedule and approved monitoring plan. No later than January 31 of each year following implementation of the compensatory mitigation, the Dischargers shall also submit, acceptable to the Executive Officer, annual monitoring reports for mitigation implemented under the approved MMP, evaluating the progress of implementation and success of mitigation in accordance with the approved implementation time schedule and approved MMP.
5. The Dischargers shall obtain all necessary permits, authorizations, and other approvals necessary to complete actions under this Order.
6. The Dischargers shall submit with the final monitoring report a Notice of Completion, acceptable to the Executive Officer, demonstrating that the CAW and MMP, as approved, have been successfully completed.
7. If the Dischargers are delayed, interrupted, or prevented from meeting the work completion or report submittal deadlines specified in this Order, the Dischargers shall promptly notify the Executive Officer in writing with recommended revised completion or report submittal deadlines. Any extensions of the time deadlines specified in this Order must be approved in writing by the Executive Officer. The Executive Officer may consider revisions to this Order.
8. Water Board staff shall be permitted reasonable access to the Site as necessary to oversee compliance with this Order.
9. The Water Board, pursuant to Water Code section 13267, subdivision (b)(1), requires the Dischargers to include a perjury statement in all reports submitted under this Order. The perjury statement shall be signed by a senior authorized representative of the Discharger(s) (not by a consultant). The perjury statement shall be in the following format:

I, [NAME], certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.
10. The technical reports and other submittals required above shall be complete, accurate, and otherwise adequate as determined acceptable by the Water Board Executive Officer.

11. The Dischargers shall provide documentation that plans and reports required under this Order are prepared under the direction of appropriately qualified professionals. California Business and Professions Code sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgements be performed by or under the direction of registered professionals. A statement of qualifications and registration numbers of the responsible lead professionals shall be included in all plans and reports submitted by the Dischargers. The lead professional shall sign and affix their registration stamp to the report, plan, or document.
12. No later than 14 days from the date of this Order, the Dischargers are required to acknowledge in writing their understanding of the reimbursement process and billing procedures for Water Board oversight of the cleanup work as described in the Reimbursement Process for Regulatory Oversight fact sheet provided to the Dischargers with this Order, by filling out and returning the Acknowledgement of Receipt of Oversight Cost Reimbursement Account Letter or its equivalent, also provided with this Order.
13. Upon receipt of a billing statement for costs incurred pursuant to Water Code section 13304, the Dischargers shall reimburse the Water Board.
14. None of the obligations imposed by this Order on the Dischargers are intended to constitute a debt, damage claim, penalty, or other civil action that should be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of California intended to protect the public health, safety, welfare, and environment.

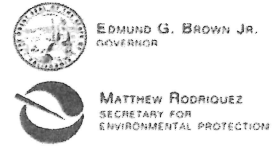
Failure to comply with the provisions of this Order may result in the imposition of civil liabilities, imposed either administratively by the Water Board or judicially by the Superior Court in accordance with Water Code sections 13268, 13304, 13308, 13350, and/or 13385, and/or referral to the Attorney General of the State of California for injunctive relief or civil or criminal liability. Failure to submit, late or inadequate submittal of technical reports and workplan proposals, or falsifying information therein, is a misdemeanor and may subject the Dischargers to additional civil liabilities. This Order does not preclude or otherwise limit in any way the Water Board's ability to take appropriate enforcement action for the Dischargers' violations of applicable laws, including, but not limited to, discharging without a permit and failing to comply with applicable requirements. The Water Board reserves its rights to take any enforcement action authorized by law.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region on DATE.

Bruce H. Wolfe
Executive Officer

Date

APPENDIX A



San Francisco Bay Regional Water Quality Control Board

INSPECTION REPORT

To: Bremer Family Winery Vineyard Case File
Place ID 829621

December 13, 2016

From: Michael Napolitano, Engineering Geologist
Agnes Farres, Environmental Scientist
Fred Hetzel, Environmental Scientist

Approved by:

Subject: Inspection of the Bremer Family Winery Vineyard, Napa County

On September 19, 2016, San Francisco Bay Regional Water Quality Control Board (Water Board) staff performed an inspection of the Bremer Family Winery Vineyard, located in St. Helena, Napa County.

Michael Napolitano, Agnes Farres, and Fred Hetzel conducted the site inspection along with Napa County staff (Brian Bordona and Patrick Ryan), a California Department of Fish and Game warden (Mark White), and one of the landowners (John Bremer) and his project engineers (Drew Aspegren and Diane Jackson with Napa Valley Vineyard Engineering). The inspection purpose was to assess site conditions after Water Board staff received complaints related to construction of the vineyard.

Background

The site is underlain by Ash-Flow Tuffs of the Sonoma Volcanics Formation, characterized by very shallow and rocky soils in most locations throughout the property except for in topographic hollows, channels, and alluvial fans. In 2013, Napa County approved an erosion control plan that authorized the placement of fill on the site to create a "new soil" that allows sufficient depth for rooting of the vineyard. The vineyard fills are wedge-shaped, typically flat or gently sloping, with fill thickness decreasing to zero at the upslope boundary, and at maximum thickness and buttressed at the down-slope edge by unreinforced boulder-cobble rock walls approximately 6-10 feet high.

Staff Observations and Concerns

1. **An unnamed intermittent or ephemeral stream channel, that is hydrologically connected to the Napa River, was ditched and culverted during the current phase of vineyard development.** Vineyard blocks were developed directly adjacent to the channelized stream, with eight- to ten-foot-high rock walls now forming the banks of the stream. Prior to development, as evidenced by review of time-sequential aerial photographs available in Google Earth, there was a continuous physical connection between this unnamed stream and a named blue-line stream (Canon Creek), and wet-season flow was evident. Prior to development the stream alternated between single-thread and multiple-threaded reaches, cascade bedforms were common, and vegetation on the rocky floodplain for the channel was dominated by chaparral species.
2. **Post-vineyard development increase in storm runoff peak does not appear to be fully attenuated.** Key assumptions in the original hydrologic model for the vineyard development project appear unreasonable or imprudent (e.g., a persistent improvement in soil infiltration capacity as a result of deep ripping; taking advantage of a recent fire over part of the property to assume reduced infiltration capacity under the pre-development condition; not accounting for decreases in time of concentration as a result of ditching and placement of subsurface drainage pipes, etc.). As a result, it is plausible that the constructed detention basin is significantly undersized.
3. **No filter fabric was placed between the rock walls and fill, and the rock walls may be vulnerable to differential settlement and soil piping,** which has the potential to result in significant sediment discharge to Canon Creek. In our discussion with the project engineer, we learned that the fill is not keyed or benched except at the contact with the rock wall. There has been no engineering analysis performed to confirm that the rock walls will remain stable under expected loads. The rock walls should be subject to a design review by a qualified geotechnical engineer.

Attachments

- Attachment A – Site Inspection Photographs
- Attachment B – Map of Channelized Stream

**Attachment A – Site Inspection Photographs
Bremer Family Winery Vineyard
Inspection Report**



Photo 1. Lower portion of unnamed intermittent stream that was channelized (looking upstream).



Photo 2. Lower portion of unnamed intermittent stream that was channelized (looking upstream).

**Attachment A – Site Inspection Photographs
Bremer Family Winery Vineyard
Inspection Report**



Photo 3. Upper portion of unnamed intermittent stream that was channelized (looking upstream).



Photo 4. Confluence of channelized unnamed intermittent stream and Canon Creek (looking upstream).

**Attachment A – Site Inspection Photographs
Bremer Family Winery Vineyard
Inspection Report**



Photo 5. Example photograph of rock walls.




Photo 6. Photograph of detention basin.

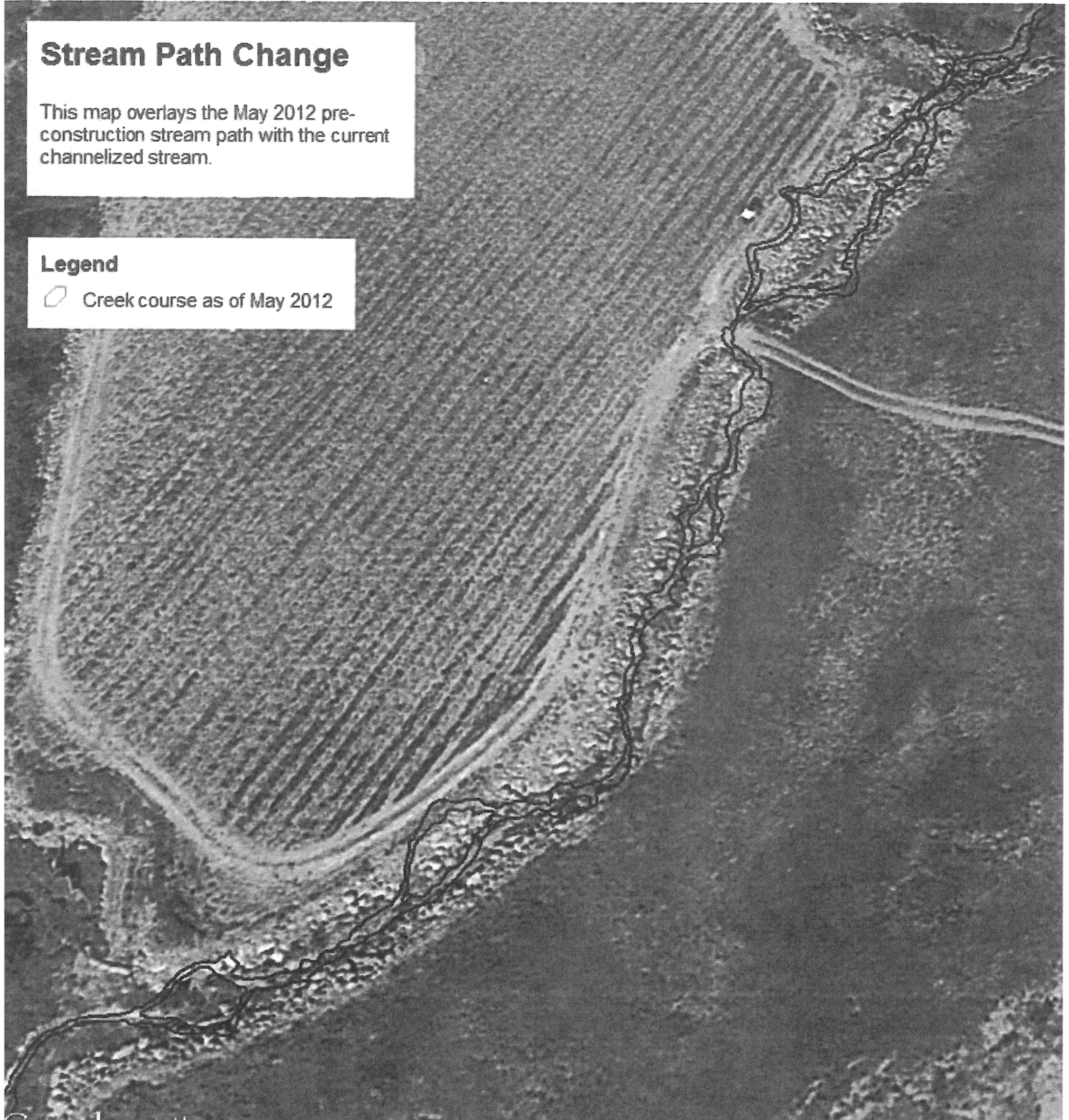
**Attachment B – Map of Channelized Stream
Bremer Family Winery Vineyard
Inspection Report**

Stream Path Change

This map overlays the May 2012 pre-construction stream path with the current channelized stream.

Legend

 Creek course as of May 2012



PROJECT REVISION STATEMENT
Bremer Family Winery Vineyard
Agricultural Erosion Control Plan #P11-00317-ECPA

I hereby revise Agricultural Erosion Control Plan #P11-00317-ECPA for the Bremer Family Winery Vineyard, to convert to vineyard up to approximately 34.6-acres (approximately 26 net vine acres) of existing chaparral, coast live oak woodland, and annual grassland within a 156.3-acre holding (Assessor's Parcel Nos. 021-400-002, -004, -005, 021-420-027, and 025-370-057 and -058) located at 975 Deer Park Road, St. Helena CA, to include the 4 measures specified below:

Measure BR-1: The owner/applicant shall revise Erosion Control Plan #P11-00317-ECPA prior to approval to include the following measures to minimize impacts to Holly-leaf Ceanothus populations and habitat:

- a. Revise the proposed vineyard layout of #P11-00317-ECPA prior to County approval to provide a 10 foot buffer from Holly-leaf Ceanothus located adjacent to the project area that are to be retained as part of the project.
- b. Revise the proposed wildlife exclusion fencing layout of #P11-00317-ECPA prior to County approval so that it is installed a minimum of 10 feet from Holly-leaf Ceanothus plants/populations to remain.
- c. At the applicant's expense and in consultation with a qualified professional, the proposed Re-vegetation plan shall be prepared and submitted to the County for review and approval prior to the approval Erosion Control Plan #P11-00317-ECPA by the County. The Re-Vegetation plan shall be incorporated into #P11-00317-ECPA and shall include the following provisions:
 - i. A restoration component containing no less than 0.7-acres of area that has been identified by a qualified professional to be suitable on-site habitat for Holly-leaf Ceanothus and replaces removed plants at a 3:1 ratio. Once the re-vegetation plan has been approved by the County, implementation shall commence in conjunction with development of vineyard as specified under Erosion Control Plan P11-00317-ECPA.
 - ii. The areas identified in the plan to be re-vegetated shall be clearly marked in the field with flagging and approved by Planning staff prior to implementation of the Re-vegetation plan.
 - iii. Plants shall be obtained from a reputable local California native plant nursery, using locally collected seeds or clipping, or from local ecotypes where available. The re-vegetation plan shall require a minimum 80% survival rate after the first 3-5 years. In the event that more than 20% of the plants should die, additional plants shall be planted and monitored for an additional 3-5 years to ensure long-term survivability at a rate of no less than 80%. Irrigation shall be provided to each individual plant with drip emitter for a minimum of 3 years or until established. The irrigation system should run at regular intervals, and be monitored to ensure each plant is getting sufficient water.
 - iv. Following implementation of the re-vegetation plan, a monitoring report shall be provided to the County annually until which time a minimum 80% survival rate has been reported. Monitoring reports shall include the success of planting, number of replacements necessary, photographs, and other information that illustrates the condition and location of any failed plantings.
- d. Prior to any earthmoving activities, temporary fencing shall be installed a minimum of 10 feet from the outer boundary of Holly-leaf Ceanothus plants/populations proposed for retention. The precise locations of the protection fencing shall be inspected and approved by the Planning Division prior to the commencement of any earthmoving activities. No disturbance, including grading, placement of fill material, storage of equipment, etc. shall occur within the designated areas for the duration of erosion control plan installation or vineyard installation. All fencing shall be maintained for the duration of vineyard construction.
- e. Wildlife exclusion fencing shall be installed a minimum of 10 feet from Holly-leaf Ceanothus plants/populations to remain.
- f. In accordance with County Code Section 18.108.100 (Erosion hazard areas – Vegetation preservation and replacement) Holly-leaf Ceanothus plants inadvertently removed that are not within the boundary of the project and/or not identified for removal as part of #P11-00317-ECPA shall be replaced on-site at a ratio of 2:1 at locations approved by the planning director. Replant locations will be supported by recommendations of a qualified professional: any replaced Holly-leaf Ceanothus shall have a 100% survival rate.

Measure BR-2: The owner/applicant shall revise Erosion Control Plan #P11-00317-ECPA prior to approval to include the following measures to minimize impacts associated with the loss and disturbance of passerine bird and raptor species consistent with and pursuant to California Department of Fish and Game Code Sections 3503 and 3503.5:

- a. For earth-disturbing activities occurring between February 1 and August 31, (which coincides with the grading season of April 1 through October 15 – NCC Section 18.108.070.L, and bird breeding and nesting seasons), a qualified wildlife biologist shall conduct preconstruction surveys for raptor and passerine bird courtship activities and/or their nests within a 300-foot radius of earthmoving activities. The preconstruction survey shall be conducted no more than 14 days prior to vegetation removal and ground disturbing activities are to commence (surveys should be conducted a minimum of 3 separate days during the 14 days prior to disturbance). A copy of the survey will be provided to the County Conservation Division and the DFG prior to commencement of work.
- b. In the event that nesting raptors and/or birds are found during preconstruction surveys, the property owner shall consult with DFG and obtain approval for specific nest-protection buffers as appropriate based on species found prior to commencement of ground-breaking activities: generally a minimum 150-foot no-disturbance buffer will be created around all active passerine bird nests and a minimum 300-foot buffer shall be created around all active raptor nests during the breeding and nesting season or until it is determined by a qualified biologist that all young have fledged. All nest protection measures shall apply to off-site active nests that are located within 300 feet of project activities. These buffer zones may be modified in coordination with DFG based on existing conditions at the project site. Buffer zones shall be fenced with temporary construction fencing and remain in place until the end of the breeding season or until young have fledged.
- c. If a 15 day or greater lapse of project-related work occurs during the breeding season, another bird and raptor pre-construction survey and consultation with DFG will be required before project work can be reinitiated.

Measure BR-3: The owner/applicant shall revise Erosion Control Plan #P11-00317-ECPA prior to approval to include the following measures to reduce impacts to special-status bat species:

- a. A qualified biologist shall conduct a habitat assessment for potential suitable special-status bat habitat/trees within 14 days of project initiation.
- b. If the habitat assessment reveals suitable special-status bat habitat and/or habitat trees, the qualified biologist shall submit an avoidance plan to the County and California Department of Fish and Game (DFG) for approval. The avoidance plan shall identify and evaluate the type of habitat present at the project site and detail habitat and/or habitat tree removal. Bat habitat/tree removal shall occur in two phases conducted over two days under the supervision of a qualified biologist: day one in the afternoon limbs and branches of habitat trees without cavities, crevices and deep bark fissures would be removed by chainsaw (limbs with cavities, crevices and deep bark fissures would be avoided); day two the entire tree can be removed. In the event the bat avoidance measures required by DFG result in a reduction or modification of vineyard block boundaries, the erosion control plan shall be revised by the applicant/engineer and submitted to the County.

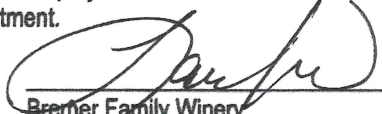
Measure BR-4: The owner/applicant shall revise Erosion Control Plan #P11-00317-ECPA prior to approval to include the following measures which establish stream setbacks for the vineyard development that are in compliance with the County Conservation Regulations (Napa County Code Section 18.108.025):

- a. To clearly delineate the required stream setbacks along the northern boundary of the existing vineyard blocks located immediately south of the blue line tributary on APN 021-400-002 (adjacent to proposed Vineyard Blocks A and B) in accordance with NCC Section 18.108.025. The revised plans shall show top of bank, percent slope, and required stream setback and shall be designed to include erosion control measures consistent with this plan and result in no net increase in soil loss and runoff as compared to pre-development conditions. Runoff calculations shall be prepared using acceptable modeling tools such as Universal Soil Loss Equation (USLE) and Technical Release 55 (TR-55) demonstrating no net increase in soil loss and runoff in a manner satisfactory to the County.

- b. The proposed Re-vegetation plan specified in **Mitigation Measure BR-1.c** shall include a stream setback restoration component to restore areas within required County stream setbacks resulting from **existing vineyard development** encroaching into the designated stream setbacks as required by **Mitigation Measure BR-4a** along the southern side of the blue line tributary located on APN 021-400-002. The plant pallet of the re-vegetation plan shall include native ground cover, shrubs and a minimum of 25 oak trees that are typically found in this area and are compatible/consistent with the area to be restored: plant selection, procurement, and survival criteria for the stream setback restoration component shall be that specified in **Mitigation Measure BR-1.c**. Once the re-vegetation plan has been approved by the County, implementation shall commence in conjunction with development of vineyard as specified under Erosion Control Plan P11-00317-ECPA.
- c. Required stream setbacks shall be clearly marked in the field and approved by Planning staff, as indicated in the Creek Protection Condition above, prior to implementation of the Re-vegetation plan.

Bremer Family Winery and the Nowell's further commit themselves and successors-in-interest to (a) inform any future purchasers of the property of the above commitments; (b) include in all property leases a provision that informs the lessee of these restrictions and binds them to adhere to them, and (c) inform in writing all persons doing work on this property of these limitations.

Bremer Family Winery and the Nowell's understand and explicitly agree that with regards to all CEQA and Permit Streamlining Act (Government Code Sections 63920-63962) deadlines, this revised application will be treated as a new project. The new date on which said application will be considered complete is the date on which an executed copy of this project revision statement is received by the Napa Co Conservation, Development and Planning Department.



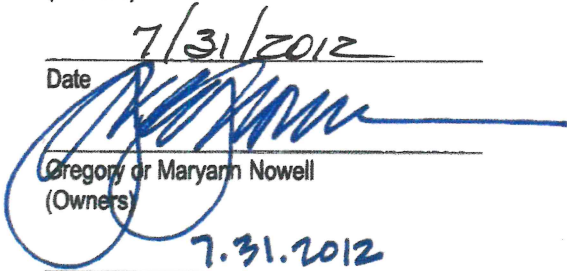
 Bremer Family Winery
 Laura or John Bremer
 (Owners)



 Printed Name

7/31/2012

 Date



 Gregory or Maryann Nowell
 (Owners)

GREGORY L. NOWELL

 Printed Name

7.31.2012

 Date