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A Commitment to Service

Planning, Building & Environmental Services

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David Morrison
Director

MEMORANDUM

To: Planning Commission Agenda Item 7B July 15, 2020	From: Don Barrella Planning, Building & Environmental Services Laura Anderson Deputy County Counsel
Date: July 10, 2020	Re: Bremer Family Winery Conservation Regulation Exception 975 Deer Park Road APNs 021-400-002 & 021-420-027 #P20-00143-UP

This memorandum responds to the June 23, 2020 letter by Water Audit California (WAC) submitted on the subject matter, and to the California Department of Fish and Wildlife (CDFW) email dated June 22, 2019 sent to the Planning Commission. For the Commission’s convenience, Staff has bracketed the WAC correspondence with numbers in the right margin and responded to each comment as set forth below (see Attachment 1).

STAFF RESPONSES TO CALIFORNIA WATER AUDIT COMMENTS:

Response to Comment #1:

Contrary to WAC’s assertion, there is nothing irregular, inappropriate or unusual about this project being remanded by the Board of Supervisors. CWA’s analogy regarding remand from an appeals court is also irrelevant and unpersuasive as this an administrative proceeding not a judicial one. The Napa County Code clearly states that among the options available following close of the hearing on an appeal, the Board of Supervisors “may remand the matter to the approving authority for further consideration.” (County Code Section 2.88.090 (C)). As noted in the July 15, 2020 Planning Commission Staff Report, on May 5, 2020, the Board adopted Resolution No. 2020-65 and (1) rejected each of the grounds of the appeal and denied the appeal in its entirety; and (2) upheld the Planning Commission’s approval of the decorative rock walls and two pedestrian bridges as further described as existing structures (E) and (F) as shown on Exhibit “A” of Resolution No. 2020-65 (included as Attachment 2 to this memo). 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. The Board’s decision to remand is fully within their authority and while not routine, it is not unprecedented. The Caldwell winery is a recent example of another project remanded to the Commission.

The project that was remanded by the Board is the same project that is before the Commission minus the two improvements (the pedestrian bridges and the rock walls) that were approved by the Board on appeal. There have been no substantial changes to the Bremer project materials, requested action or documents since this item was last before the Commission in September 2019. The project was and remains an application requesting an exception to the Conservation Regulations in the form of a use permit 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 #B08-00074; (D) an approximate 100 square foot freestanding restroom constructed and completed under Building Permit #B08-01030. A new application was not required nor was one submitted because the original application included the four improvements that are now before the Commission. To avoid confusion and for housekeeping purposes, the Planning Department assigned a new permit number (#P20-00143) to reflect the remaining four improvements that will be acted upon by the Commission.

Response to Comment #2:

WAC is correct that the subject property address is 975 Deer Park Road, which is also identified as Assessors' Parcel Number (APN) 021-400-002, and that the existing site improvements being considered under this specific matter may extend onto what is identified/mapped as APN 021-420-027 but it is of no consequence. Separate applications are not necessary merely because a property/holding is comprised of multiple APNs. This matter is specific to encroachments into stream setbacks pursuant to NCC Section 18.108.025 not yard setbacks pursuant to NCC Section and Table 18.104.010 (Schedule of zoning district regulations); therefore, the location of the common property line between APNs 021-400-002 and 021-420-027 is immaterial in this matter. Furthermore, it is the County's understanding that the two APNs make up one legal parcel. Also see *Response to Comment #3*, incorporated herein by reference.

Response to Comment #3:

Regarding the application and its status, the Applicants' did not 'resubmit' the Application on June 28, 2019. As indicated in the record the application was submitted on March 29, 2019, and additional information was provided to the County by the Applicant on June 28, 2019 in response to the County's May 14, 2019 Application Completeness Determination Letter for #P19-00153-UP. The information provided in the original application package in conjunction with the information received on June 28, 2019, was determined to be sufficient to appropriately and adequately disclose, review, and assess the matter specific to this application (i.e. existing site improvements encroaching into stream setbacks). The record the application was deemed complete on July 28, 2019. Also see *Response to Comment #2*, incorporated herein by reference.

Response to Comment #4:

With respect to Napa County's GIS System and mapping and reports/images generated therefrom, the System includes the following disclaimer: *"This report was prepared for informational purposes only. No*

liability is assumed for the accuracy of the data delineated hereon". Minor deviations in images generated through the Napa County GIS System (in particular property lines) can occur due to the differing mapping platforms, scales and spatial characters utilized by the various data layers compiled in the GIS System. Also see *Response to Comment #2*, incorporated herein by reference.

Response to Comment #5:

The Planning Commission is not a court of law and land use hearings are not trials. The Planning Commission proceedings are not subject to the formal rules of evidence applicable to the trial of civil proceedings in the trial courts of California. The Planning Commission hears and considers comments from members of the applicant team and public commenting on a project but those comments are not subject to the same evidentiary requirements as needed in a court of law.

See also Staff Responses to Department of Fish and Wildlife Comments below and incorporated here by reference.

Response to Comment #6:

As indicated in the County's September 18, 2019 CEQA Determination Memo on this matter, and in the County GIS System, the subject parcel/holding (or APNs) are neither located in a flood zone nor a floodway (i.e. 'Special flood hazard area' pursuant to NCC Section 18.04.025). Therefore, the provisions of NCC Chapter 16.04 (Floodplain Management) do not apply in this matter. The closest flood hazard area to the subject parcels are located over a half mile to the southwest. Also see *Response to Comment #1 and #7* (incorporated herein by reference), and NCC Section 16.04.510 (Special flood hazard areas – jurisdictional limits) for additional information.

Response to Comment #7:

The County agrees with WAC that the stream setback encroachments subject to this matter (#P20-00143-UP) would not qualify for any Exemptions specified in NCC Section 18.108.050 or 18.108.025(E), which is the very reason why the County has required, and has been processing an exception in the form of a use permit pursuant to NCC Section 18.108.040 for the site improvements associated with this matter. This process allows the Planning Commission to consider and authorize or deny encroachments within stream setbacks.

With respect to NCC Chapter 18.112 (Road Setbacks), the matter before the Commission is specifically related to stream setbacks pursuant to 18.108.02; therefore, the Violation-Penalty provisions of NCC Section 18.112.160 do not apply in this matter. Regarding NCC Chapter 18.144.030, the County concurs with WAC, which is the reason this application (#P20-00143-UP) is required and is being processed by the County. Should the Commission deny any or all of the setback encroachments an enforcement action pursuant to Chapter 18.144 may be commenced.

Response to Comment #8:

Without a reference to the following statement identified in the first paragraph of page 12 of the WAC letter, *"All the site improvements subject to this use permit exception application are existing, some of which predate the County's Conservation Regulations."*, it is presumed it was taken from page 3 of the September

19, 2019 Commission Hearing Report and Paragraph 3 of Page 3 of the report's attached CEQA Determination Memo (September 18, 2019 – Attachment C to the September 18, 2019 Commission staff report)¹. This statement is specific to the setting for the County's CEQA baseline condition analysis and determination pursuant to Public Resources Code Section 15125, it is not a disclosure of site improvements that may or may not pre-date the Applicants (i.e. the Bremer's). Also see *Response to Comment #7 and #9*, incorporated herein by reference.

As identified and disclosed in the September 2019 and October 2019 Planning Commission staff reports and supporting documentation, staff identified and disclosed (i.e. "staff reported" as stated in the WAC letter) that the Bremer's acquired the holding in 2002 and the following site improvements were installed after 2002: the Ag Storage Barn (presumed 2012), the additions and repairs to the Main Dwelling/Farmhouse (or "Frank") (Building Permit #B08-00074), and the restroom (Building Permit B08-01030). Therefore, staff has appropriately identified and disclosed site improvements that occurred after the Bremer's (Applicants) acquisition of the holding (i.e. that post-date the Applicants). That is why these improvements are subject to this exception request.

Response to Comment #9 - Violation A:

The approximate 2,200 sq. ft. Ag Storage Barn is neither recognized as a Legal Nonconforming structure pursuant to NCC Chapter 18.132 (Legal Nonconformities), nor is a Certificate of Legal Nonconformity being requested or considered under this application. That is why the Ag Storage Barn is included in this request, and the provisions of NCC Chapter 18.132 do not apply in this case. Furthermore, as indicated in previous staff reports associated with this matter, this application is to recognize and maintain specific existing site improvements located within stream setbacks in their current configurations. No expansion or augmentation of existing site improvements or currently entitled uses or operations are requested or being considered as part of this application: in other words this matter would not authorize any uses, either residential or winery, that had not been previously entitled, and any modification thereto would require a separate use permit and/or use permit modification application. Also see *Response to Comment #1 and #2*, incorporated herein by reference.

Response to Comment #10 - Violation B:

As indicated in *Response to Comment #3* above (incorporated herein by reference), this matter is to recognize and maintain specific existing site improvements located within stream setbacks in their current configurations, and no expansion or augmentation of existing site improvements or currently entitled uses or operations are requested or being considered as part of this application. Any modification to existing uses identified in Use Permits (#U-697879, #P07-00654-UP, P08-00088-VMM, and #P09-00178-VMM) would require a separate use permit and/or use permit modification application. The location(s) of fermentation tanks and barrel storage, and the uses allowed to the holding's wine cave are not germane or relevant to this application.

With respect to the concrete pad, as indicated in the record it was constructed sometime before 2002 (prior to the Bremer's ownership of the holding) and appropriate permits were not obtained prior to its

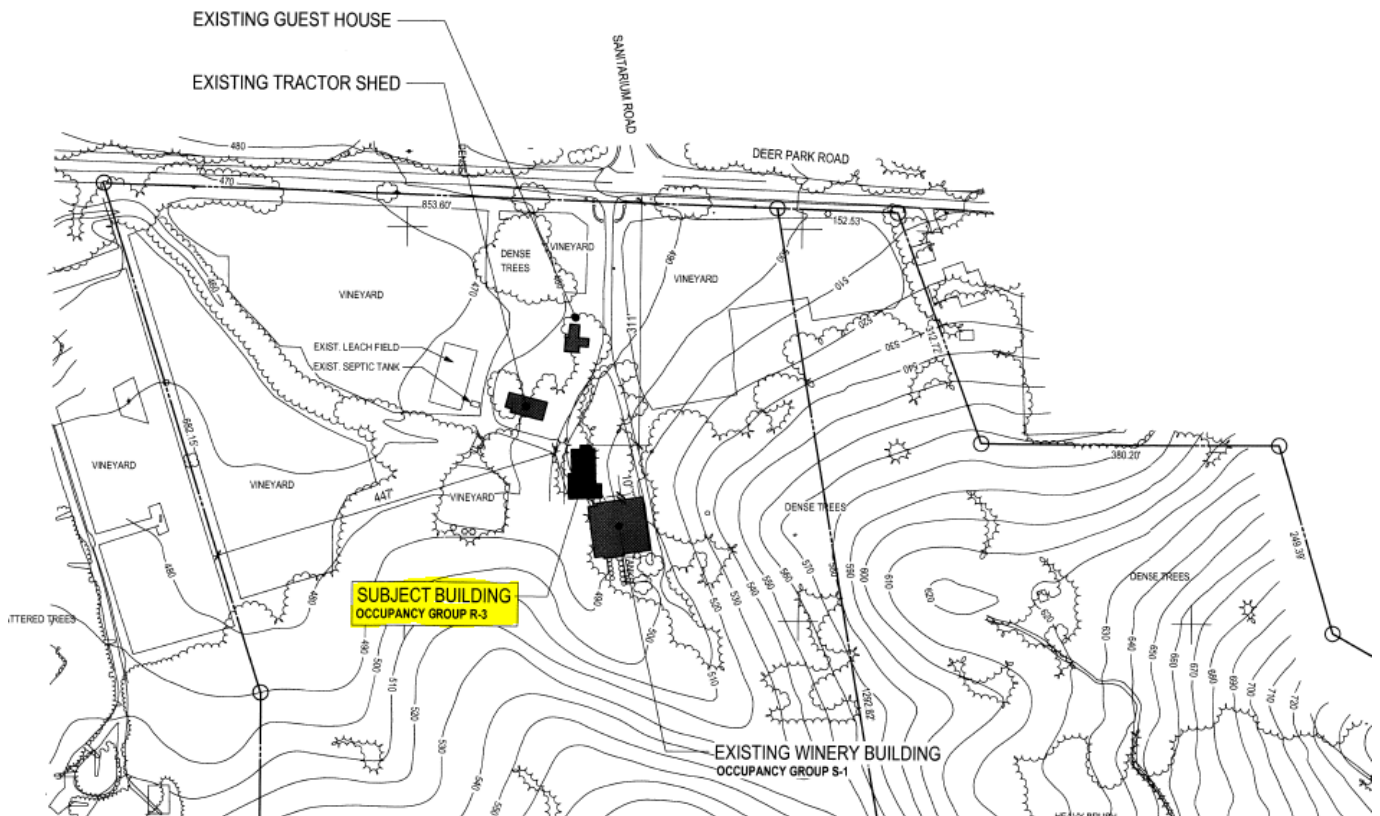
¹ "In this case, all the site improvements subject to this use permit exception application are existing, some of which predate the County's Conservation Regulations."

construction. Therefore, it is included in this exception request, and as previously indicated the uses associated with the concrete pad would be limited to those identified in Use Permits (#U-697879, #P07-00654-UP, P08-00088-VMM, and #P09-00178-VMM). Any winery use of the concrete pad would be subject to a separate use permit modification request.

Response to Comment #11 - Violation C:

The County agrees with WAC that Building Permit #B05-01249 is subject to the Second Dwelling Unit located on the holding and not associated with the Main Dwelling/Farmhouse (referred to by WAC as “Frank”). The second dwelling unit is neither located within a stream setback nor a subject of this application.

With respect to Very Minor Modification #P08-00088-VMM and Building Permit #B08-00074 the plans for both identify the existing main residence (or Farmhouse) is the subject of both the VMM and Building Permit applications. The site plan and description of work for Building Permit #B08-00074 specifically identify the farmhouse (or Frank) as the subject structure (below); therefore, the Applicant/Bremer’s did not apply of a modification to the winery building and construct the improvements on a completely different building.



DESCRIPTION OF WORK AT EXISTING RESIDENCE:

CONSTRUCTION OF NEW COVERED PORCHES AND REPAIR OF EXISTING WOODEN DECKS; REPLACEMENT OF EXISTING ROOFING; AND REPLACEMENT OF EXISTING WOODEN STAIRS. NO INTERIOR WORK IS PROPOSED AS A PART OF THE PROJECT. NO ELECTRICAL, PLUMBING, OR MECHANICAL WORK IS PROPOSED AS A PART OF THIS PROJECT.

Regarding Building Permit #B06-01434, it is specific to the Garage/Shed identified in Use Permit #U-697879, which is also referred to as the "Covered Carport" in documentation specific to this matter (#P19-00153-UP, #P19-00447-APEL, and #P20-00143-UP). Therefore, Building Permit #B06-01434 is not associated with the Main Residence/Farmhouse (or "Frank"). Also see *Response to Comment #7 and #13* (incorporated herein by reference) for additional discuss regarding the Covered Carport

Response to Comment #12 -Violation D:

As indicated in the September 2019 Commission Staff Report on this matter, the freestanding restroom was constructed under Building Permit #B08-01030. While the original building permit application for the freestanding bathroom was submitted in 2008, the building permit for the freestanding bathroom was ultimately issued in July 2012. The location of the freestanding restroom is indicated on the building permit plans for #B08-00074: included as Attachment 3 of this memo.

As indicated in the County's Permit Management Center (PMC) program, building inspections for Building Permit #B08-01030 occurred after July 2012 on the bathroom (see below):

Bldg – Temp Occupancy ...	01/14/2013	MARCI L PATON	Passed	
A7-Final Building	01/14/2013	MARCI L PATON	Passed	
Final Occupancy Certif..	01/14/2013	MARCI L PATON	Passed	
Permit Final	01/14/2013	MARCI L PATON	Passed	
A7-Final Building	12/17/2012	CARLALEXANDER A...	Passed	partial final only at detached bat...
55- Exterior Lath Nailing	10/09/2012	CARLALEXANDER A...	Passed	
83- Wallboard	10/09/2012	CARLALEXANDER A...	Passed	
40- Roof Deck Nailing	10/01/2012	CARLALEXANDER A...	Passed	
44- Rough Plumbing	10/01/2012	CARLALEXANDER A...	Passed	
45- Rough Electrical	10/01/2012	CARLALEXANDER A...	Passed	
47- Rough Structural F...	10/01/2012	CARLALEXANDER A...	Passed	
42- Shearwall Nailing...	10/01/2012	CARLALEXANDER A...	Passed	
Request for Temp Occup...	09/20/2012	BEN REYNOLDS	Passed	
9- Footing Pour	08/30/2012	CARLALEXANDER A...	Passed	
13- Slab Pour	08/30/2012	CARLALEXANDER A...	Passed	
16- Underslab Plumbing	08/27/2012	CARLALEXANDER A...	Passed	ok at detached bathroom

With respect to Section 16.04.750(B), as indicated in Section #2(A) above, the subject parcels (or APNs) are neither located in a flood zone or floodway (i.e. 'Special flood hazard area' pursuant to NCC Section 18.04.025); therefore, the provisions of NCC Chapter 16.04 (Floodplain Management) do not apply in this matter. Also see *Response to Comment #6*, incorporated herein by reference.

Response to Comment #13 - Violation E:

As indicated in the previous Commission staff reports the existing Garage/Shed (aka Tractor Shed or Covered Carport) existed prior to 1979 as evident in Use Permit #U-697879 plans that show the garage/shed. The Covered Carport was replaced in 2006 under Building Permit #B06-01434 (included as Attachment 4). As indicated in the October 16, 2019 Commission Staff report, the replacement of the existing 1,125 sq. ft. Garage/Shed with an approximate 1,000 sq. ft. Covered Carport, occurred to an existing legally established structure within an existing disturbed area (i.e. within the existing footprint), and did not encroach further into required stream setbacks, and therefore it is not part of this Use Permit Exception.

Regarding the other improvements indicated by WAC (i.e. the outdoor kitchen, fireplace, and bocce ball court), these are not associated with the Covered Carport as shown in Building Permit #B06-01434, and are also located outside stream setbacks. With regard to use of the Covered Carport, as previously indicated no expansion or augmentation of existing site improvements or currently entitled uses or operations are requested or being considered as part of this application: i.e. this matter would not authorize any uses, either residential or winery, that had not been previously entitled, and any modification thereto would require a separate use permit and/or use permit modification application. Therefore, previous approvals and this request (#P20-00143-UP) have not and would not authorize use of the Covered Carport as a 'catering center or hub' or a 'wedding venue'. Also see *Response to Comment #6 and #9*, incorporated herein by reference.

Response to Comment #14 - Violation F:

It is presumed that WAC is referring to Permit #E19-00176 because it is associated with the sewer/waste line for the outdoor sink on APN 021-044-002: Permit #E19-00174 is for the demolition of 5 slope inclinometers located on an unrelated parcel. The County's PMC program indicates this permit (#E19-00176) was finalized on April 9, 2019.

Regarding Building Permit #B19-00513, on June 7, 2019 it was issued for the plumbing to the outdoor sink located adjacent to the garage/shed (a.k.a. Covered Carport), because this site improvement did not occur within stream setbacks. Furthermore, the review documents for this building permit includes the following: *"Please be advised that use of improvements requested in this permit application for winery purposes may require separate approval of a use permit modification. The information in this letter should not be construed as either a comment or determination on the use of these improvements for winery purposes, or the ability of the Planning Commission to subsequently review and authorize winery uses pursuant to NCC Chapters 18.20 (Agricultural Watershed District) and 18.124 (Use Permits), and/or the February 6, 2019 Settlement Agreement associated with this matter."* This permit is shown in the PMC program to have been finalized on July 18, 2019. Also see *Response to Comment #13* incorporated herein by reference.

Response to Comment #15:

Planning Commission Staff continues to believe the necessary findings can be made to approve the Use Permit Exception because: 1) the project would not result in substantial effects to mapped or designated environmentally sensitive areas or resources; 2) no work would be performed within the defined bed or

bank of the stream; and 3) all of the site improvements subject to this application (#P20-00143-UP) that are located within stream setbacks are existing and would remain unchanged.

Also see Responses to Comments #1, #3, #5, #6, #7, and #9 through #14 (incorporated herein by reference).

STAFF RESPONSES TO CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE (CDFW) CRAIG WEIGHTMAN LETTER:

On June 22, 2020, Craig Weightman, Environmental Program Manager from CDFW emailed the Planning Commission and PBES staff indicating that previous conversations between his staff and the applicant's representatives were inaccurate and potentially misleading. From staff's perspective, the email from Mr. Weightman may have led to some confusion on the part of the Planning Commission and the public. In an effort to help clarify CDFW's position on the project, on June 30, 2020, PBES staff conducted a site inspection with Karen Weiss, Senior Environmental Scientist Supervisor and Garrett Allen, Environmental Scientist from the CDFW along with Geoff Monk and Sara Lynch from Monk and Associates who represent the applicant.

An overview of the site was conducted with particular focus on the improvements that had occurred within the area of the stream. A general discussion regarding the timing of the improvements occurred as well as the possibility of removing non-native plants that were observed within the channel and riparian area. CDFW voiced the support of the removal of the non-native plants and replacement with native plants.

At the conclusion of the site inspection, CDFW staff was asked if they would be requiring a 1602 Permit (i.e. Lake and Streambed Alteration Permit) for the existing improvements. CDFW stated that their office does not issue retroactive 1602 Permits and that remediation (if any) would occur as an enforcement action through the Napa County District Attorney's office. In subsequent correspondence between PBES and CDFW staff, they further stated that they do not have a position or recommendation on the application before the Planning Commission regarding the four subject site improvements. In addition, CDFW again reiterated that they are supportive of projects that will replace non-native and invasive plants with native plants.

Staff's analysis has found potential environmental impacts to natural resources related to the four subject improvements to be Categorical Exempt from CEQA, as detailed in the CEQA Memo. Therefore, restoration of the riparian area adjacent to the winery improvements is not required to reduce impacts to a less than significant level. However, the Planning Commission nevertheless has the discretion to require a restoration/enhancement plan that results in the replacement of non-native and invasive plants with native plants, to offset any ongoing negative effects (impacts) to the stream corridor as a result of maintenance, use, and improvement of site features located within stream setbacks (such as but not limited to the site improvements subject to this application).

In the event the Planning Commission elects to require a restoration plan, Staff believes restoration activities would be consistent with the following applicable General Plan Goals and Policies:

Natural Resources Goals and Policies:

- Goal CON-4: Conserve, protect, and improve plant, wildlife, and fishery habitats for all native species in Napa County.
- Policy CON-11(e): Manage the removal of invasive vegetation and the retention of other riparian vegetation to reduce the potential for increased water temperatures and siltation and to improve fishery habitat.
- Policy CON-13(f): Enhance existing habitat values, particularly for special-status species, through restoration and replanting of native plant species as part of discretionary permit review and approval.
- Policy CON-50(h): Require replanting and/or restoration of riparian vegetation to the extent feasible as part of any discretionary permit or erosion control plan approved by the County, understanding that replanting or restoration that enhances the potential for Pierce's Disease or other vectors is considered infeasible.

Staff also believes the restoration activities would qualify as Categorically Exempt pursuant to CCR §15333 (Class 33, Small Habitat Restoration Projects), which exempts projects not exceeding 5 acres in size to assure the restoration or enhancement of habitat for plants or wildlife, such as revegetation of disturbed areas with native plants provided that there would be no significant impact on endangered species or their habitat.

As a reminder, the State Water Board has required the applicant to restore portions of the subject stream as part of the Water Board's Final Corrective Action Workplan² (CAW) Intermittent Channel Enhancement Plan located immediately south of the area subject to this application, which was presented and discussed during the September 18, 2019 Planning Commission meeting. More specifically, the applicant is currently required to restore an approximately 300 linear foot portion of the subject stream, immediately downstream of the winery area: see Attachment 5 which consists of Plan Sheet 10 and Figure 5 of the CAW, that shows the location to the intermittent stream reach immediately south of the winery and the planting plan for this stream segment.

In the event restoration activities are a desire of the Planning Commission, staff's recommendation would be to require that restoration be simply expanded to include an approximate 600 lineal foot segment of the stream commencing from approximately the southern site improvement associated with this matter (i.e. the freestanding restroom) running northeast through the subject stream setback area. This restoration plan would serve as an extension to the stream restoration currently required for the

² Final Corrective Action Workplan and Mitigation and Monitoring Plan, California Regional Water Quality Control Board, SF Bay Region, Cleanup and Abatement Order #R2-2017-025 for the Bremer Family Winery Vineyard, June 17, 2017.

stream under the CAW, and be consistent with same goals, parameters, implementation, and monitoring specifications and success criteria of the CAW.

Such a Restoration/Enhancement Plan shall be prepared by a qualified biologist or restoration ecologist and include the following: 1) a site plan showing the areas of understory invasive species removal, such as but not limited to Periwinkle (*Vinca major*) and Broom/French Broom (*Genista monspessulana*), and Himalayan Blackberry (*Rubus armeniacus*), and revegetation areas; and 2) a narrative that includes a) invasive species removal and replanting methods, and that no mechanical equipment will be used; b) a replacement plant pallet composed of compatible native plant species, including planting densities and plant sizes and/or application rates; c) planting notes and details including plant protection measures; invasive species removal and management recommendations, specifications and goals; d) an implementation and monitoring schedule; and, e) performance standards with a minimum success rate of at least 70% to ensure the success of re-vegetation efforts. The Restoration/Enhancement Plan shall be submitted to the County and CDFW for review and approval, and the applicant shall provide documentation to the County that all applicable permits from CDFW and Water Board have been obtained prior to its implementation.

List of Attachments:

Attachment 1 – Water Audit California letter, Annotated without Exhibits

Attachment 2 - Bremer Site Improvements

Attachment 3 - Building Permit Plans #B08-00074

Attachment 4 - Building Permit Plans #B06-01434

Attachment 5 – Intermittent Channel Enhancement Plan¹

Attachment 1



WATER AUDIT CALIFORNIA

A PUBLIC BENEFIT CORPORATION

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June 23, 2020

BY EMAIL

Joelle Gallagher
Chair
Napa County Planning Commission
JoellePC@gmail.com

Dear Ms. Gallagher

RE: Planning Commission Meeting (Date to be noticed)

7A BREMER GROUP LLC. / BREMER FAMILY WINERY / USE PERMIT EXCEPTION TO THE CONSERVATION REGULATIONS FOR EXISTING SITE IMPROVEMENTS - APPLICATION #P20-00143-UP

Water Audit California (Water Audit) is an advocate for the public trust.

Water Audit has two concerns herein: (1) the preservation of the Napa County stream setback provision, and (2) the application of proper policies and practices considering environmental matters.

Water Audit believes that riparian ways should be seen as sacred ground, an essential foundation of the community's environmental health. The following comments relate solely to our assessment of fact and law, with no distortion or filter caused by identities, status or personalities. We assume that these Applicants will be treated no better or no worse than any other before this Commission.

THE PARTIES

John Alex Bremer and Laura Joyce Bremer, as Trustees of the Bremer Family 1995 Living Trust dated August 23, 1995, are the owners by Grant Deed for parcels APN 021-400-002 and APN 021-420-027. The interests or status of the individual persons, Bremer Group LLC, and the Bremer Winery are unknown to Water Audit. Each may be the agent of the other. Planning and building permits have been applied for and issued on various occasions for both commercial and residential uses. To simplify this complex situation for the sake of this comment, all and any of the aforesaid parties will be referred to as the "Applicants."

There presently are no supporting documents for P20-00143 in the public record, rendering any response to that matter purely speculative. For the record, attached hereto are copies of the original postings pursuant to the June 17, 2020, remand hearing, cancelled on June 16.¹ No new notice has been given of the P20-00143 hearing. *Prima facie* this is inadequate due process.

In light of this situation, and to make this comment timely and intelligible, "Application" herein will refer to the documents filed to initiate P19-00153, including the Napa County application form and all supporting documents concurrently provided to and utilized at the September 18, 2019, Planning Commission hearing.

Nevertheless, in the interests of judicial efficiency, Water Audit has reviewed the P19-00153 record as best possible so as to respond to what is believed to be Staff's Recommendation:

Option 1: Approve Applicant's Proposal to Retain the Four Improvements - A through D

This option would allow the subject four site improvements that encroach into the County's required stream setbacks to be maintained and utilized for their authorized uses. No other exceptions or variances to the County Standards are requested or necessary.

Water Audit respectfully disagrees and submits that it is in the public's best interest that the application for a ConRegs Exemption be denied, and that the Commission adopt Option 2 (remove the improvements) or Option 3 (deny the Request (and remove the improvements)).

Whatever the Commission's decision, this matter will be precedent setting in respect to Napa Valley riparian encroachment. To approve this Application would oblige the Commission to provide the same indulgence to all subsequent malefactors who ignore the law until caught and prosecuted. Such a precedence would render the conservation regulations irrelevant, and the process of enforcing the law into an endless game of whack-a-mole, with a foregone conclusion of futility. As any parent knows, one should not reward bad behavior lest it become a habit.

The law demands that the infringements be removed, and there is no good reason for the Applicants to not be held to the law.

PRIOR PROCEEDINGS

1. The record before the Commission is not the record remanded by the BOS.

The procedure that has returned this matter to the Commission is highly irregular. When a matter is heard on appeal, the adjudicator may deny the appeal, grant the appeal, or remand the matter. Supervisor Dillon succinctly stated the alternatives immediately before the vote on the Hackett appeal.

If the adjudicator denies the appeal, as herein, the matter is concluded, save for a potential appeal to a higher authority. If an appeal is denied, the matter is *res judicata*, and no further adjudication is possible. A "remand" is not appropriate after the denial of an appeal, nor does it provide for bifurcation. It is an interlocutory procedure used by higher jurisdictions to return matters to lower jurisdictions for further action consistent with instructions.

Analogously, an appeals court may remand a case to the trial court for further action if it reverses the judgment of the lower court. See analogous CCP 583.320(3) "If on appeal an order granting a new trial is affirmed or a judgment is reversed, and the action remanded for a new trial..." Reviewing a decision made following a remand, the Supreme Court stated: "The principal issue here



¹ See Exhibit 1 attached hereto.

is whether the city council, on remand, did in fact employ the test stated by the trial court.” No Oil, Inc. v. City of Los Angeles 13 Cal.3d 68 (Cal. 1974)

Herein the Board of Supervisors denied the appeal, which should have concluded the proceedings, save for a potential appeal to the Superior Court. Nevertheless, the Board then remanded the matter for further proceedings before the lower tribunal, i.e. the Planning Commission. This is the legal equivalent of a doctor declaring a patient deceased, and then scheduling them for further surgery.

Further, the matter before the Planning Commission is not the same as the matter remanded. A remand does not bifurcate or invoke or authorize a new and different proceeding; a remand directs a lower tribunal to revisit the same proceeding with instructions for further review. The Remand herein directed the Planning Commission:

... to further consider the approximate 2,200 sq. ft. agricultural storage barn and associated water tank that replaced an approximate 320 sq. ft. barn; an approximate 800 sq. ft. concrete pad located off the east side of the winery building; an approximate 150 sq. ft. ground floor/story addition and second floor/story deck to the main dwelling (a.k.a. farmhouse/office building); and an approximate 100 sq. ft. freestanding restroom, all four of which currently encroach into required stream setbacks. ...

The Findings of Fact provided further clarification and direction as it relates to the Planning Commission's reconsideration of the four remaining existing structures, noting that the Commission should consider each structure individually on its own merits, with greater scrutiny, and without further reference to the settlement agreement given these four structures are not affected by said agreement.

It is County policy that a Use Permit for an exception to the Conservation Regulations must be approved by the Planning Commission prior to construction. Development may not begin until all necessary permits have been obtained, including any building or grading permits. The Applicants now seek forgiveness for their failure to comply with this law.

The differences between the matter remanded and the matter now under reconsideration are substantial and material. All Napa requests for conservation exceptions start with a standard form application. The subject Application (Supporting Document D, hereinafter the “Application”) states that it concerned Assessor’s Parcel Number (APN) 021-400-002, 975 Deer Park Road.

Permit review discloses that the same parcel has had, at different times, two different street addresses: 1000 Deer Park Road, and 975 Park Road. The latter is the current correct address for APN 021-400-002.

PROJECT NAME: <u>Bremer Family Winery</u>
Assessor's Parcel #: <u>021-400-002</u>
Site Address/Location: <u>975 Deer Park Road</u>
No. Street

Comparison of the Application with the County's standard form shows that the Application is missing pages 1 to 4, and all pages after page 10. The omitted pages include the Application Checklist, which would have revealed the Application was incomplete. Page 3 sets forth the bold type admonition: “**The Use Permit application is not complete until all the information listed on the checklist is submitted for review.**” Page 11 contained a requirement for a list of all property holders within 1,000 feet. **Page 12 mandates plans showing the boundary lines of all existing**

1 cont.

2

2 Cent.
3

parcels. *Prima facie* the Application was incomplete. The County procedures clearly and unequivocally provide that an application is deemed submitted only when it is complete. Nevertheless, the planning department issued the number P19-00153 to the incomplete Application on the date of submission.

The Applicants *resubmitted* the Application on June 28, 2019, two days after receiving RSA+'s Encroachment and Site Plan Narrative (Supporting Document E, hereinafter the "RSA+ Encroachment Plan"). The RSA+ Encroachment Plan **does not show the property boundaries.** There is no restroom indicated; inexplicably the words "Top of Bank" indicate the infringement's location. The concrete crush pad is not distinguished from the asphalt paving, and the asphalt paving is not distinguished from the graveled areas. It may well be argued that the RSA+ Encroachment Plan conceals more than it reveals.

Inexplicably, the planning department considered the resubmitted Application complete, and it worked its way through the process to the Board of Supervisors, from where it was remanded. However, the matter assigned file number P19-00153 is not presently before the Commission. This proceeding is numbered P20-00143, and when last seen concerned two parcels, APN 021-400-002, and the adjoining parcel, APN 021-420-027. Note the property line indicated by the arrow between APN 021-400-002 and 021-420-027 that bifurcates the faintly indicated structures. (Magnification of the image makes the structures' outlines more visible.)



Staff has summarily bundled the two parcels together, arbitrarily asserting that because the two share a common business name and owners, they have become a single parcel for the purposes of this proceeding. The law holds otherwise. A "parcel" is a discrete and finite unit of land. As the County has stated:

[T]he California Legislature in the mid-1950s expanded the Subdivision Map Act (Government Code 66410) and gave local agencies broad "police powers" by authorizing general plan, zoning and building permit regulations.

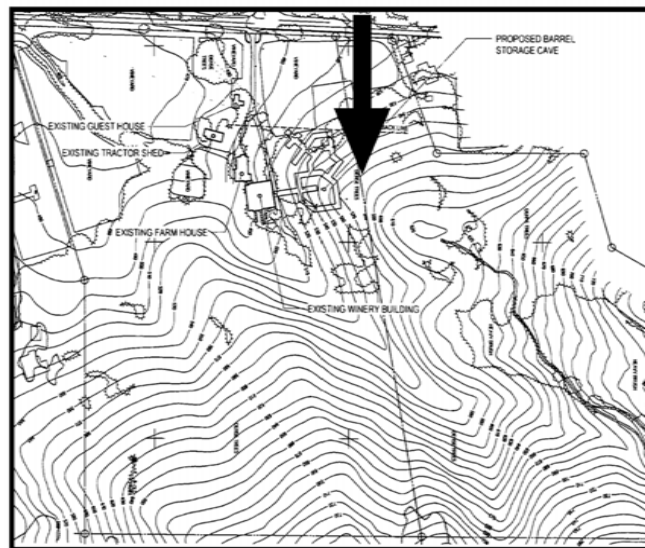
One key aspect of this new power was the ability to limit the amount of development on a legal parcel. Another was that the creation of legal parcels could be regulated by the local agency within whose jurisdiction the land was located. In the

unincorporated areas of Napa County all parcel divisions were subject to regulation beginning March 4, 1972. Creation of legal parcels, i.e. those that could be developed and receive a building permit, now required either an approved parcel or subdivision map or a lot line adjustment.

<https://www.countyofnapa.org/1209/Creating-New-Parcels>

Supporting Documents D to the Application, prepared by Ron Cox, represents that the land in question is one 44.82-acre parcel assigned APN 021-400-002. This is inconsistent with the County's records, and without legal foundation.

In an earlier submission Mr. Cox presented the property lines in a very different manner by, as shown below, unilaterally moving the parcel boundary (indicated by the arrow) between APN 021-400-002 and APN 021-420-027 substantially north to encompass a cave development. The motivation for this earlier misrepresentation is obvious: the prior owner, the Clarks, had in 1979 made a successful application (U-697879) for reactivation of a winery on APN 021-400-002. By misrepresenting the property in the cave permit applications, the Applicants were able to avoid a new Use review.



Further lack of clarity on this subject was provided by a report prepared by the Applicants' expert Monk & Associates, submitted by Planner Donald Barrella "as additional information" in advance of the October 2019 Commission hearing. The "Project Site" outline was drawn without apparent reference to the APN locations, although the legend misleadingly implies that the image complied with that information.

3 Cont.



3 Cont.

Applicants and the County are well aware of the distinct legal nature of their various parcels, but neither raised the issue to the attention of the Commission during either of the two earlier Commission proceedings, nor before the Board of Supervisors.

For limited examples, in 2007 the Applicants wrote: “We are the owners of this adjacent parcel and the house pad contains our existing primary residence.”²

In 2013 the Applicants submitted a Williamson Act contract application, which was subsequently withdrawn. In November 2013 Planner Barrella wrote a memo to record/file explaining why. “Based on the current available information and given contracting rules and peripheral subdivision issues the County does not have the ability to proceed with two contracts for the subject APNs (i.e. one contract covering each individual APN), and can only offer one contract for the property in question at this time. ... The applicant/owner has been advised ... to clarify the parcel/property status, and has also been directed [to] County Code Section 17.02.320 for what constitutes a legal lot.”

The impact of this issue herein is clearly seen in the Napa County GIS image following. The red line indicated by the arrow represents the property boundary on the map. Above the line APN 021-420-027 contains the crush pad and agricultural storage building, while APN 021-400-002, with the “carport,” “main house,” 2nd Dwelling and ADA washroom are below the line.

4

² The record is contradictory as to whether the Bremers remain resident on APN 021-400-002. See the discussion re W07-00895, in particular the topo plan of Napa Vineyard Engineering.



Cover Napa GIS parcel report

It is important to distinguish between two buildings. Staff writes: “these improvements include the winery building constructed in 1880, the residence constructed in 1930 (also known as -aka- the Farmhouse). Other denominations for the second structure include the “winery office” which tends to become confused with the “winery building.” Given to the uncertainty of nomenclature and the building’s origin story discussed below, we will refer to the building under the blue dot herein as “Frankenstein,” or “Frank” for short.

The square building to Frank’s immediate right is the winery building, while at the top right is the Ag. Storage Building. The long amber colored rectangle to the lower left is the bocce ball court, with the “carport” at its right end. The small building at the junction of the “V” of the driveways on the left is the 2nd Dwelling.

The Applicants could have consolidated the properties, lot line adjusted, or simply filed the Application for both parcels. They could have filed a second application, and consolidated. They could have sought leave to amend the Application. Instead, with the assistance of the planning department, Applicants created a new file, P20-0143, for which there is no application, no prior proceeding, and no hearing before the Board of Supervisors. The absence of full and proper notice of the proposed hearing compounds the impropriety.

Without waiving the aforesaid objections, and in the interest of judicial efficiency, Water Audit will comment on the only proceedings to date, in P19-0153.

2. A “finding of facts” requires a hearing of “evidence”

A Planning Commission hearing is quasi-judicial in nature. This Commission has a duty to hear and weigh evidence and make a finding of facts at the conclusion of its deliberations.

“Although such boards do not have the character of an ordinary court of law or equity, they frequently are required to exercise judicial functions in the course of the duties enjoined upon them. In *Robinson v. Board of Suprs.* (1979) 16 Cal. 208 the court says: ‘It is sufficient if they are invested by the legislature with power to decide on the property or rights of the citizen. In making their decision they act judicially

4 Cont.

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whatever may be their public character.” Nider v. Homan (1939) 32 Cal. App. 2d 11, at 16; 89 P.2d 136.

Courts have held that substantial evidence must support the award of a variance in order to ensure that legislative requirements have been satisfied. See Siller v. Board of Supervisors (1962) 58 Cal.2d 479, 482 [25 Cal.Rptr. 73, 375 P.2d 41]; [Bradbeer v. England (1951) 104 Cal.App.2d 704, 707 [232 P.2d 308].

Only *admissible* evidence may be considered. To be admissible, evidence must be *relevant, material, and competent*. Any decision based on inadmissible evidence would be fundamentally unfair.

The only *relevant* and *material* evidence in this proceeding is that which pertains to the violations now in consideration. Discussion and testimony about rock walls and ornamental bridges is now irrelevant and immaterial.

Evidence is considered "*competent*" if it complies with certain traditional notions of reliability. For example, "hearsay evidence" is evidence of a statement that was made other than by a witness testifying at the hearing. Except as provided by law, hearsay evidence is inadmissible. Evidence Code § 1200. Witnesses must not speculate or testify without personal knowledge. If a witness does not have personal knowledge of a matter, testimony on that matter is to be excluded. Evidence Code § 702.

Both the oral and written statements by Mr. Monk and Mr. Blake regarding the opinions of Department of Fish and Wildlife employee Garrett Allen were inadmissible hearsay and should not have been accepted by the Commission as evidence. No evidence was given that Mr. Allen was unavailable to testify, or of any effort made by the Applicant to secure his participation. Mr. Allen could have offered his opinion, and it would have been relevant, admissible and competent, but Messrs. Monk and Blake could offer only *hearsay* of his opinions.

The result was predictable. As discussed in an email sent to the Commission and counsel on June 22, 2020, Mr. Allen characterized the testimony tendered by Mr. Monk as "inaccurate and misleading." He wrote: "I have never visited the Bremer Family Winery that is the subject of the letter and the Planning Commission meeting (project site) either alone or with a warden ... I told Mr. Monk that I was not involved in or familiar with this matter..."

Mr. Gilbreth's comments recorded in the September 18 hearing transcript at pages 24:9-33:9, 39:19, and in the October 16 hearing transcript at pages 15:11-22;13 and pages 50:11-53:17, *inter alia*, are inadmissible as evidence and cannot be the basis for a finding of fact. Setting aside the issue of veracity, Mr. Gilbreth is incompetent to testify.

"It is undeniable that the argument of counsel does not constitute evidence." Beagle v. Vasold 65 Cal.2d 166, p. 176. "While an attorney may argue all reasonable inferences from the evidence [Citation omitted] it is misconduct to argue matters not in evidence or to assert as fact matters allegedly within counsel's personal knowledge." Malkasian v. Irwin, 61 Cal.2d 738, 745-747 [40 Cal.Rptr. 78, 394 P.2d 822]; 4 Witkin. Cal. Procedure (2d ed.) pp. 2996-2997.)

This record reflects the real danger of placing weight on the argument of counsel. For example, in response to a commissioner's inquiry Applicants' counsel David Gilbreth avowed:

"Anna, we effectively have incredible compliance with the settlement agreement. On the winery site, we've obtained just about every permit and finalized just about every permit. ... I can't tell you because of the workloads, but probably within 60 to 90 days the last remaining items will be obtained and finalized on the winery site."
(September 18 Transcript at 26:1-27:4)

Mr. Gilbreth represented that the issues addressed in the Application were the last remaining matters in a long process of remediations. September 18 Transcript at 5:25:25; October 16 Transcript at 7:16:6; 7:19:4; 7:29:9.

5 Cont.

Mr. Gilbreth is the only source for this testimony, and his comments may have influenced the October 16 decision, but the statements of Applicants’ counsel do not accord with the County’s records which show that numerous and significant permits remain open.³

Evidence Code 1523(a) states “Except as otherwise provided by statute, oral testimony is not admissible to prove the content of a writing.” Evidence Code 1521(a) states in part: “The court shall exclude secondary evidence of the content of writing if the court determines either of the following: (1) A genuine dispute exists concerning material terms of the writing and justice requires the exclusion ...”

County staff *knew or should have known* this representation by Applicant’s counsel was false. Th Commission sought confirmation from County counsel on this subject, but the inquiry was evaded. Staff continues to remain silent on the outstanding permits, allowing the Applicants’ misrepresentations to be uncorrected on the record. This fact strongly implies that staff has become an advocate for the Applicants at the expense of their primary duty to promote the general welfare of Napa residents.

LEGAL AUTHORITY

Through Government Code § 65800 et seq. the Legislature conveyed to the county the authority to adopt regulations and ordinances to promote the general welfare of the State’s residents, while providing that the county’s may exercise the maximum degree of control over zoning matters. Government Code § 65101 states in part: “The legislative body [i.e. the Board of Supervisors] may create one or more planning commissions each of which shall report directly to the legislative body.”

The Napa County Planning Commission performs the function of a planning agency. Its five members are each appointed by the supervisor representing one of the counties’ five districts for a term that expires one month after the appointing supervisor is no longer in office.

Notwithstanding the State’s sweeping assignment of powers, the County remains subordinate to the control and direction of the senior levels of government. Napa Ordinances Title 16 and Title 18 were required to conform the County to state law. The state endows the highest priority on fish and wildlife protection and conservation. “The Legislature finds and declares that the protection and conservation of the fish and wildlife resources of the state are of utmost public interest. Fish and wildlife are the property of the people, and provide a major contribution to the property of the state ...” (Fish and Game Code § 1600) This statement is one of the foundations of Water Audit’s mission, both generally and herein.

Napa County Ordinance (Ordinance) § 18.108.030 states in part: “‘stream’ means any of the following: 1. A watercourse designated by a solid line of dash and three dots symbol on the largest scale of the United States Geological Survey maps most recently published ...” Accordingly a “stream” passes through the Applicants property.

³ See for example the following open permits and their status: P19-00447 Review Process; B19-01695 (Commercial) Review Process; B19-00559 (Commercial) Record on Hold; B19-00435 (Commercial) Review Process; P16-00271 (ECP) Resubmittal; P11-00317 (ECP) Approved; W09-00883 Pending; W09-00096 Pending. In particular see E-19-00174 for installation of an outdoor sink waste line (Residential): “This permit is NOT VALID until Building Permit # B19-00513 is issued.” There is no record that B19-00513 has ever been issued.



Ordinance § 16.04.040 declares the County's intent to, *inter alia*, control the alteration of stream channels.

A 'riparian way' is proximate to the stream flowing through the subject property. Ordinance § 16.04.010 states a County finding that riparian vegetation "is a valuable natural resource ... [many] wildlife species, particularly birds, live only in riparian cover."

Ordinance § 16.04.050 lists five County riparian objectives:

- A. Preserving fish and game habitats;
- B. Preventing or reducing erosion;
- C. Maintaining cool water temperature;
- D. Preventing or reducing siltation;
- E. Promoting wise uses and conservation of woodland and wildlife resources of the county.

Ordinance § 16.04.060 provides that the methods "of preserving riparian cover include regulating by permit all development activities within riparian zones."

Ordinance § 16.04.750 (B) prohibits any facility or structure within ten feet from the top of a stream bank.

Ordinance § 16.04.770 states: "No structure or facility shall be constructed, located, extended, converted *or altered* without full compliance with the provision of this chapter ... "

Ordinance § 18.108.050 states that that no permit shall be issued "for uses, buildings or purposes which would be in conflict with the provisions of this title." In further emphasis of the preeminence of the subject chapter.

Ordinance § 16.04.780 states in relevant part:

"Neither the issuance of a permit nor compliance with the conditions thereof ... shall act to relieve any person from any responsibility otherwise imposed by law. ... A permit issued pursuant to this chapter shall not relieve the permittee of the responsibility of securing and complying with all other permit requirements and procedures which may be required by any other rule or regulation. "

Ordinance § 18.108.050 sets forth categorical exemptions to the chapter. Review of the provisions disclose that none apply to the instant matter.

Ordinance § 18.108.040 sets forth the requirements in order to qualify for use permit that would allow a discretionary exception to environmental compliance. It provides that "the encroachment, if any, is the minimum necessary to implement the project."

Ordinance § 18.108.040 requires that there be a "project" of some form. The Applicant and the planning department agree that no work whatsoever will occur as a result of this application; however, as a matter of law, a project that does nothing is not a project. A "Project means the whole of an action, resulting in physical impact on the environment," *Bozung v. Local Agency Formation Com.*, 13 Cal.3d 263, 278 n. 16 (Cal. 1975) "[T]he failure to act is not itself an activity, even if, as may commonly be true, there are consequences, possibly including environmental consequences, resulting from the inactivity." *Lake Norconian Club Found. v. Dep't of Corr. & Rehab.*, 39 Cal.App.5th 1044, 1051 (Cal. Ct. App. 2019)

Ordinance § 18.108.040 provides that for agricultural projects there is a second condition of approval: "Impacts on streams and watercourses are minimized, and adequate setbacks along these drainages are or will be maintained. ..."

Ordinance § 18.108.025 (B)(3) sets forth the mandatory minimum setback provisions for streams: 35 feet "from the top of the bank on both sides of the stream ..." It states that construction of main or accessory structures "shall be prohibited within the stream setback areas ... "

There are three exemptions to the rule that would permit the approval of a use permit. None avail the Applicants. The first exemption, Ordinance § 18.108.050, is factually inapplicable. The application did not concern land clearing, fire safety, or any other of the designated exceptions set forth in that provision.

Second, the Applicants are ineligible for an exemption because their proposal does not contain the necessary precondition of maintaining legal setbacks from the stream bank. See Ordinance § 16.04.750 (B) and Ordinance § 18.108.025 (B)(3). The Planning Commission is without authority to grant an exemption if the applicant does not meet that fundamental requirement. Other provisions of building and zoning it may waive, but this minimum protection of environmental interests is mandatory.

Third, although on first glance it seems that the Applicants may qualify under Ordinance § 18.108.025(E) which allows for “installation of stream crossings, recreational roads and equestrian and nonmotorized trails,” that provision is unavailing because it requires “appropriate permits from other state, federal and local use permit requirements,” and that the director determine “that the least damaging alternative has been selected as part of an approved project.” There is no state or federal permit, or evidence that the encroaching buildings are the least damaging alternative.

Ordinance § 18.112.160 provides for mandatory abatement in situations where an encroachment has occurred:

Any building set up, erected, built, moved or maintained, and any use of property contrary to the provisions of this title, shall be and the same is hereby declared to be unlawful and a public nuisance and the county may immediately commence action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof in the manner provided by law, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate and remove such building or use and restrain and enjoin any persons, firm or corporation from setting up, erecting, building, moving or maintaining any such building or using any property contrary to provisions of this title.

Ordinance § 18.144.030 provides it “*shall* be the duty of the director, and other county officials herein or otherwise charged by law with the enforcement of this title, to enforce this title and all of its provisions.” (Emphasis added)

Amongst the most venerable of California’s laws are the Maxims of Equity, otherwise known as the Maxims of Jurisprudence. Intended to integrate the concept of “what is fair and just” with statutory law, the Maxims import moral values into “legal” decisions. The Maxims include “He who seeks equity must do equity.” Applied herein, it is submitted that the Maxims mean that if the Applicants wish to receive relief from the legal constraints that prohibit their conduct, they must be completely and unreservedly truthful to this Commission. As is detailed below, they have repeatedly failed this test.

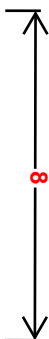
FACTS



*September 18, 2019, Application, Supporting Documents
Aerial View 975 Deer Park Road, St. Helena, CA*

As the predicate foundation for their opinion herein, staff has written: “All of the site improvements subject to this Use Permit Exception application are existing, many of which predate the County’s Conservation Regulations.”

Water Audit’s review of the underlying record has concluded that staff is in error. As will be evidenced below, no structure under consideration pre-dated the Applicants. Ordinance [16.04.770](#) is clear that no building shall be altered without compliance with stream setback requirements. It is not a justification for a current encroachment that there has been an historical encroachment. When a building naturally reaches the end of its useful life, the law requires that any successor building comply with current ordinances. We no longer permit outhouses.



Violation A: The “Ag Storage Barn”

Staff reported:

An approximate 2,200 sq. ft. agricultural barn and associated water tank:
This improvement was constructed in 2013. An Exception to the Conservation Regulations in the form of a Use Permit and a building permit were required. Neither permits were obtained. The applicant has indicated this structure is not used for winery purposes and is solely used as an accessory structure to the vineyards on the property. During a site visit conducted by the Code Enforcement Division the structure was found to be empty. A Use Permit Modification to the existing winery use permit would need to be obtained prior to any uses related to the winery.

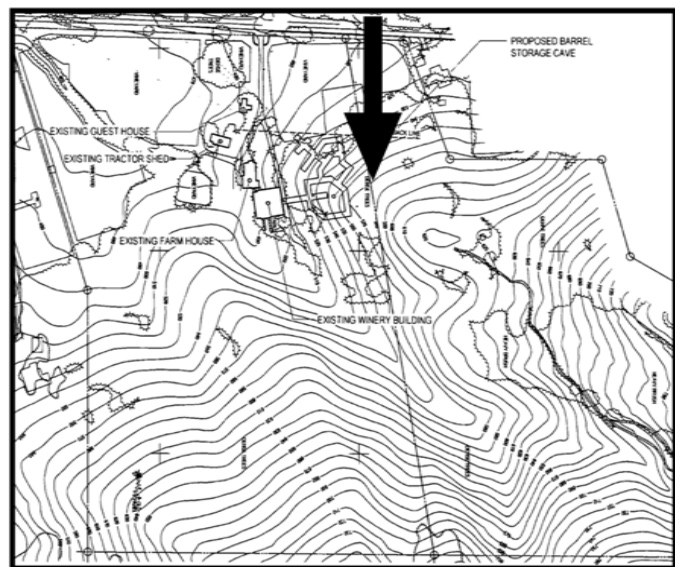


In order for staff's argument to have any merit, the existing building under consideration must be of the same configuration as in 1979. This is a statement of well-established Napa policy:

“To maintain a legal nonconforming status the use of the parcel or structure cannot be abandoned. Abandonment usually refers to a period of time with certain leeway for reconstruction *if the use was discontinued because of a calamity or misfortune*. ... If those uses had been done without permits or contrary to existing zoning at the time they were commenced, the use does not qualify as a legal nonconformity and would have to be discontinued and in some cases torn down.”

Tellingly, the Applicant did not directly image the current Ag Storage Barn in the Application. The substantial stone building, roughly equal in size to Frank, can only be seen by magnification of the background of a photo labeled “#7 - Bridge,” (Supporting Document H).

Close examination of Mr. Cox's drawing submitted in support of the cave development shows the existing winery building, “farmhouse,” (a.k.a. Frank) “tractor shed,” and guesthouse, but NO ag storage. See also a portion of the site plan submitted with P16-00271.



Part of Cox drawing



Part of Site Plan: P16-00271

9 Cont.

Historically, there may have been some form of barn, but the original building is no longer there. There is no evidence that it was recently destroyed by calamity, and there can be no evidence to suggest that the existing building is in the same form. What is in front of the Commission now is a new violation, a monolith snubbing its nose at environmental constraints, waiting for its moment to be turned into an event center.

For the reasons set forth above, Water Audit prays that the Commission exercise Option 2 or 3, remove the encroachment, and reclaim the stream setback.

9 Cont.

Violation B: The Concrete Pad

Staff reported:

An approximate 800 sq. ft. concrete pad: Based on the interpretation of the County aerial photos, this improvement was constructed some time prior to 2002. The County has no records of an approved building permit, an Exception to the Conservation Regulations in the form of a Use Permit, and a modification to the winery use permit, all of which were required. None of the required permits were obtained.

It would seem that this is such a simple and mundane subject that no objection could arise, but that is not the case. Again, the underlying issue to be addressed is saying one thing and doing another, coupled with a problem of following the law.

The first recorded mention of the fermentation tanks was made in a letter by the Applicants to the Planning Commission in support of their effort to build a wine storage cave, P07-00654. They wrote in part:

Moving barrel storage from the exiting winery building to the caves will free up the existing winery building. This allows us to move inside our fermentation tanks that are currently stored outside giving the winery a neater appearance and improve the energy efficiency of the tanks.

The approval of the cave permit was in some part based upon the representation of some public benefit in a "neater appearance." The environment would benefit in some measure by having a few more square feet of permeable soil. Having obtained the permit, the Applicant unilaterally withdrew the offered benefit, while at the same time expanding its cave development by from 12,000 to 16,000 feet. To ratify this conduct is to encourage repetition.

The RSA+ Encroachment Plan shows that Applicants have more than adequate land on which to put their enterprises without infringement on the riparian way. It is not essential that this concrete pad be located where it is, and it would not be there had the Applicants not violated the law. Additionally, while it is acknowledged that driveways may be paved to suppress dust, that does not authorize the extensive concrete paving *in the riparian way* that is proximate to the subject pad. Although the planning department has abandoned this subject, that fact is just further evidence that the planning department has abandoned its protection of the public trust.

For the reasons set forth above, Water Audit prays that the Commission exercise Option 2 or 3, remove the encroachment, and reclaim the stream setback.

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Violation C: The Main Dwelling/Farmhouse/Office (“Frank”)

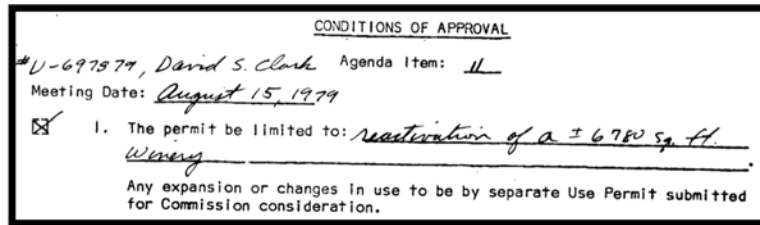
Staff reported:

An approximate 150 sq. ft. two story addition to the main dwelling (a.k.a. farmhouse/office building): The ground floor addition was permitted through building permit #B05-01249 and finalized by the Building Division on September 1, 2006. The second story was permitted through building permit #B08-00074 and finalized by the Building Division on September 15, 2011. An Exception to the Conservation Regulations in the form of a Use permit and a modification to the winery use permit should have been required by staff prior to the approval of the building permit for the addition to the winery. However, that requirement was inadvertently omitted by staff.

Staff further reports:

“[A]dditions to the residence/farmhouse (constructed 2005 and 2008 under B05-01249 and B08-00074 ...” “February 2008, application #P08-00088-VMM for a Very Minor Modification to Use Permit #U-697879 was approved by the Director to repair and expand 572 sf of porch and deck, replace roof and siding, and add side porch to the dwelling/farmhouse. The building permit for these improvements (B08-00074) was issued in advance of the Very Minor Modification⁴ approval.”

The reference to U-69789 pertains to the previous owners’ application made in May 1979 to reactivate the winery. The permits states:



The first permit, B05-01249 states it was issued for the addition of a deck and re-siding the “2nd DWLG” with cedar for a total cost of \$5,000. Although not disclosed to the Planning Commission, the work is revealed in the background of an image provided to the County by the Applicants to obtain a conservation regulations applicability determination. This was not a permit that related to Frank.



⁴ A “very minor modification” was formerly defined by Ordinance 18.124.130(C) as being less than ten percent.

B08-00074 (and a Permit Alternation Request) were commercial building permits issued for the “winery office.” This was consistent with U-697879, which concerned *only* the winery, and not Frank. Acreage was originally shown as “26 +/-” then on the Alteration Request as “46.” Planning permit P08-00088-VMM is shown on the parcel report as being applied for on February 13, 2008, two weeks after B08-00074.

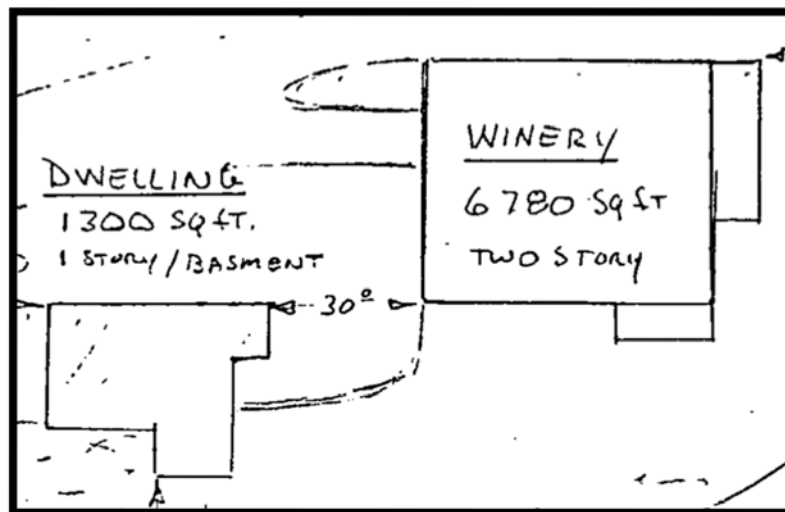
B08-00074 was filed for a roof replacement, and a total of 572 square feet of front porch, back deck and side porches to be added to the “winery office.” The Conditions of Approval state that the “permit shall be limited to: Repair and Expansion of 572 square feet of porch and deck to the exterior of the winery building with no change to marketing plan or production activities.” A roof was not included in the permit, although clearly it was part of application and the proposed construction.

Ordinance 18.124.130 provides in part:

[T]he zoning administrator shall not consider or approve a minor modification if the result of the approval of the requested minor modification would result in any structure or the aggregate of all approved structures being increased more than twenty-five percent in size or one story in height based on the size allowed under the approved use permit.

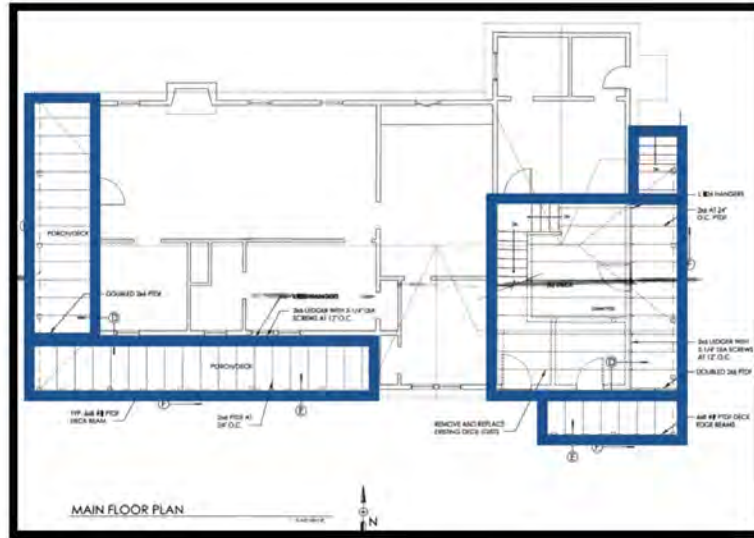
B08-00074 does not discuss the substantial two-story addition to Frank shown in the P08-00088-VMM planning permit application. The notation “B08-0074” is visible in reverse on the last page of the P08-00088-VMM drawing set, but there is no copy of the other side of the page. Further, careful examination reveals that substantial portions of the original have been blocked out on the file copies.

The images of Frank submitted with the Application do not fully encompass the scope of the addition. However, by careful reference to the drawings submitted in support of P08-0088-VMM, a better understanding is possible. This appears to be yet another variation of what is popularly known as “the shell game.” A permit for a 572 square foot addition to the 6,780 square foot winery building qualified as a “very minor modification.” When the Applicants purchased from the Clarks, Frank was only 1,300 square feet. To avoid a Use reviewt, the Applicants applied for a “very minor modification” permit to add onto the “winery building,” and then actually performed an addition to Frank, a completely different building.



11 Cont.

The notable absence of any dimension on the drawings associated with P08-0088-VMM does not assist in reviewing this matter, but casual reference to the new construction relative to the existing structure shows the deception. Mentally adding on the ground floor work confirms the above calcolous. Realty reports indicate that the present residence is 1,754 square feet, an increase of 454 square feet, or 35%. It would appear this number is exclusive of the ground floor, which would bring the net addition to approximately 44%.



Staff reports that in “September and October 2016, Notices of Violation were issued under Code Enforcement #CE16-00251⁵ for... alteration of the dwelling/Farmhouse including use as winery office...”

The left following image, blown up from the Application Supporting Document Photo Documentation, is the only useful shot of Frank in the Application, but it does not fully encompass the scope of the addition. To broaden the impression, the remaining images were copied from the Bremer Family Winery website, from Yelp reviews and from the website Napa Wine Project. They show the other side of the building, both literally and metaphorically.



Application, Frank, rear view



Image Napa Wine Project

⁵ This document is no longer in the web posted public record.

11 Cont.



Frank, front view, Image Napa Project



Images: <https://www.bremerfamilywinery.com>

11 Cont.



<https://www.bremerfamilywinery.com>

Image Napa Wine Project

Notwithstanding terms in the Settlement Agreement or the restrictions in the permits,, Yelp comments indicate that Bremer wine cave touring remains popular with the public. Chris L. from Oakland wrote: “Tim showed us the range of wines and walked us through the **caves** and grounds - so cool, tempted to join their wine club as they have monthly get-togethers for members.” Elliot K. from Santa Rosa: “After our fantastic tasting, Tom took us through the beautiful **cave** they have and it was just a cherry on top.”

Strangely, it seems that there may be yet another building permit issued in respect to Frank. B06-01434 was issued for the stated purpose of rehabilitation of an “ag storage.” There is no evidence of this work being performed aside from a note on the parcel report, but it’s true purpose may have been revealed by a letter from one of the Applicants. “We are close to completing the project listed above. We have only the roof structure to finish before the job is complete. We have been waiting on some specialty lumber which we are expecting shortly.”

Common sense would cause one to wonder if “specialty lumber” was actually utilized on an ag building, particularly given the fancy new roof line shown on P08-00088-VMM. Alternatively, the work may have been performed on the “carport” as part of its conversion to an outdoor kitchen and a catering center. Competent testimony from an Applicant could resolve the confusion.

Of the four identified violations Frank is the only one that *could possibly* have qualified under the Ordinances if timely and proper application had been made, although it should never have been permitted as a “very minor modification” to a different building. But as timely application was not made, and the Applicants have unclean hands, the remedy is clearly stated in Ordinance § 18.112.160: “abate and remove such building.”

For the reasons set forth above, Water Audit prays that the Commission exercise Option 2 or 3, remove the encroachment, and reclaim the stream setback.

Violation D: The Restroom

Staff reported:

An approximate 100 sq. ft. restroom: The restroom was permitted through building permit #B08-01030 and finalized by the Building Division on January 14, 2013. An Exception to the Conservation Regulations in the form of a Use permit and a modification to the winery use permit should have been required by staff prior to the approval of the building permit for the addition. However, that requirement was inadvertently omitted by staff.

This subject is a further example of the Applicants making a representation to the County, obtaining the result desired, and then doing the opposite of what was originally promised.. The Applicants wrote: "The existing winery waste system/leach fields and tanks will not be impacted by this cave addition. We are not increasing production. We are not adding any bathroom facilities. There will be no additional sewage waste."

At the end of June 2012, the Applicants applied for a permit to construct an ADA compliant restroom. This application was made in the form of a permit alteration request in respect to B08-01030, the permit issued to construct the wine cave surreptitiously on APN 021-420-027. The permit had been closed a year earlier. The record of the permit does not indicate that the County was told of the proposed location, or inspected the work as it was performed.

The restroom was constructed on the edge of the stream bank, in the most ecologically offensive location on the site.



Ordinance § 16.04.750 (B) prohibits any facility or structure within ten feet from the top of bank. If the Planning Department were to properly apply the Ordinance, they could not have approved the restroom..

The Applicants own a great deal of land; the riparian way is very small. The symbolism implicit in this violation is obvious and intolerable. The Applicants and their guests are literally sitting on the edge of a blue line stream and defecating in the riparian way.

For the reasons set forth above, Water Audit prays that the Commission exercise Option 2 or 3, remove the encroachment, and reclaim the stream setback.

Bonus Violation E: the “carport” or “ag shop” or “tractor shed” or “catering portal.”

The Planning Department has, without explanation, exercised its “discretion” to not put several additional violations before the Commission. “Staff has clarified that the components of the application shown as deleted above either pre-date the Conservation Regulations or were previously entitled and therefore not subject to the Use Permit Exception Request.”

During the course of the Applicants ownership this multi-named structure has changed from the classic “pole barn” type structure pictured below to a rather grand rock and concrete structure, complete with fireplace, outdoor kitchen and bocce ballcourt.



2002



2013



2019

Once again, it is useful to have a second perspective. In the view of the other side of the structure that follows one can see the associated outdoor kitchen, bocce ball court, and wedding venue. The chimney in the left of the image can be seen above the roof in the preceding images. One can easily image the catering vans backing up to the carport just before the festivities begin. To suggest that this structure is equal to the pole barn ...



13 Cont.

Fifty years ago, the Ordinances had not been enacted. Water Audit concedes that the pole barn pre-dated the Applicants, and if it still existed it would be grandfathered. But the original building does not exist, and the outdoor kitchen is illegal where it is. Clearly the “carport” was “altered” by the Applicants, and planning review should have occurred. The Applicant has attempted to gloss this over, and the Planning Department has fully collaborated. The structure is a perfectly admirable building if it were not built in a riparian way.

The Ordinances provide for environmental remediation when a structure reaches the end of its useful life. The Ordinances do not allow the owner of a grandfathered infringement to double down on the offense, and yet that is exactly what happened here.

For the reasons set forth above, Water Audit prays that the Commission exercise Option 2 or 3, remove the encroachment, and reclaim the stream setback.

Violation F: “Outdoor Kitchen Sink”

It seems appropriate to end this comment by throwing in the kitchen sink. Peripheral to the conversion of the carport into a catering hub, the sink waste line was permitted by [E19-00174](#). Improperly located in the stream setback it should not be present any more than the adjacent building.

14

Although it is minor work, and apparently complete, the permit has not been closed because on its face it states that: "This Permit is NOT VALID until Building Permit B19-00513 is issued." There is no record of permit B19-00513. This is not the only anomaly in the record.⁶

For the reasons set forth above, Water Audit prays that the Commission exercise Option 2 or 3, remove the encroachment, and reclaim the stream setback.

CONCLUSION

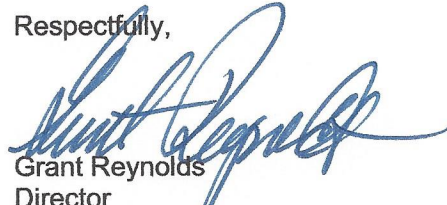
The Applicants motivation is obvious: maximization of their investment. They apparently have no particular affection for the riparian way, and the law does not compel them to have one. The law only provides what they may do, or may not, and their only duty is to obey the law.

The planning department has a different role. They should apply the law to the facts and come to a fair and legal recommendation. It is not proper for a public employee to obfuscate. It is not their job to act as an advocate for the Applicants. There is a universe of highly compensated consultants available for that task. The planning department's role is to act as the public's advocate.

An inquiring mind is inevitably left with the unanswered question of the motive for all of this skullduggery, but Water Audit has concluded that for the moment the motive is of no matter. The Ordinances anticipate and provide precisely for this situation, and they make no provision for motive or party.

It is submitted that it is the duty of the Commission to conform the Applicants conduct to the law. The alternative is anarchy in this realm.

Respectfully,


Grant Reynolds
Director
Water Audit California

Recipient List and Exhibits 1 to 3 Attached

⁶ Note the reiteration of the permit number on the front page of the permit in a broad tipped felt pen, "E19-00174." and then on the following page note the number on the back side of the document: "E18-00174." Once the alteration of the record is observed on the reverse, the alteration on the front becomes obvious. The same situation occurred in B08-00074, where the back of the page did not have its companion front of the page. Penal Code 115 makes it a very serious offense to remove or alter a public record. Why would someone take that risk? Why did any of this happen? It makes no sense, unless the Applicants know that it is the intent of Napa is to repeal Ordinance Titles 17 & 18 by neglect, no matter what means are necessary.

14 Cont.
15

Recipient List

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PC@countyofnapa.org

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Laura.Anderson@countyofnapa.org

Jeffery.Brax@countyofnapa.org

DBGilbreth@Gmail.com

MHackett54@Gmail.com

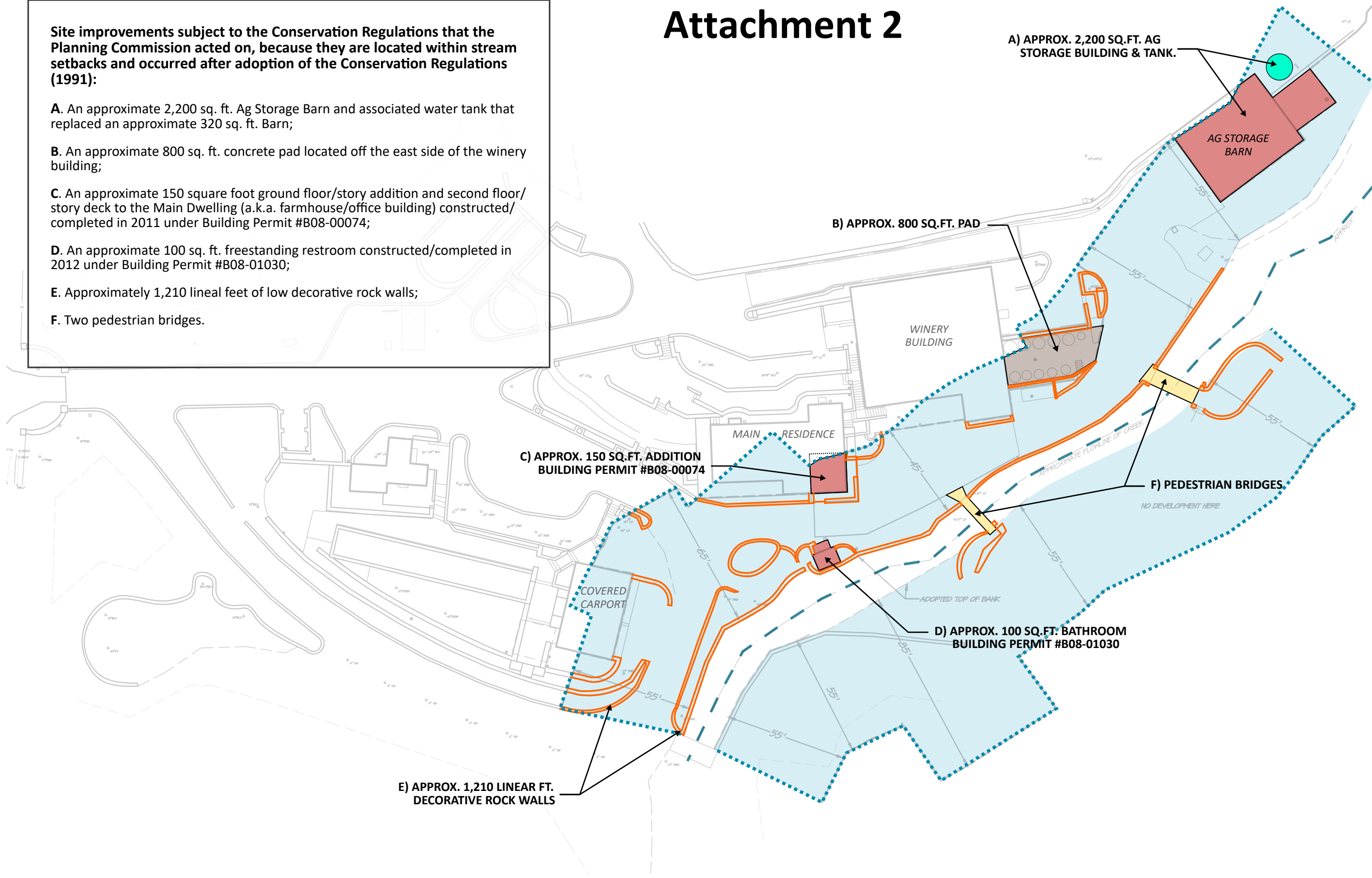
Kathy@KathyLynnFelch.com

General@WaterAuditCA.com

Attachment 2

Site improvements subject to the Conservation Regulations that the Planning Commission acted on, because they are located within stream setbacks and occurred after adoption of the Conservation Regulations (1991):

- A.** An approximate 2,200 sq. ft. Ag Storage Barn and associated water tank that replaced an approximate 320 sq. ft. Barn;
- 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;
- D.** An approximate 100 sq. ft. freestanding restroom constructed/completed in 2012 under Building Permit #B08-01030;
- E.** Approximately 1,210 lineal feet of low decorative rock walls;
- F.** Two pedestrian bridges.



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

AG STORAGE BARN

B) APPROX. 800 SQ.FT. PAD

WINERY BUILDING

MAIN RESIDENCE

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

COVERED CARPORT

F) PEDESTRIAN BRIDGES

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

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



Attachment 3

B08-00074

SHEET INDEX

- COVER SHEET
- 1.1 - ROOF PLAN
- 1.2 - MAIN FLOOR PLAN
- 1.3 - LOWER FLOOR PLAN & SECTION ELEVATIONS
- 1.4 - ELEVATIONS
- 2.1 - CONSTRUCTION DETAILS
- 2.2 - CONSTRUCTION DETAILS

STATEMENT

THE CONSTRUCTION OF THIS PERMIT WILL CONFORM TO CODES IN EFFECT THE TIME THIS PERMIT IS ISSUED, CURRENTLY:

- 2007 CALIFORNIA BUILDING CODE
- 2007 CALIFORNIA MECHANICAL CODE
- 2007 CALIFORNIA PLUMBING CODE
- 2007 CALIFORNIA ELECTRICAL CODE
- 2007 CALIFORNIA FIRE CODE
- 2005 CALIFORNIA ENERGY CODE
- 2005 ENERGY EFFICIENCY STANDARDS
- AND ALL LOCAL AMENDMENTS TO THE ABOVE CODES

PROJECT DATA

APN#: 021-400-002

APP#: B08-00074

OWNER'S REPRESENTATIVE:

LAURA BREMER
THE BREMER GROUP, LLC
975 DEER PARK ROAD
ST. HELENA, CA 94574
(707) 963-5411

DESIGNER'S CONTACT INFORMATION:

GREGORY L. NOWELL, ASLA
NOWELL & ASSOCIATES LANDSCAPE ARCHITECTURE, INC.
2605 STATE STREET
SAN DIEGO, CA 92103
(619) 325-1990

STRUCTURAL ENGINEER:

VAL E. PIZZINI
VAL E. PIZZINI STRUCTURAL ENGINEERING
3000 CLEVELAND AVENUE, #201
SANTA ROSA, CA 95403
(707) 527-9802

RECEIVED
OCT 21 2008
NAPA COUNTY CONSERVATION
DEVELOPMENT & PLANNING DEPT.

DESCRIPTION OF WORK AT EXISTING RESIDENCE:

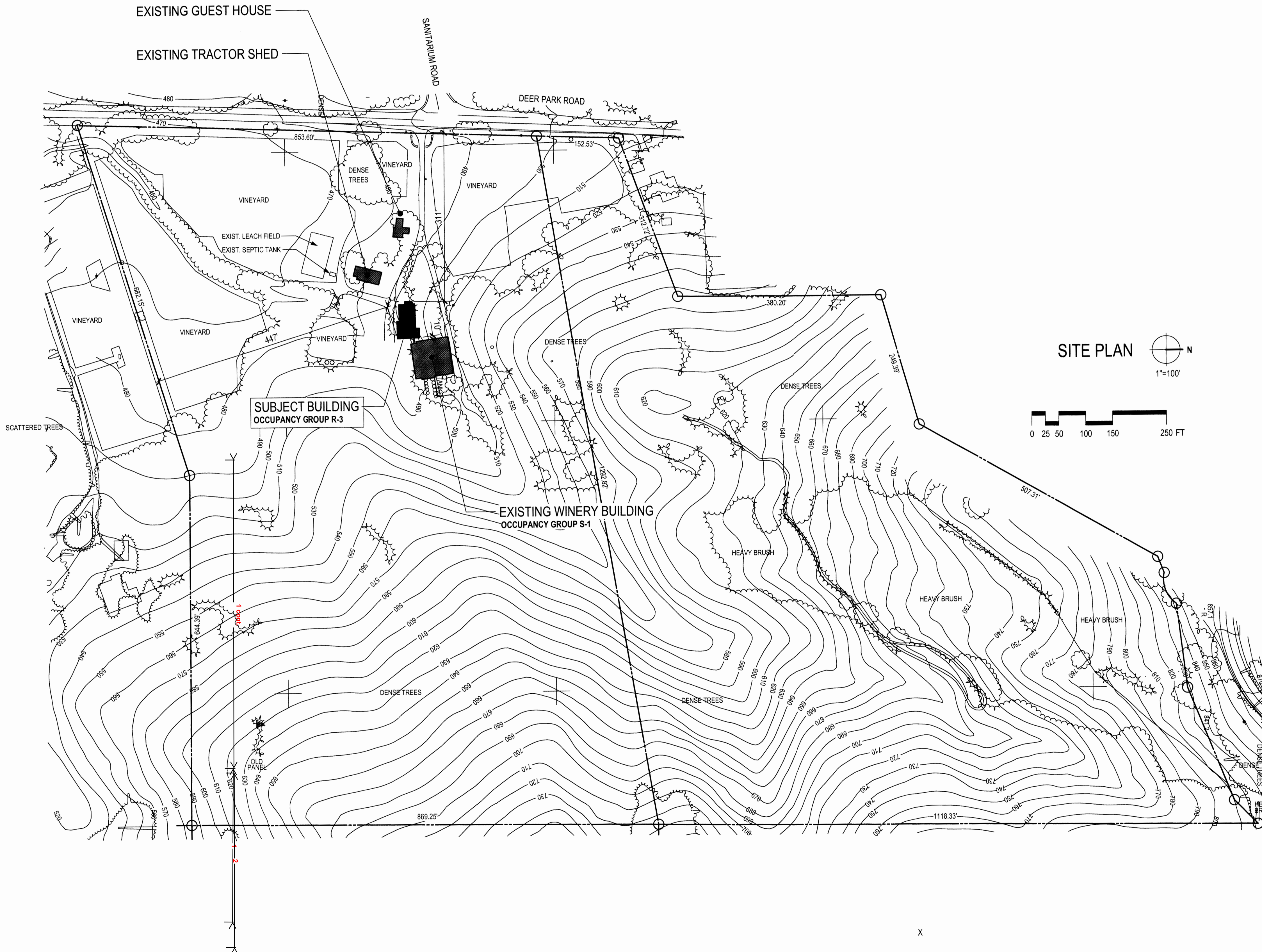
CONSTRUCTION OF NEW COVERED PORCHES AND REPAIR OF EXISTING WOODEN DECKS; REPLACEMENT OF EXISTING ROOFING, AND REPLACEMENT OF EXISTING WOODEN STAIRS. NO INTERIOR WORK IS PROPOSED AS A PART OF THE PROJECT. NO ELECTRICAL, PLUMBING, OR MECHANICAL WORK IS PROPOSED AS A PART OF THIS PROJECT.

EXISTING RESIDENCE - NOT OCCUPIED:

OCCUPANCY GROUP: R - 3
FIRE SPRINKLERS: NO
APPROX. SQUARE FOOTAGE: 2,100 SQ. FT.
APPROX. DECK SQUARE FOOTAGE: 950 SQ. FT.
APPROX. ROOF SQUARE FOOTAGE: 2400 SQ. FT.
STORIES: 2 (1+ BASEMENT)
DESCRIPTION: STUCCO OVER WOOD FRAMED EXT. WALLS & METAL ROOF

EXISTING WINERY BUILDING:

OCCUPANCY GROUP: S - 1
CONSTRUCTION TYPE: V - B
FIRE SPRINKLERS: NO
APPROX. SQUARE FOOTAGE: 7,200 SQ. FT.
APPROX. ROOF SQUARE FOOTAGE: 4,800 SQ. FT.
STORIES: 2 (1+ BASEMENT)
DESCRIPTION: ROCK EXT. WALLS & METAL ROOF



OFFICE SET

Bremer

FAMILY WINERY

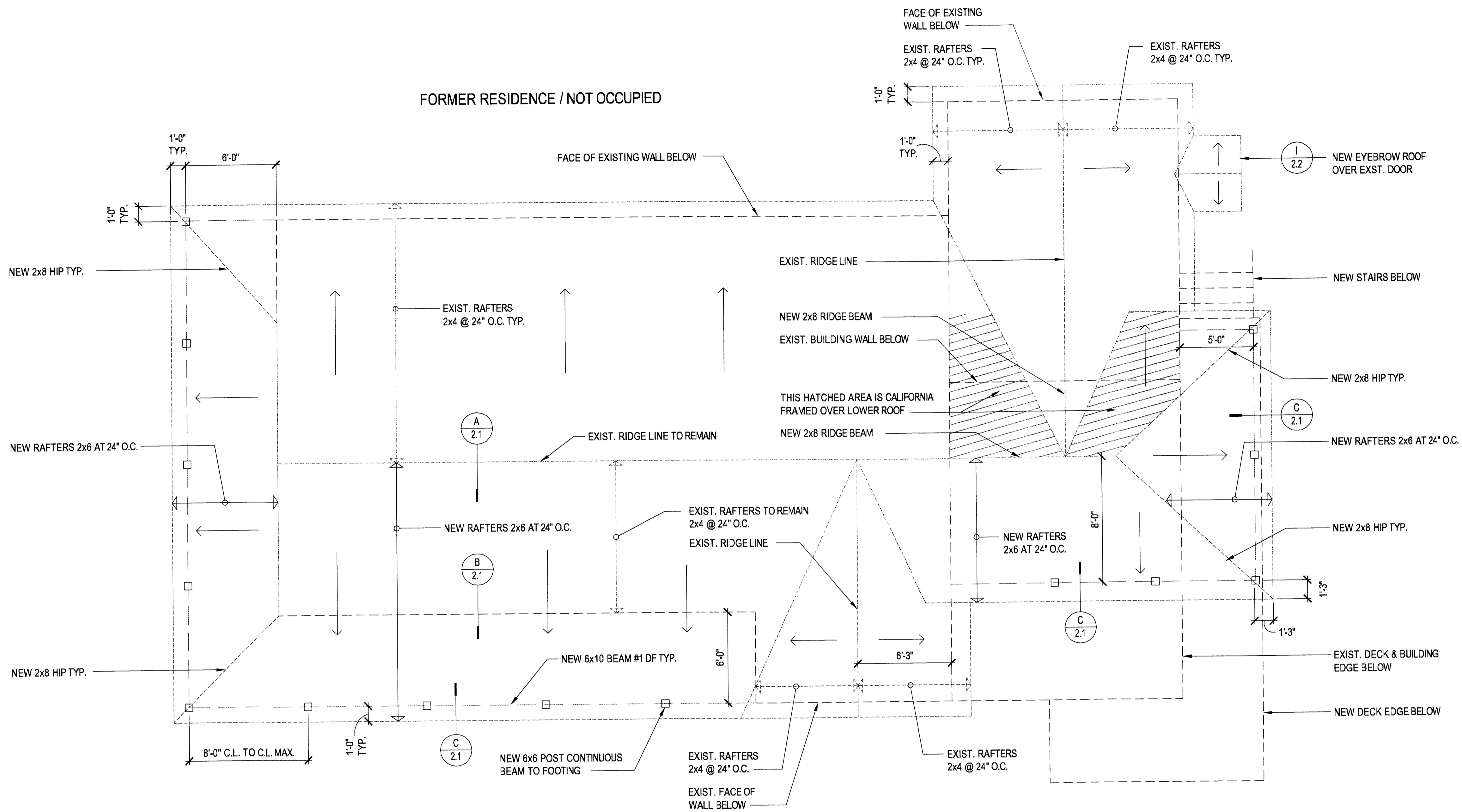
REVIEW FOR CODE COMPLIANCE

Approval of these plans does not authorize or 94574 any omission or deviation from the requirements of state laws or local ordinances. One set of approved plans shall be available on the project site at all times.

By: *[Signature]* Date: NOV 12 2008
No. 08-00074

Napa County Building Department

EXISTING PORCH / DECK REPAIRS & PORCH ADDITION TO EXISTING RESIDENCE



NOTE:

1. LUMBER; ALL LUMBER D.F. CONST. GRADE EXCEPT AS NOTED. ALL EXPOSED LUMBER D.F. CONST. SELECT. ALL 6x AND LARGER D.F. CONST. #1 STRUCTURAL GRADE. ALL LUMBER IN ENCLOSED CRAWL SPACE OVER SOIL TO BE P.T.D.F. CONST. GRADE.

ROOF PLAN

SCALE: 1/4"=1'-0" NORTH

Handwritten signature and date stamp: 10/1/2008

COMPLIANCE FOR CODE COMPLIANCE

THIS DOCUMENT DOES NOT GUARANTEE OR Warrant the accuracy of the information provided herein. The user assumes all liability for the use of this information. The information is provided on an "as is" basis.

Project: _____

Date: _____

Prepared by: _____

Checked by: _____

Approved by: _____

City of San Diego Building Department

2405 STATE STREET, SAN DIEGO, CA 92103
 T 619.325.1970 F 619.325.1977 E MAIL@NOWELLASOCIATES.COM
 LANDSCAPE ARCHITECT
 REGISTERED PROFESSIONAL ARCHITECT
 1999
 STATE OF CALIFORNIA
 ARCHITECT NO. 10000

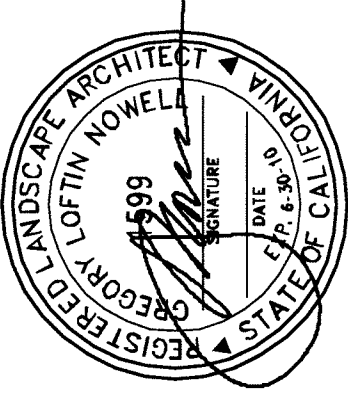
NOWELL & ASSOCIATES LANDSCAPE ARCHITECTURE

BREMER FAMILY WINERY
 EXISTING PORCH / DECK REPAIRS &
 PORCH ADDITION TO EXISTING RESIDENCE

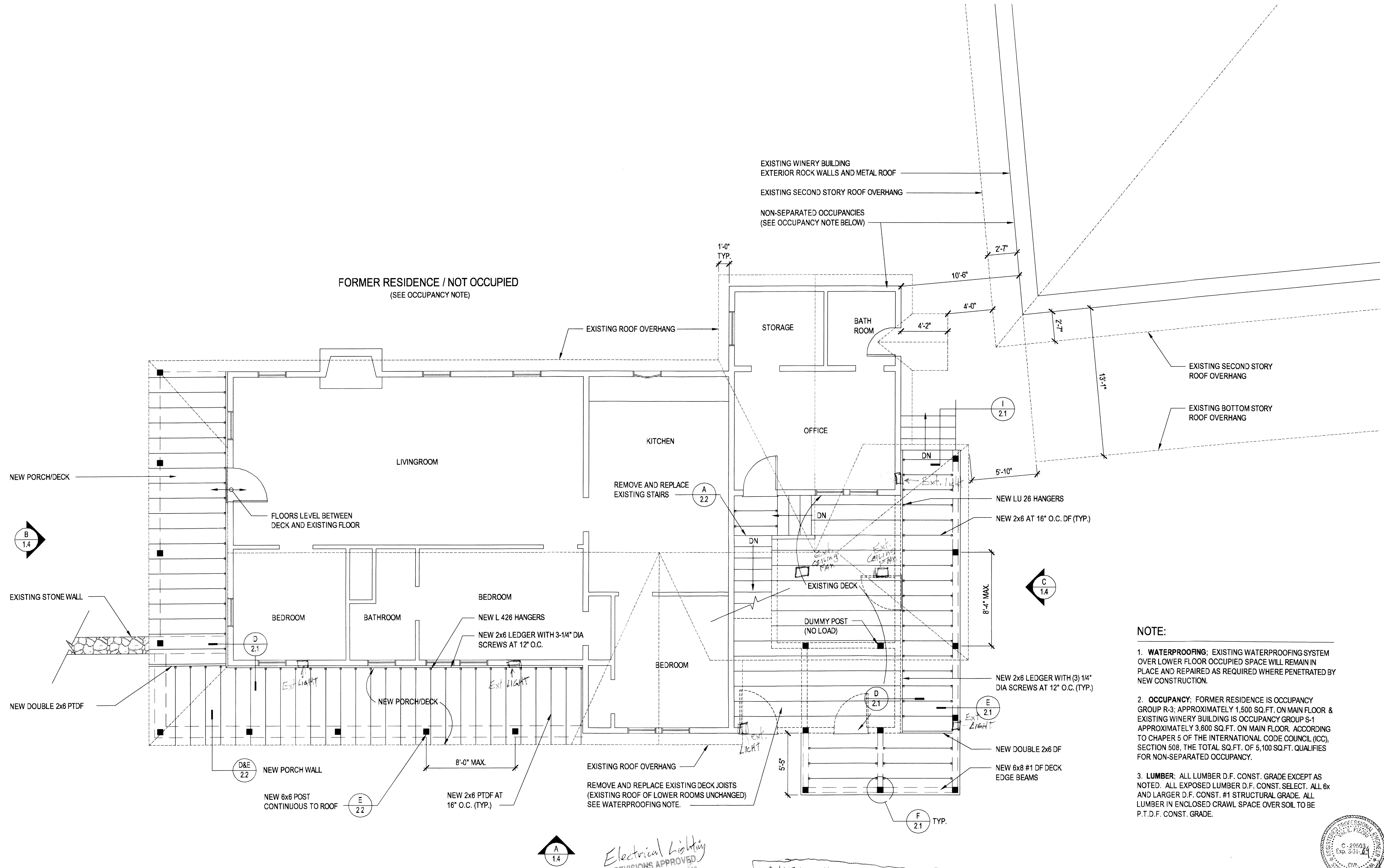
LAURA BREMER
 975 DEER PARK ROAD
 ST. HELENA, CA 94574
 APN: 021-400-002
 APP: 808-00074

JOB: 04030
 DATE: OCT. 1, 2008
 REVISIONS
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ROOF PLAN
 1.1



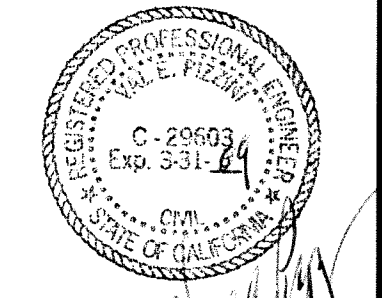
JOB	04030
DATE	OCT. 1, 2008
REVISIONS	
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- NOTE:**
- WATERPROOFING:** EXISTING WATERPROOFING SYSTEM OVER LOWER FLOOR OCCUPIED SPACE WILL REMAIN IN PLACE AND REPAIRED AS REQUIRED WHERE PENETRATED BY NEW CONSTRUCTION.
 - OCCUPANCY:** FORMER RESIDENCE IS OCCUPANCY GROUP R-3; APPROXIMATELY 1,500 SQ.FT. ON MAIN FLOOR & EXISTING WINERY BUILDING IS OCCUPANCY GROUP S-1 APPROXIMATELY 3,600 SQ.FT. ON MAIN FLOOR. ACCORDING TO CHAPTER 5 OF THE INTERNATIONAL CODE COUNCIL (ICC), SECTION 508, THE TOTAL SQ.FT. OF 5,100 SQ.FT. QUALIFIES FOR NON-SEPARATED OCCUPANCY.
 - LUMBER:** ALL LUMBER D.F. CONST. GRADE EXCEPT AS NOTED. ALL EXPOSED LUMBER D.F. CONST. SELECT. ALL 6x AND LARGER D.F. CONST. #1 STRUCTURAL GRADE. ALL LUMBER IN ENCLOSED CRAWL SPACE OVER SOIL TO BE P.T.D.F. CONST. GRADE.

Electrical Lighting
REVISIONS APPROVED
 Approval of this sheet applies to revision only
 See Building Permit B08-00074
 Date 8/3/10 By EB

OUT DOOR Residential Lighting
 High efficacy must be:
OR
 Controlled by a motion sensor
AND
 Controlled by an integral photocontrol, photocontrol not having an override or bypass switch, astronomical time clock, not having an override or bypass switch, or Energy management control system (EMCS) not having an override or bypass switch that allows the luminaire to be always on
 Low efficacy outdoor luminaires may have temporary override switch which bypasses the motion sensing function for up to six hours provided that the override switch automatically reactivates the motion sensor



SCALE: 1/4"=1'-0" NORTH

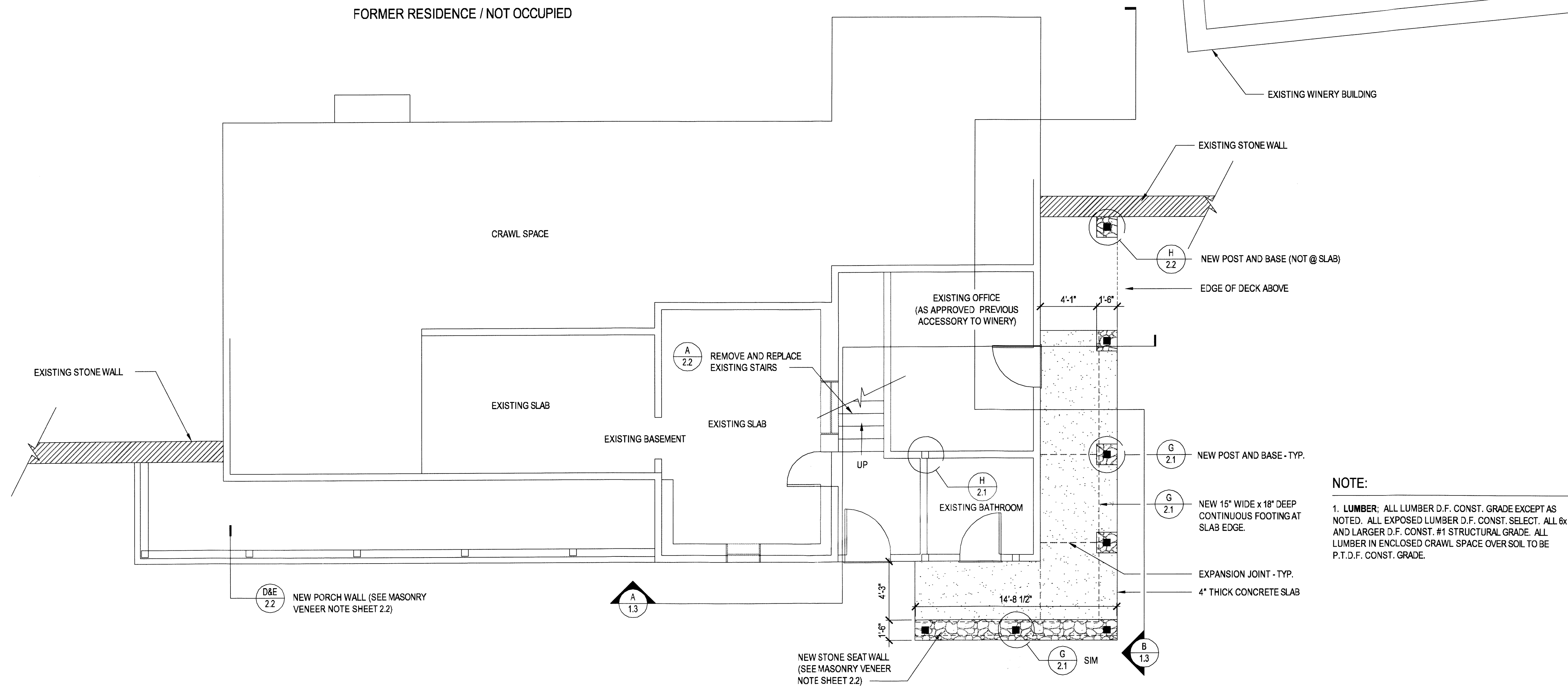
REVIEWED FOR CODE COMPLIANCE

Approval of those listed above shall not be construed as approval of any other code requirements, it shall be the responsibility of the applicant to provide the appropriate code requirements. Only one set of original drawings shall be submitted to the department at all times.

By: _____ Date: _____
 No. _____

Napa County Building Department

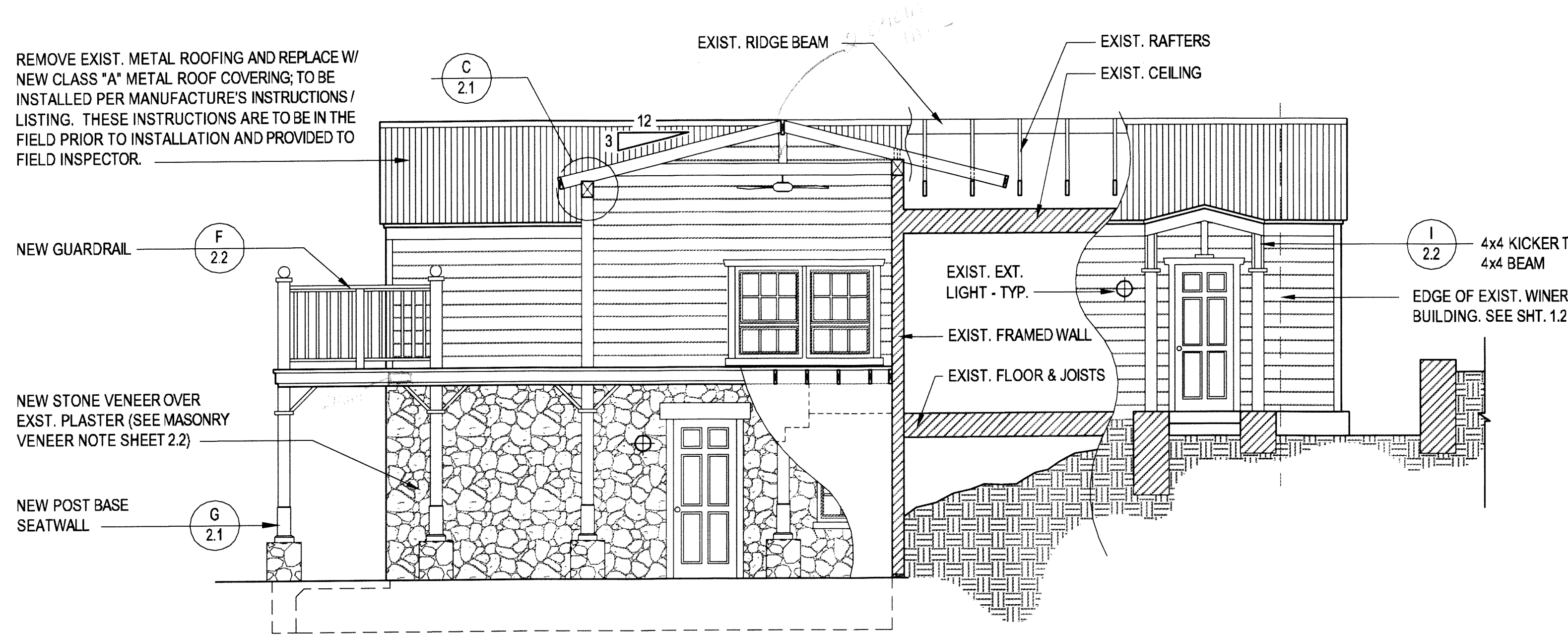
MAIN FLOOR PLAN



NOTE:
 1. **LUMBER:** ALL LUMBER D.F. CONST. GRADE EXCEPT AS NOTED. ALL EXPOSED LUMBER D.F. CONST. SELECT. ALL 6x AND LARGER D.F. CONST. #1 STRUCTURAL GRADE. ALL LUMBER IN ENCLOSED CRAWL SPACE OVER SOIL TO BE P.T.D.F. CONST. GRADE.

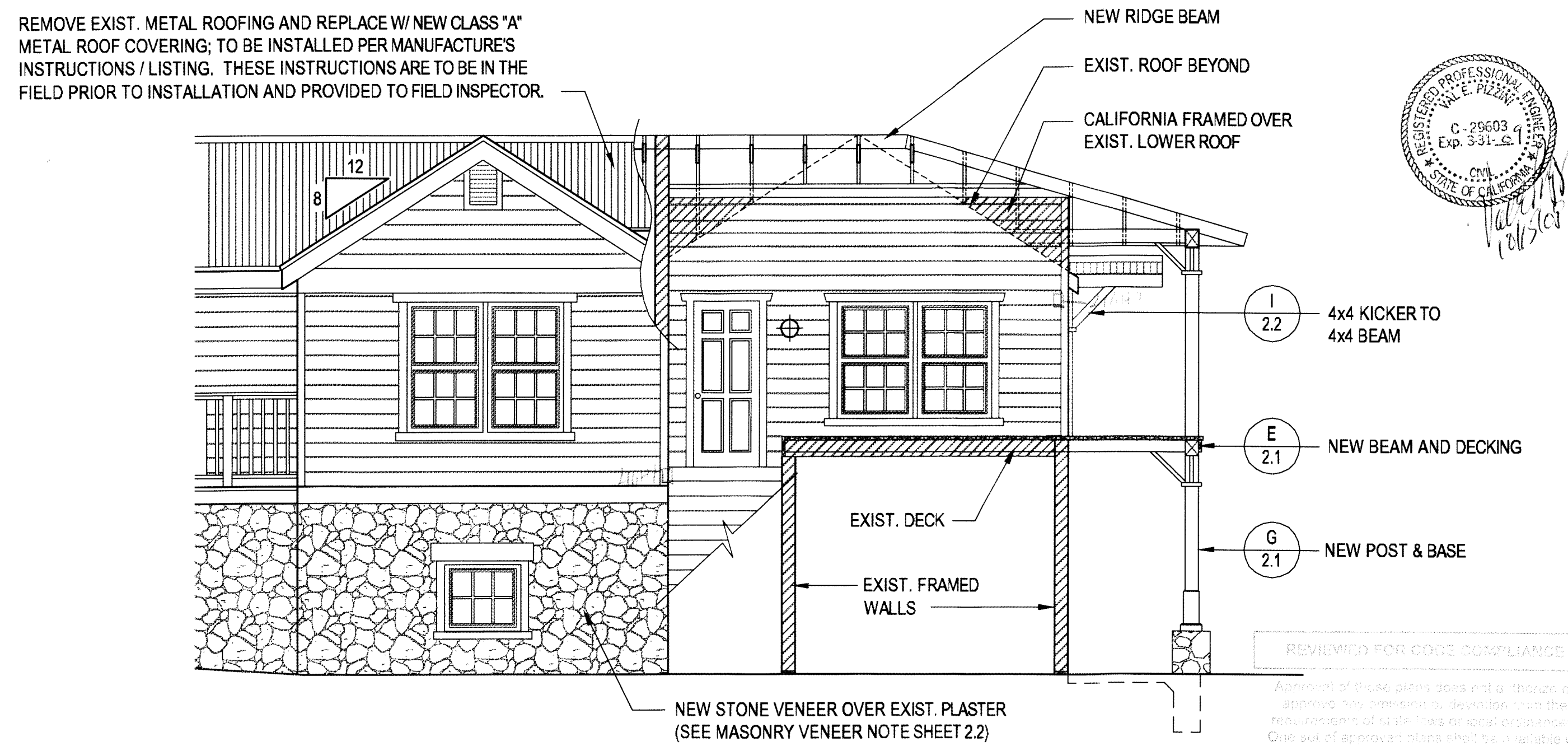
LOWER FLOOR PLAN

SCALE: 1/4"=1'-0" NORTH



EAST SECTION ELEVATION

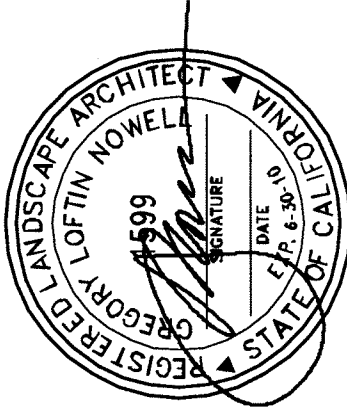
SCALE: 1/4"=1'-0"



SOUTH SECTION ELEVATION

SCALE: 1/4"=1'-0"

REVIEWED FOR CODE COMPLIANCE
 APPROVAL OF THESE PLANS DOES NOT constitute an approval of the design or construction of the project. The responsibility of the design and construction of the project shall be the responsibility of the project owner and the project team at all times.



2805 STATE STREET, SAN DIEGO, CA 92108
 T 619.325.1990 F 619.325.1977 E MAIL@NOWELLASSOCIATES.COM

LANDSCAPE ARCHITECTURE

EXISTING PORCH / DECK REPAIRS &
 PORCH ADDITION TO EXISTING RESIDENCE

BREMER FAMILY WINERY
 LAURA BREMER
 975 DEER PARK ROAD
 ST. HELENA, CA 94574

JOB: 04030
 DATE: OCT. 1, 2008

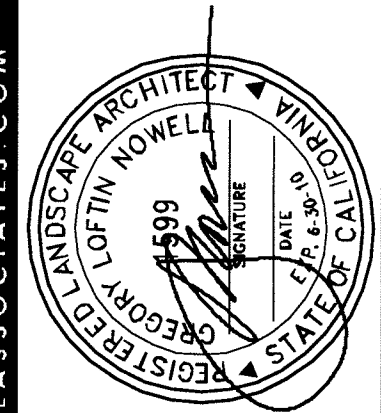
REVISIONS

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LOWER FLOOR PLAN & SECT. ELEVATIONS

1.3

Napa County Building Department



2405 STATE STREET SAN DIEGO, CA 92103
 T 619.325.1990 F 619.325.1997 E MAIL@NOWELLASSOCIATES.COM

EXISTING PORCH / DECK REPAIRS &
 PORCH ADDITION TO EXISTING RESIDENCE

BREMER FAMILY WINERY

LAURA BREMER
 975 DEER PARK ROAD
 ST. HELENA, CA 94574

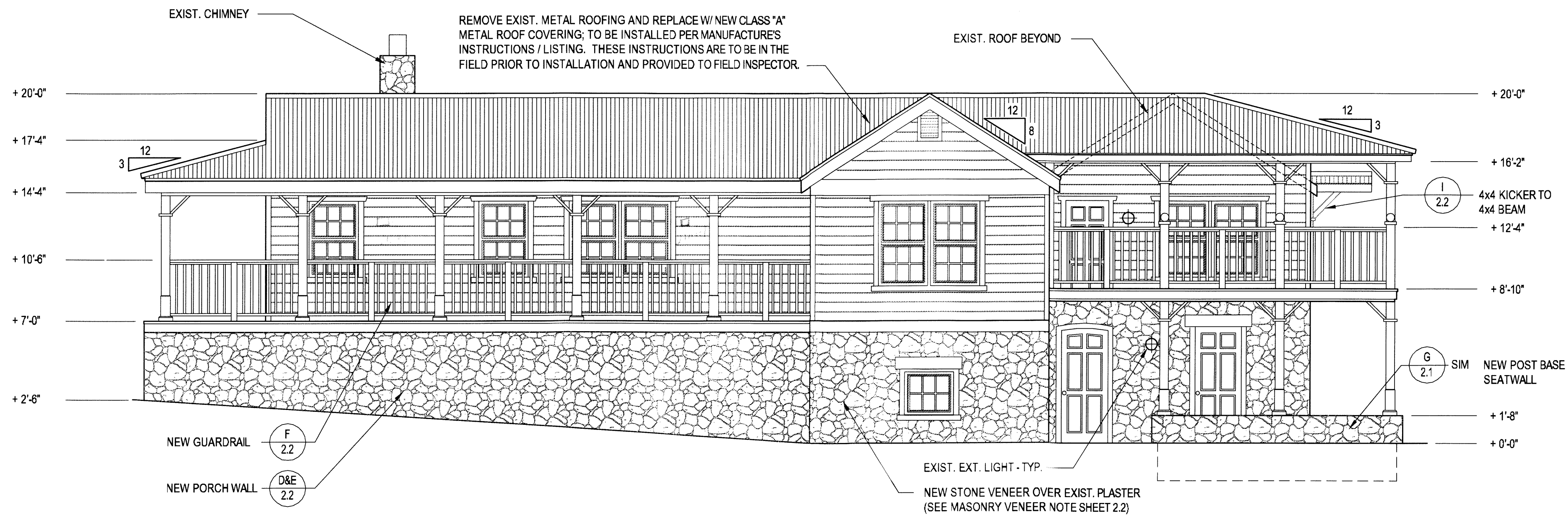
JOB 04030
 DATE OCT. 1, 2008
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ELEVATIONS

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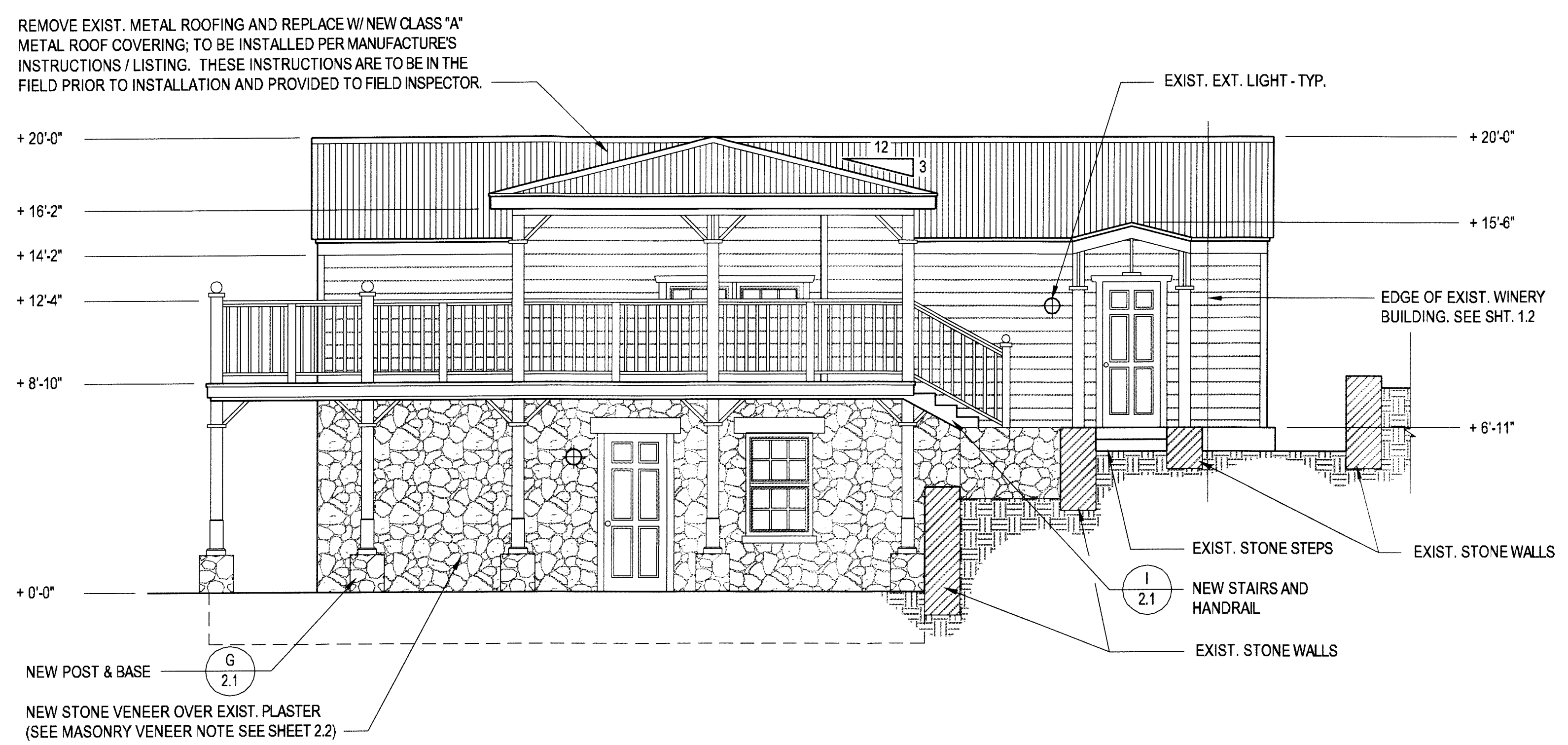
NOWELL & ASSOCIATES LANDSCAPE ARCHITECTURE

NOTE:
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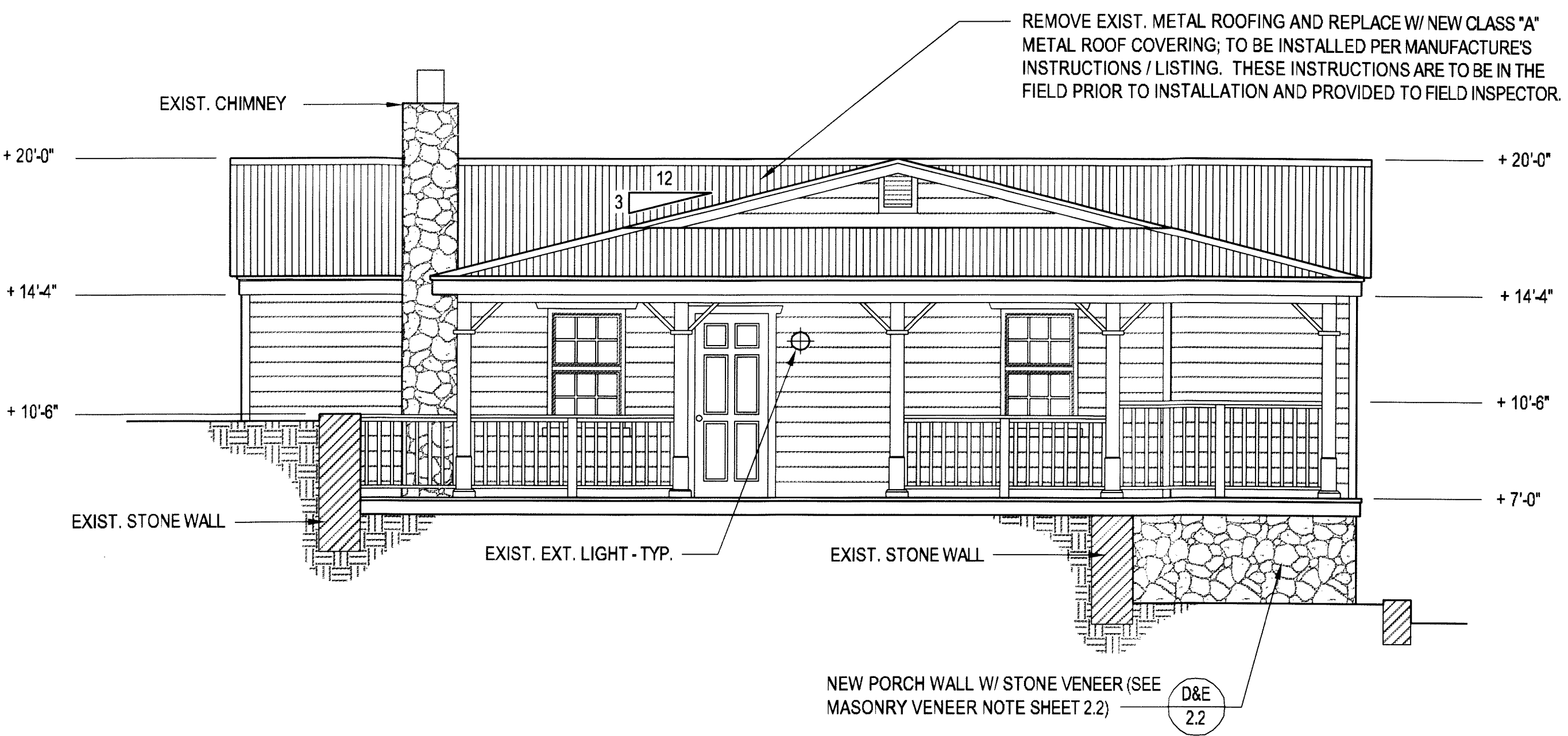
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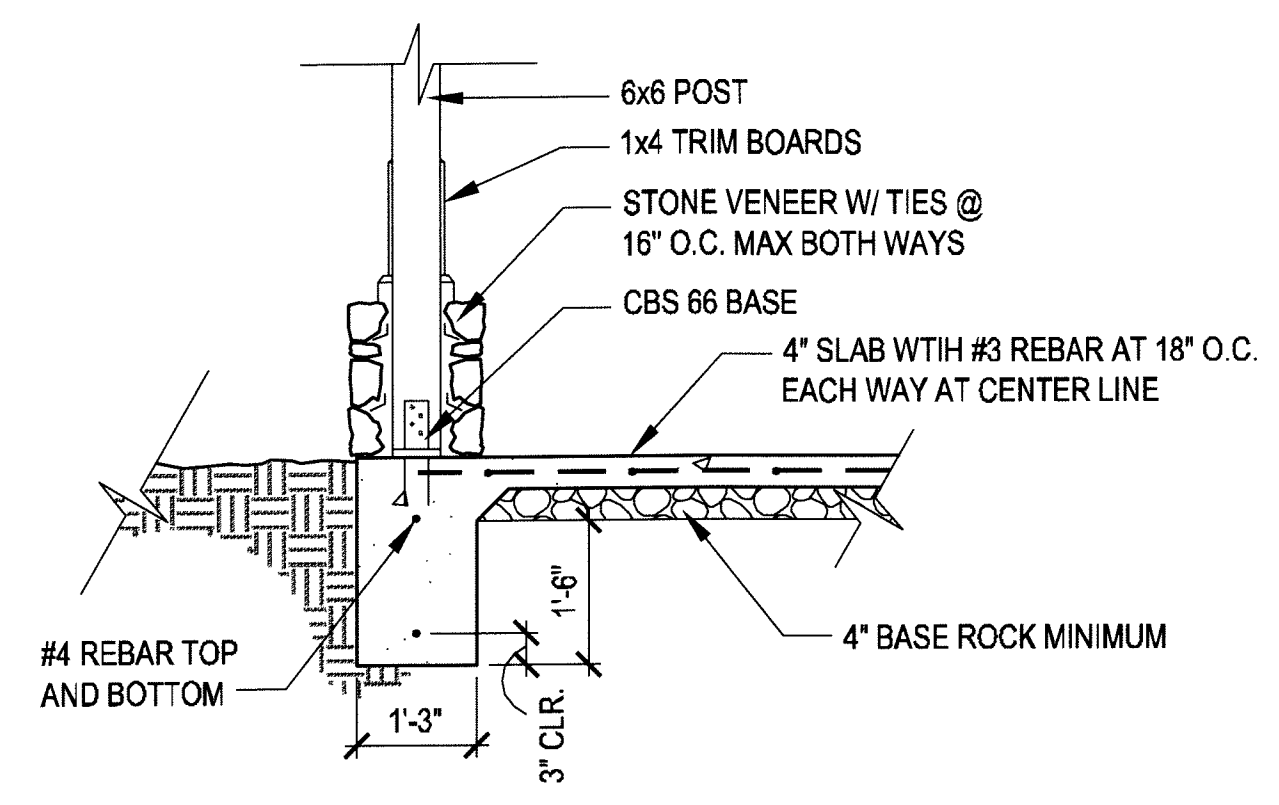
C EAST ELEVATION

SCALE: 1/4"=1'-0"

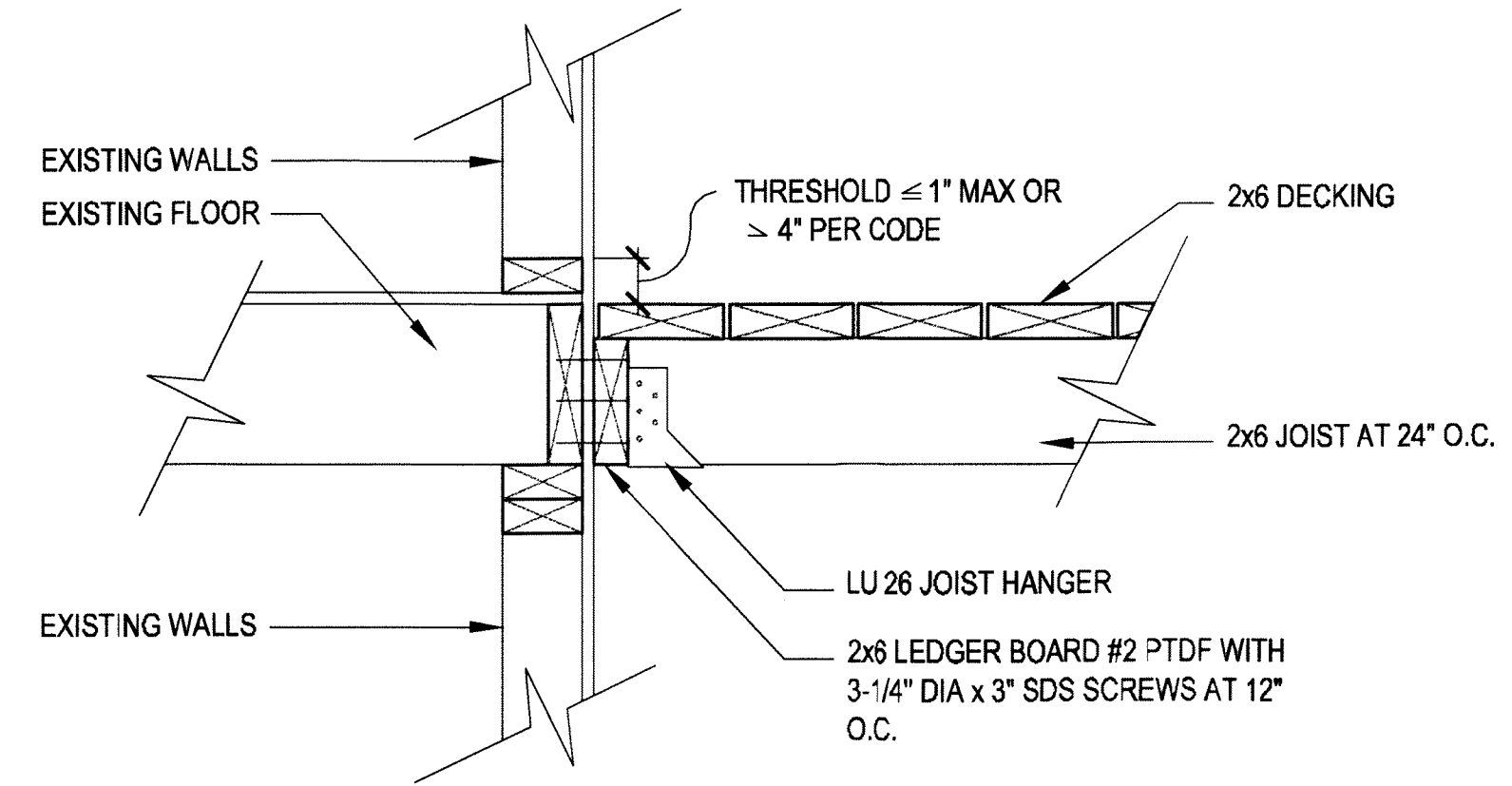


B WEST ELEVATION

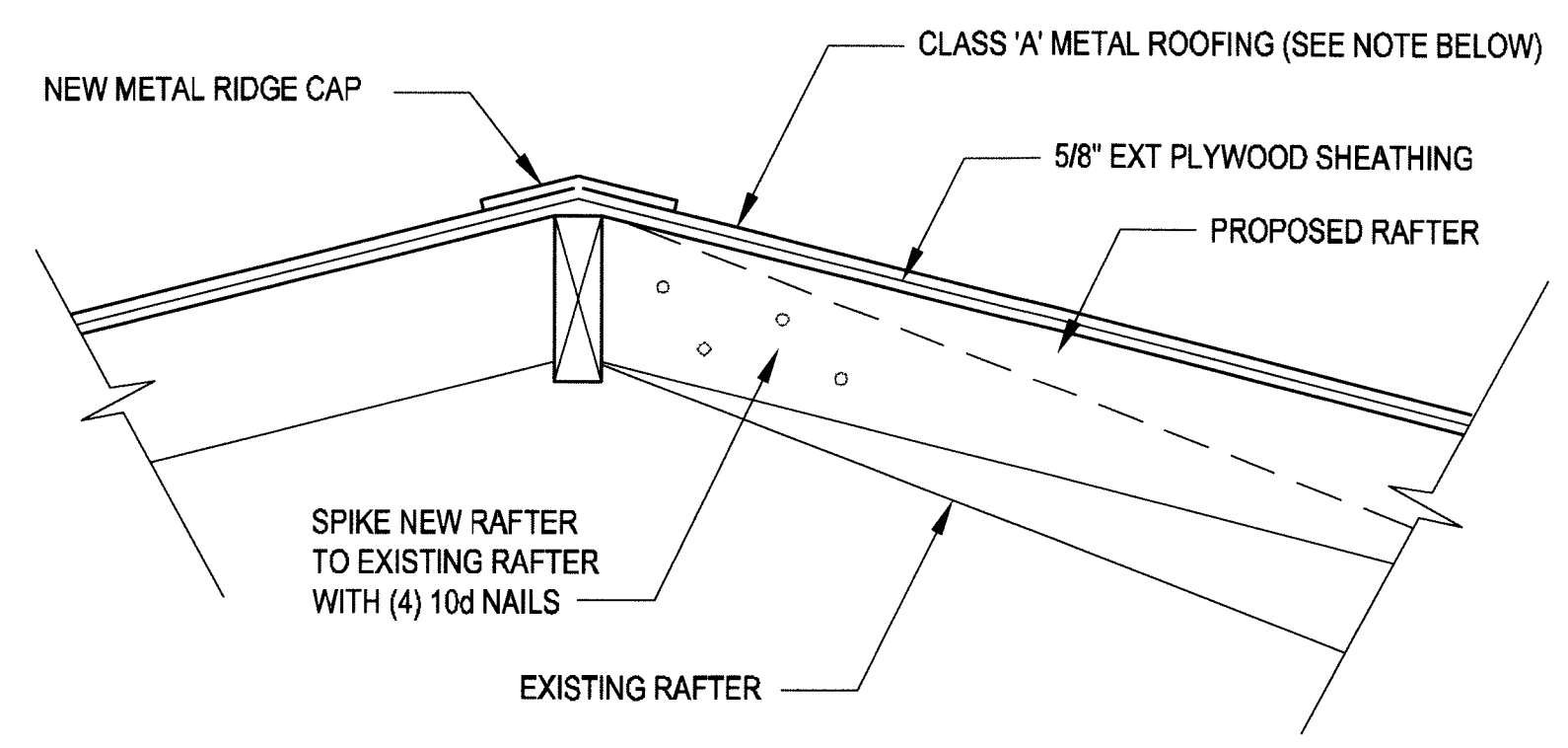
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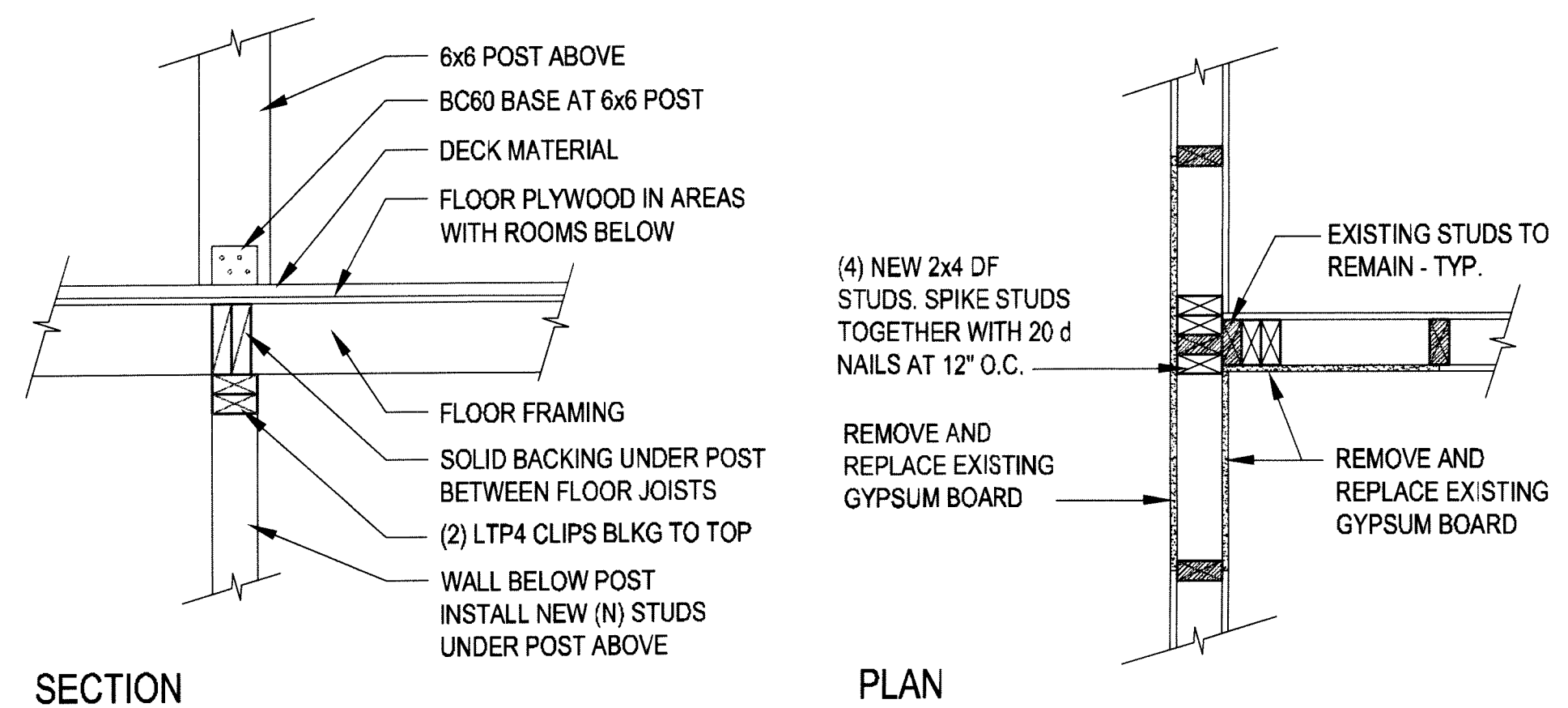
G CONCRETE FOOTING AND SLAB AT PORCH EDGE SCALE: 1/2" = 1'-0"



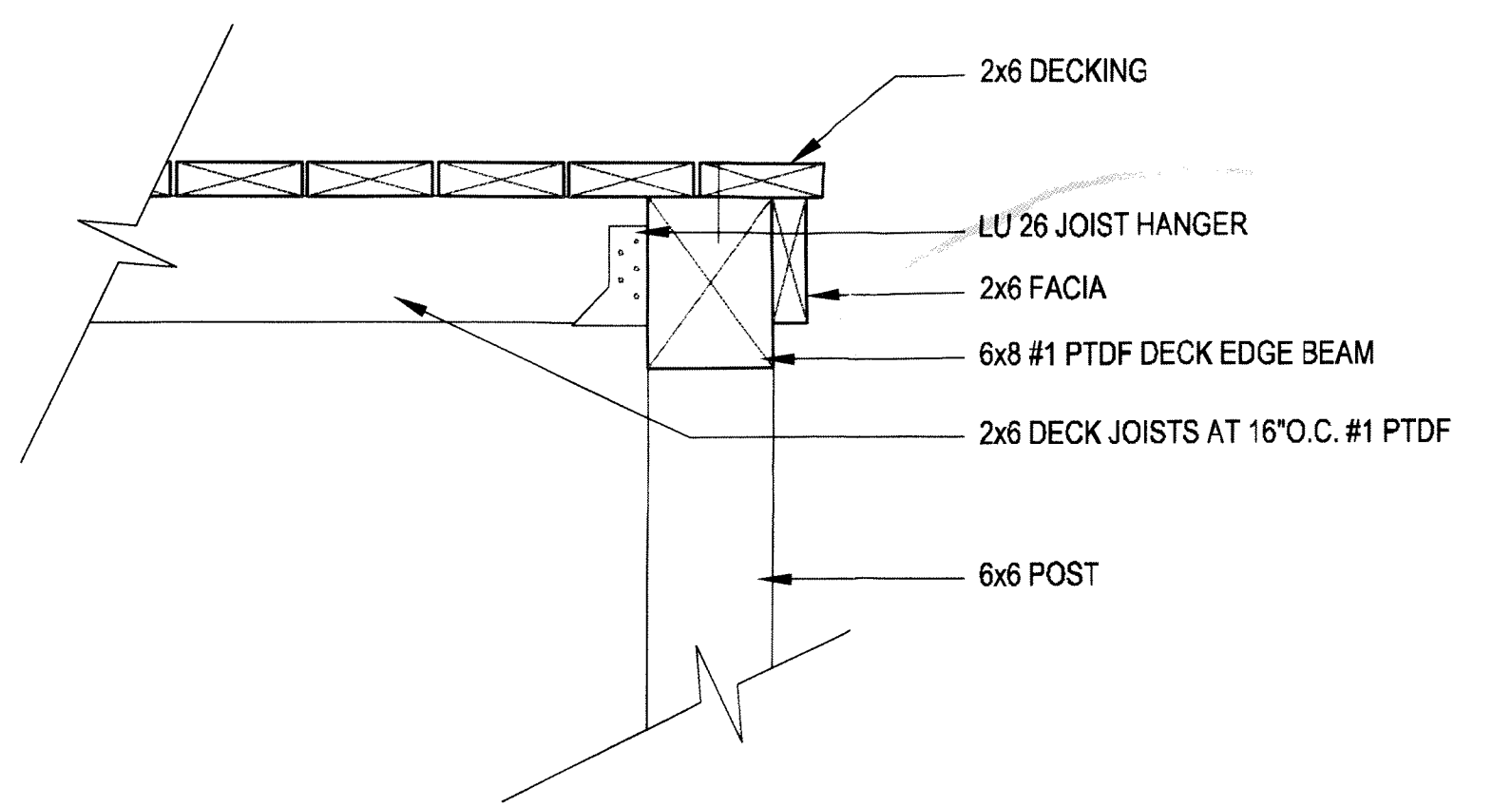
D DECKING CONNECTION AT LEDGER BOARD SCALE: 1 1/2" = 1'-0"



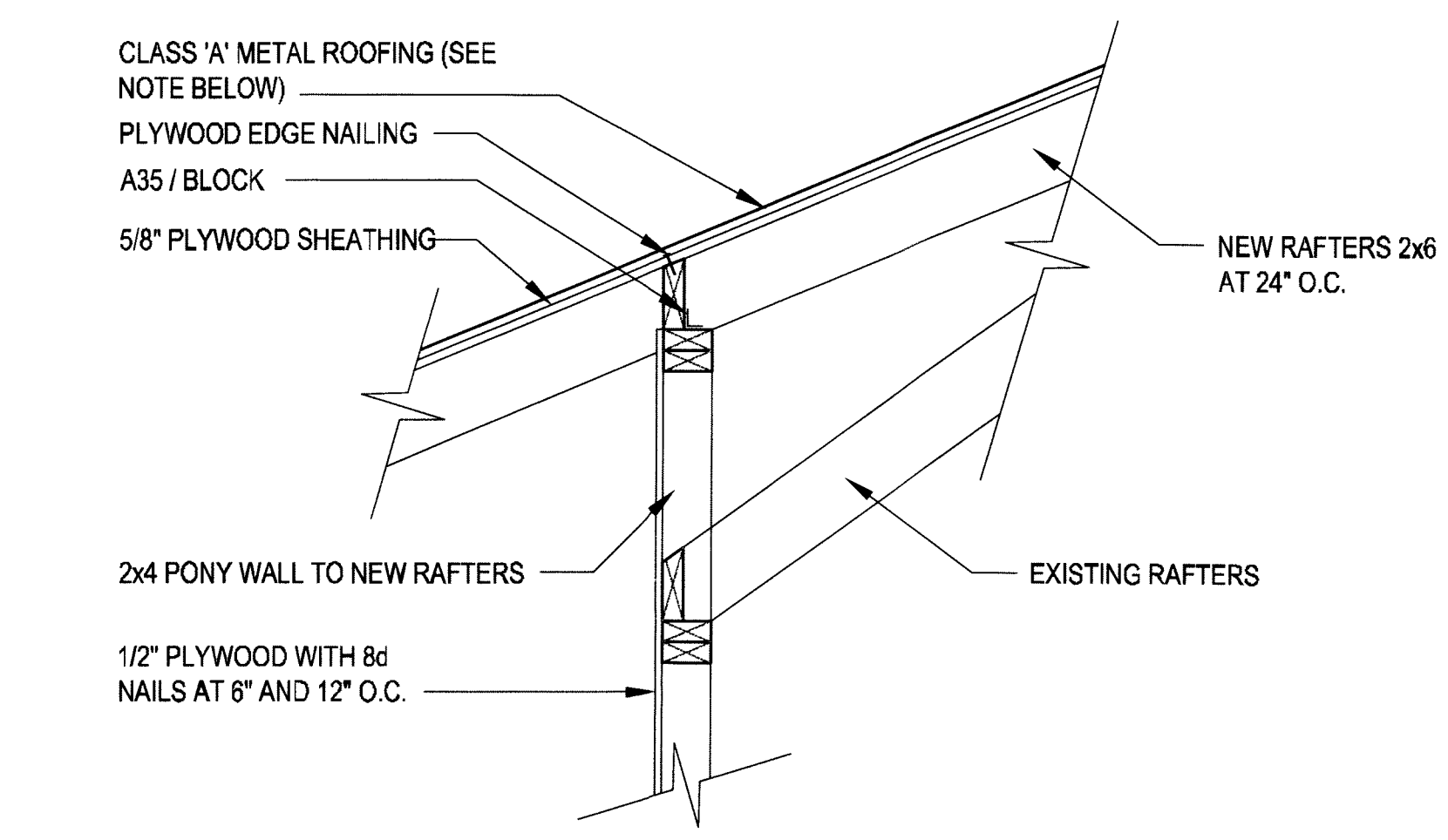
A RIDGE TO RAFTER ATTACHMENT SCALE: 1 1/2" = 1'-0"



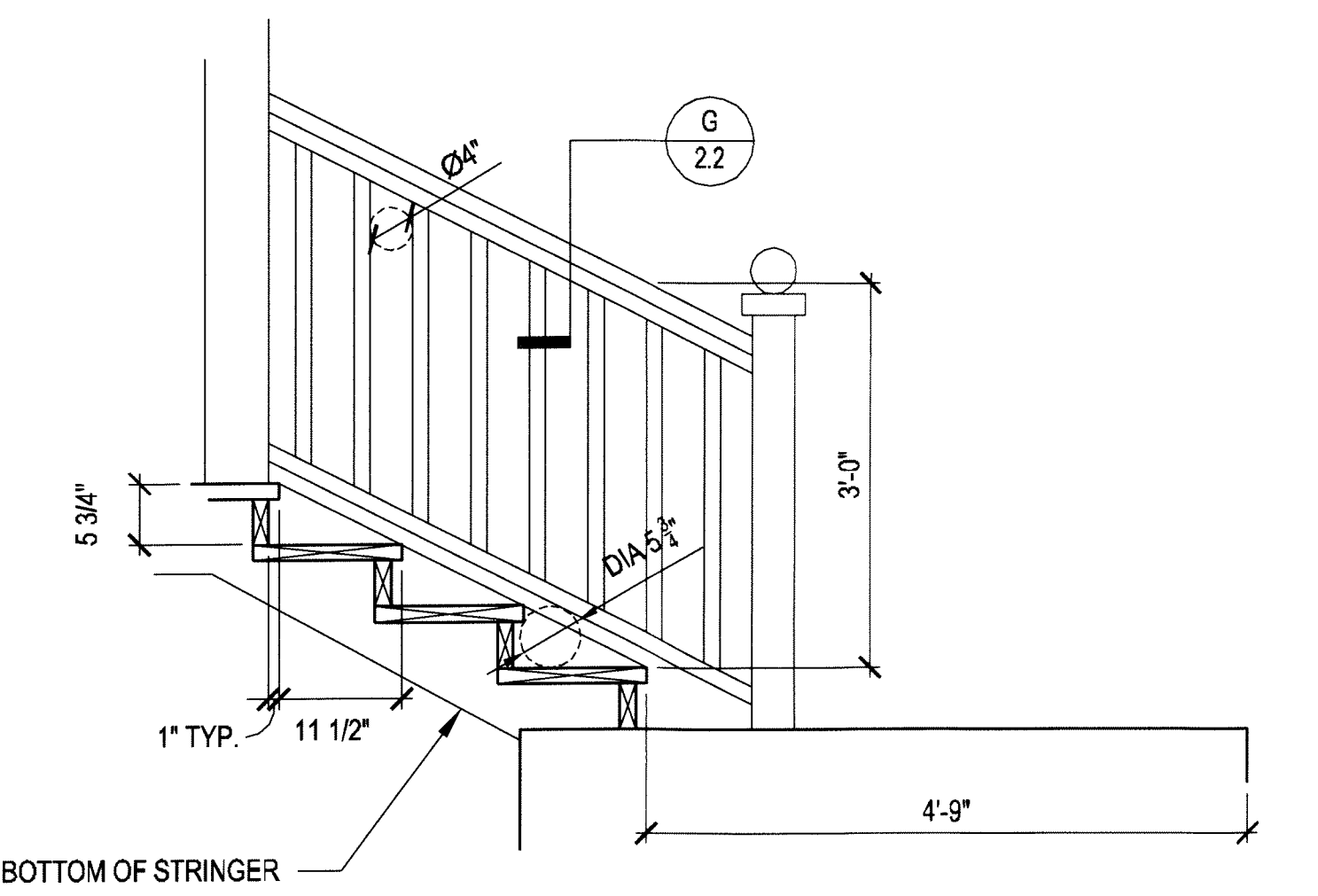
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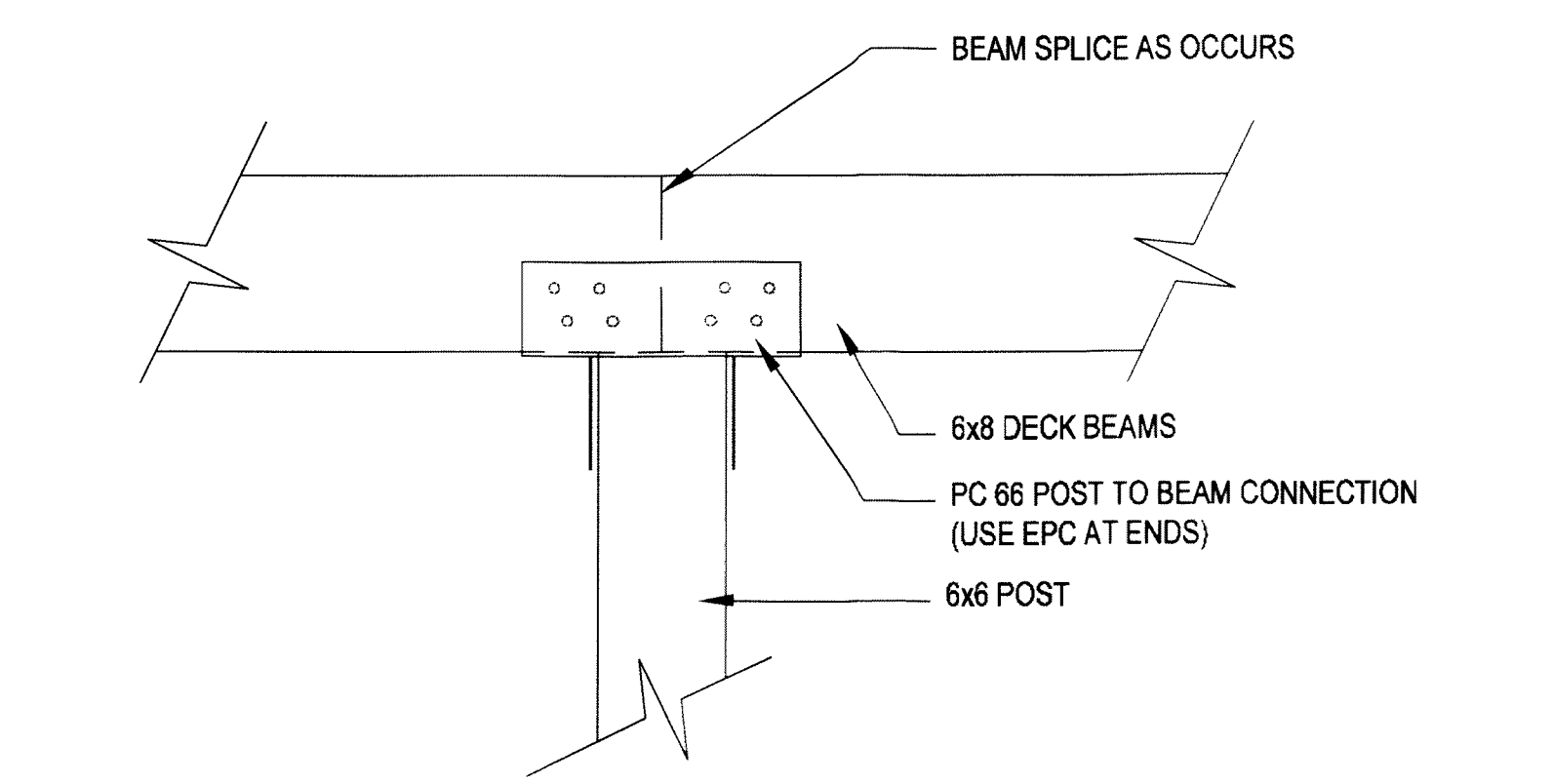
E DECKING SECTION SCALE: 1 1/2" = 1'-0"



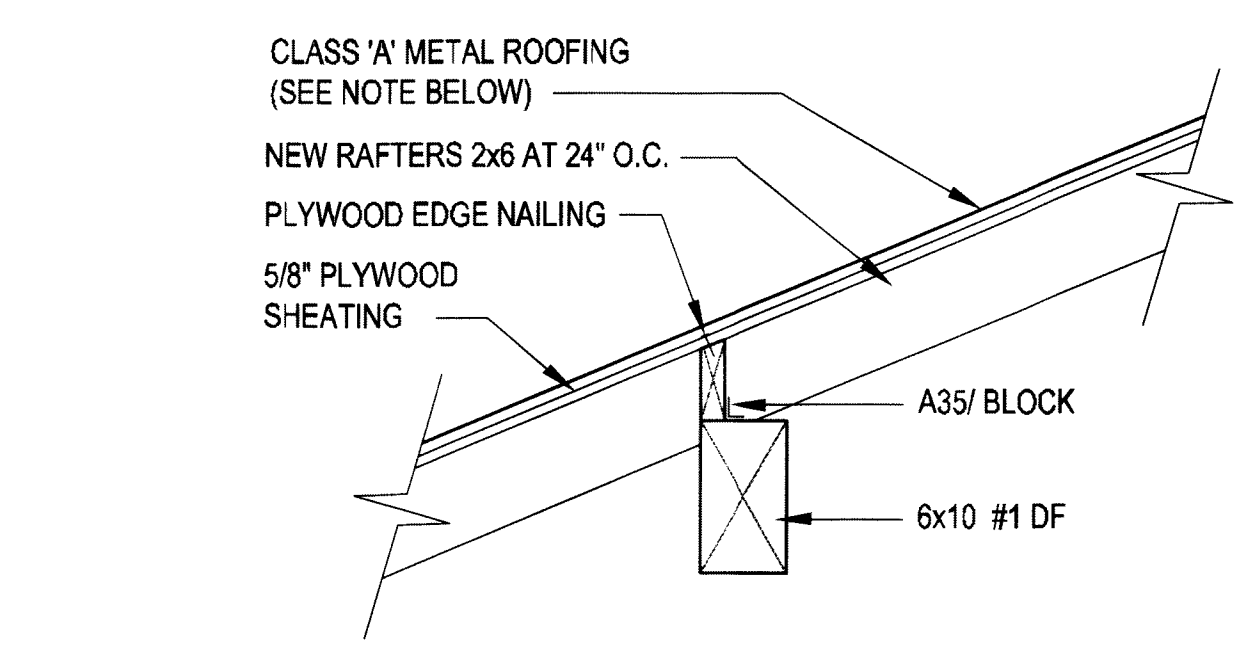
B NEW RAFTER CONNECTION AT PONY WALL SCALE: 1" = 1'-0"



I STAIR SECTION SCALE: 3/4" = 1'-0"



F POST TO BEAM CONNECTION SCALE: 1 1/2" = 1'-0"



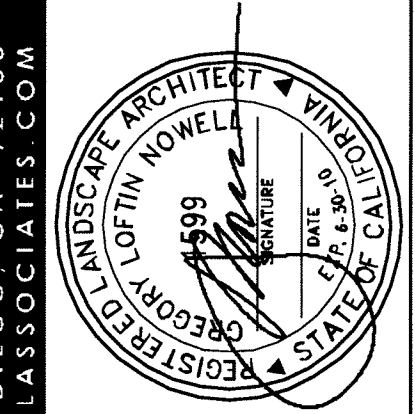
C NEW RAFTER CONNECTION AT BEAM SCALE: 1" = 1'-0"

LUMBER NOTE:
ALL LUMBER D.F. CONST. GRADE EXCEPT AS NOTED. ALL EXPOSED LUMBER D.F. CONST. SELECT. ALL 6x AND LARGER D.F. CONST. #1 STRUCTURAL GRADE. ALL LUMBER IN ENCLOSED CRAWL SPACE OVER SOIL TO BE P.T.D.F. CONST. GRADE.

NOTE: REMOVE EXIST. METAL ROOFING AND REPLACE W/ NEW CLASS "A" METAL ROOF COVERING; TO BE INSTALLED PER MANUFACTURE'S INSTRUCTIONS / LISTING. THESE INSTRUCTIONS ARE TO BE IN THE FIELD PRIOR TO INSTALLATION AND PROVIDED TO FIELD INSPECTOR.

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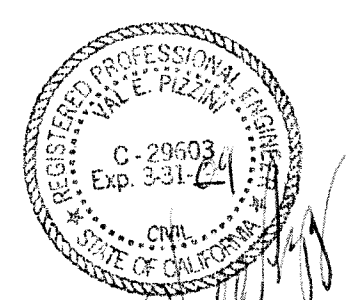
2805 STATE STREET SAN DIEGO, CA 92103
T 619.325.1990 F 619.325.1997 E MAIL@NOWELLASSOCIATES.COM

NOWELL & ASSOCIATES LANDSCAPE ARCHITECTURE

EXISTING PORCH / DECK REPAIRS &
PORCH ADDITION TO EXISTING RESIDENCE

BREMER FAMILY WINERY

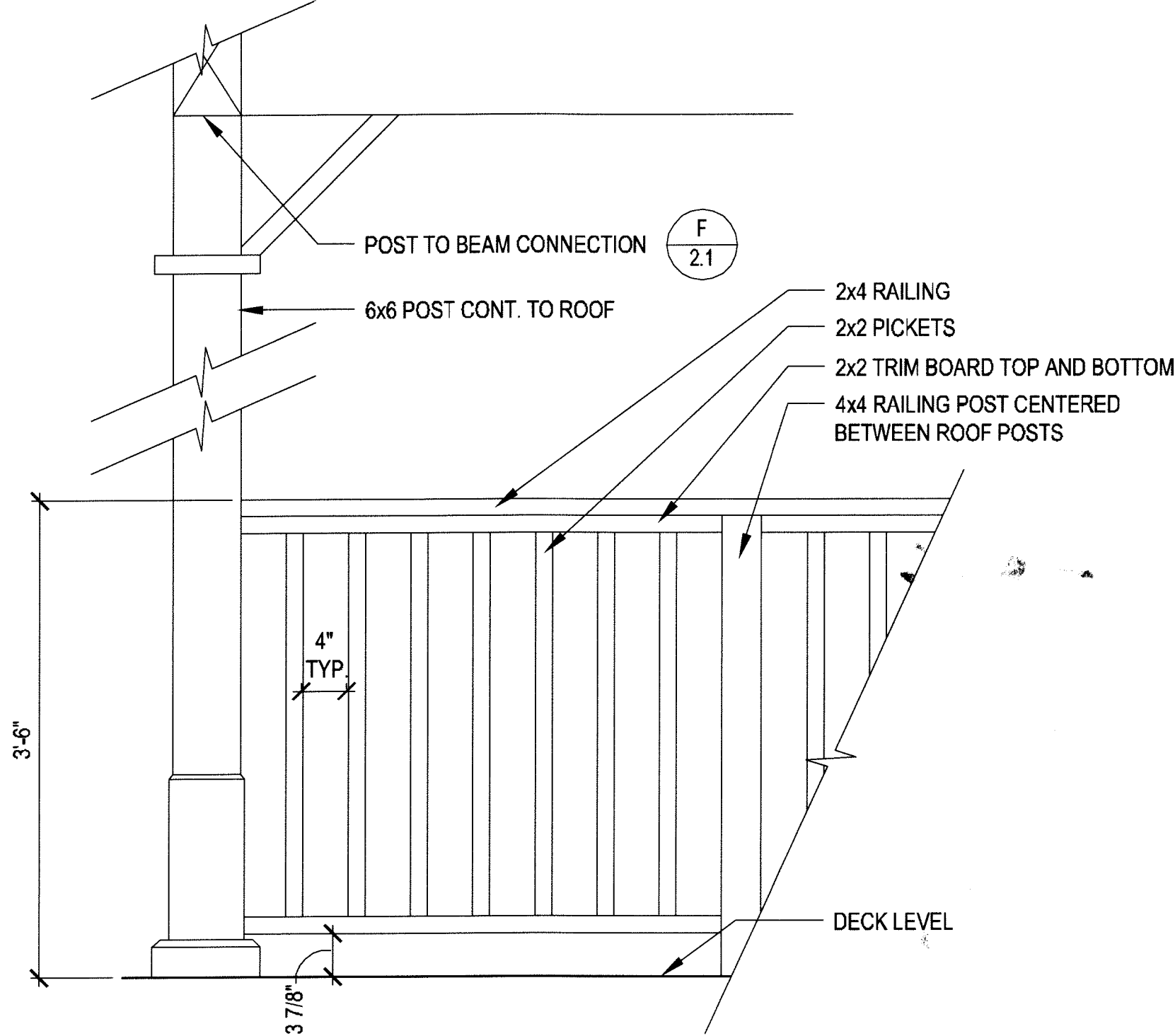
LAURA BREMER
975 DEER PARK ROAD
ST. HELENA, CA 94574
APN: 021 - 400 - 002
APP: 808 - 00074



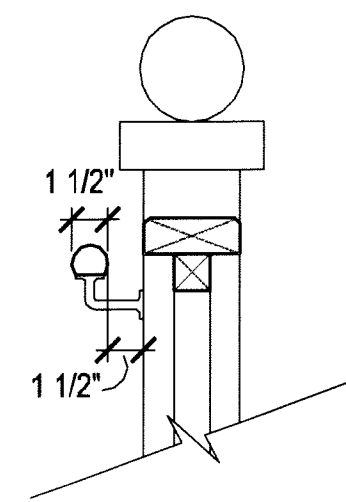
JOB: 04030
DATE: OCT. 1, 2008

REVISIONS	DATE	DESCRIPTION
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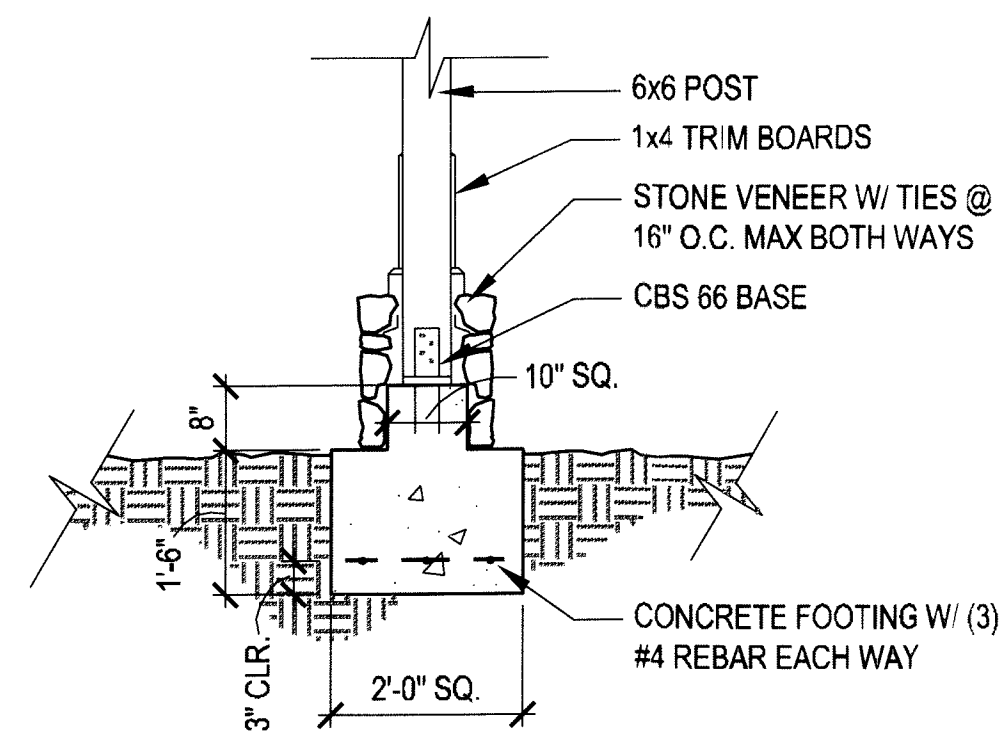
DETAILS



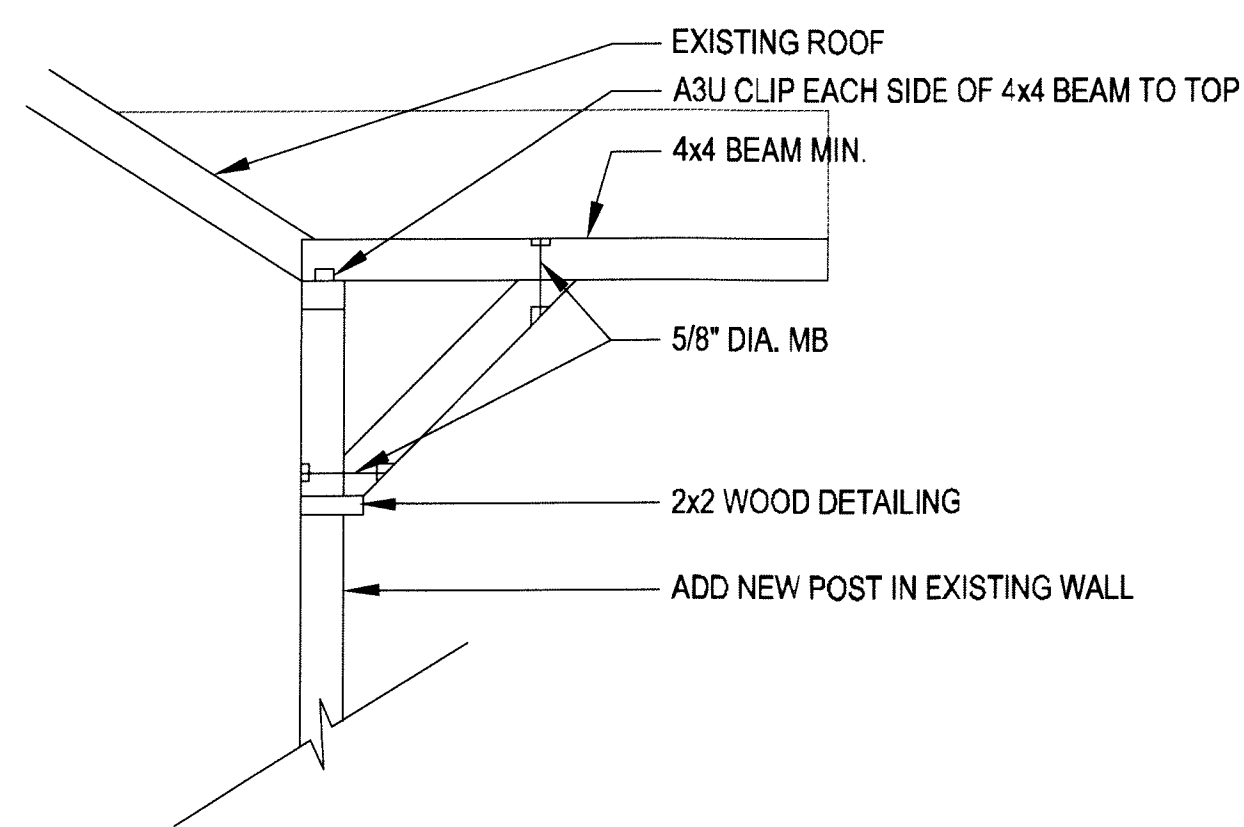
F DECK GUARD RAIL SCALE: 1" = 1'-0"



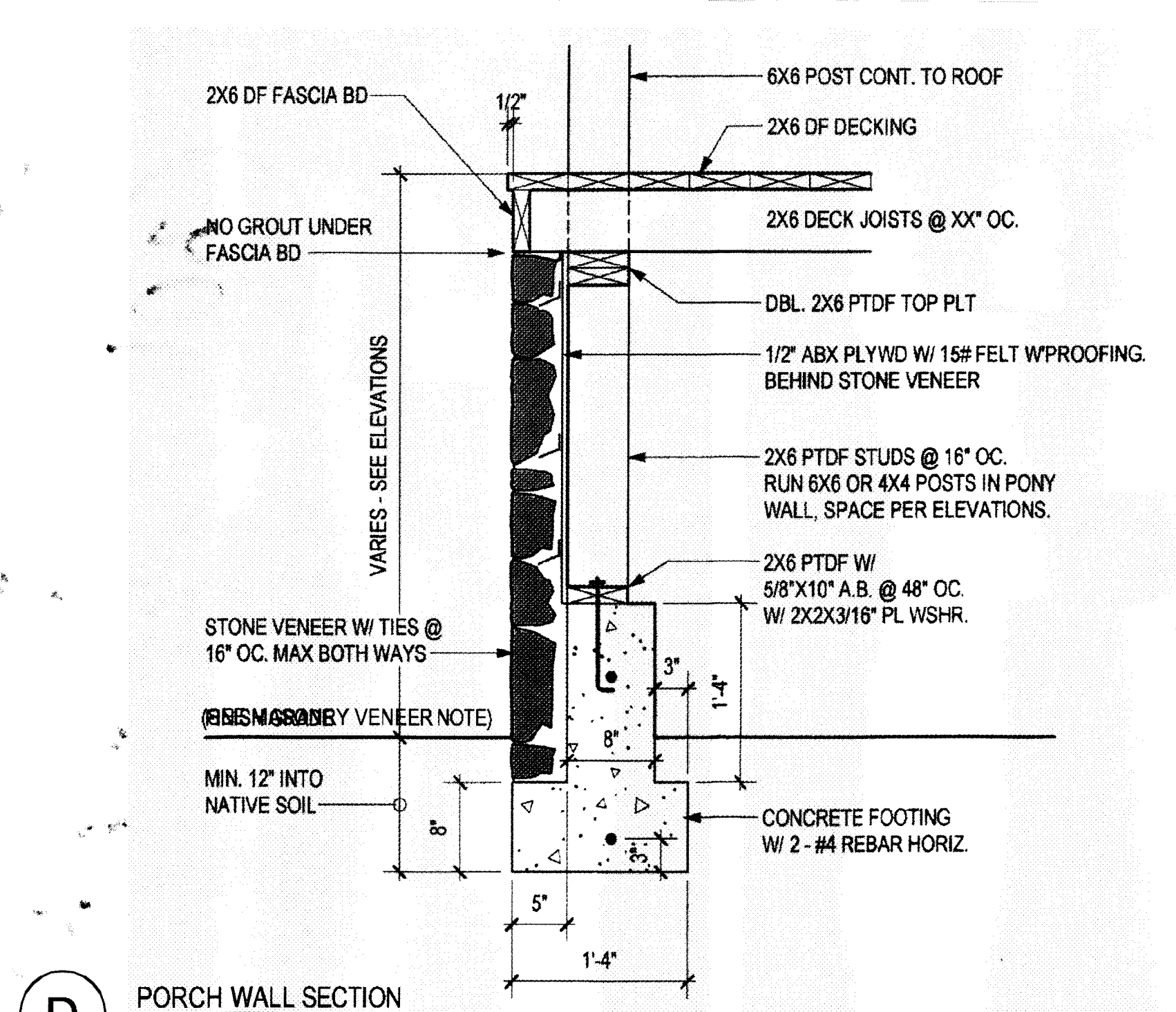
G HANDRAIL SECTION SCALE: 1 1/2" = 1'-0"



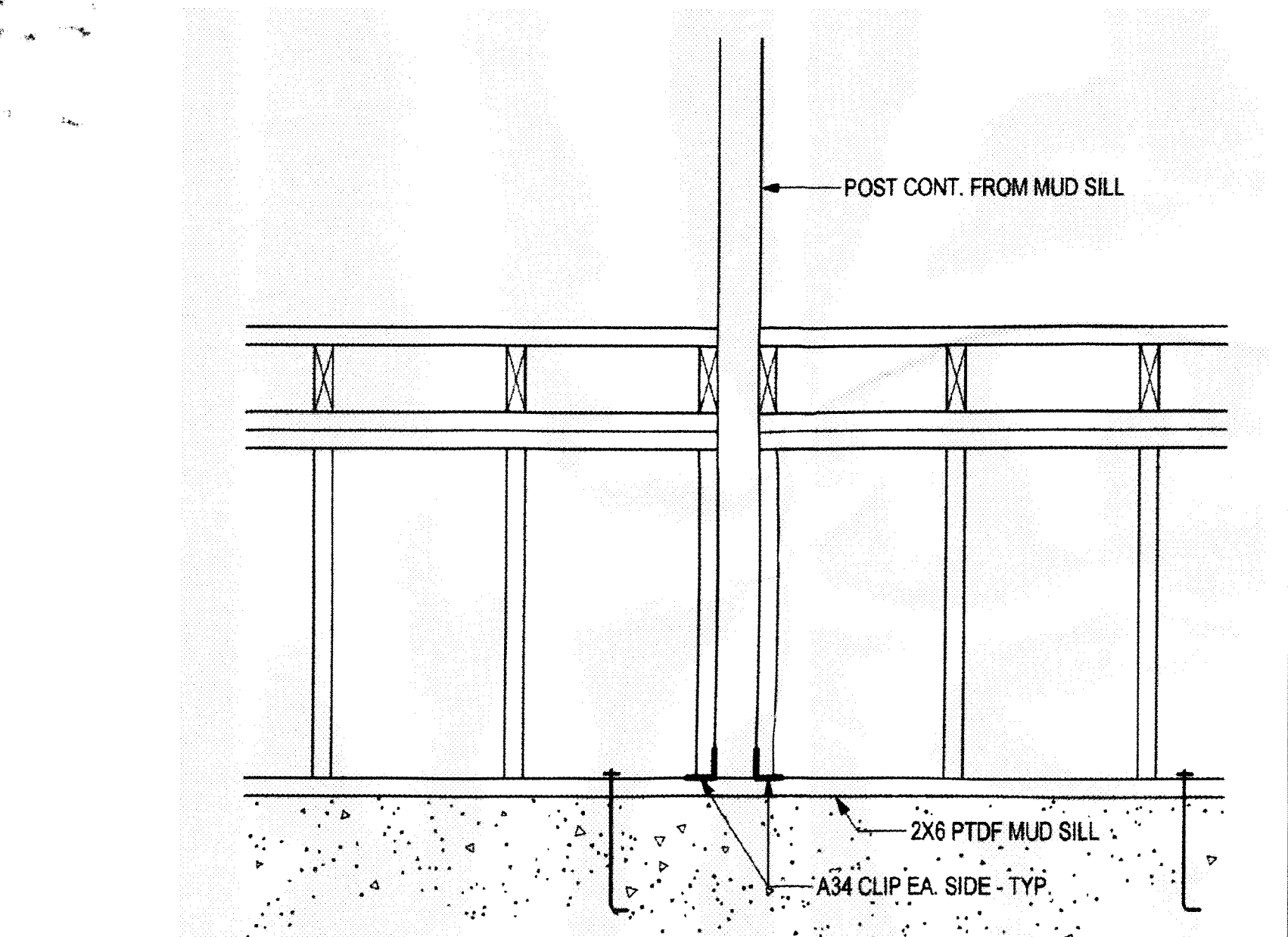
H CONCRETE FOOTING AT BOTTOM OF POST W/O SLAB SCALE: 1/2" = 1'-0"



I 4x4 KICKER ATTACHMENT SCALE: 3/4" = 1'-0"



D PORCH WALL SECTION SCALE: 1" = 1'-0"



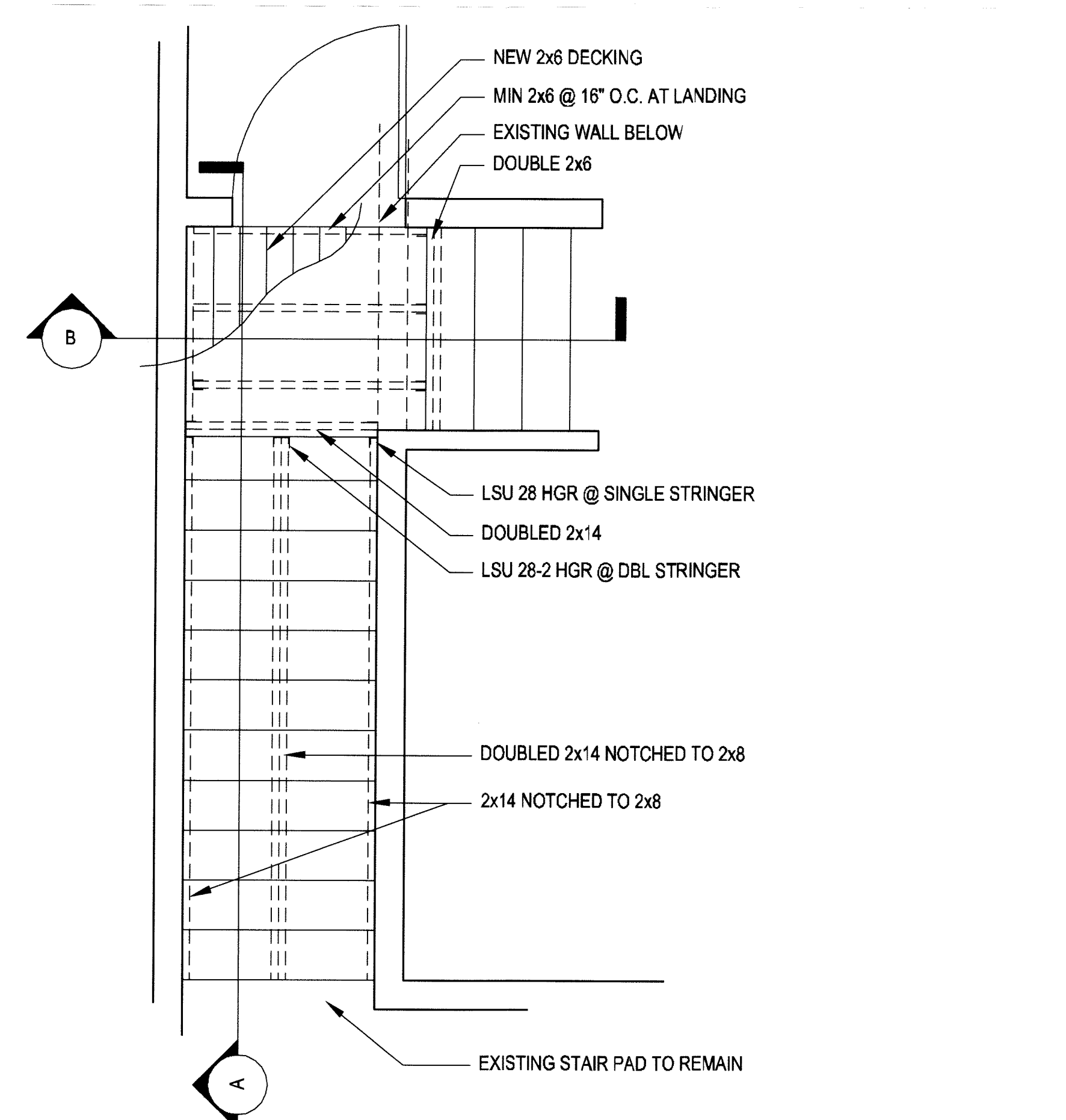
E PORCH WALL FRAMING SCALE: 1/2" = 1'-0"

MASONRY VENEER NOTES:
 VENEERS APPLIED OVER WOOD CONSTRUCTION SHALL HAVE BACKING OF BUILDING PAPER OVER CONTINUOUS PLYWOOD SURFACE.

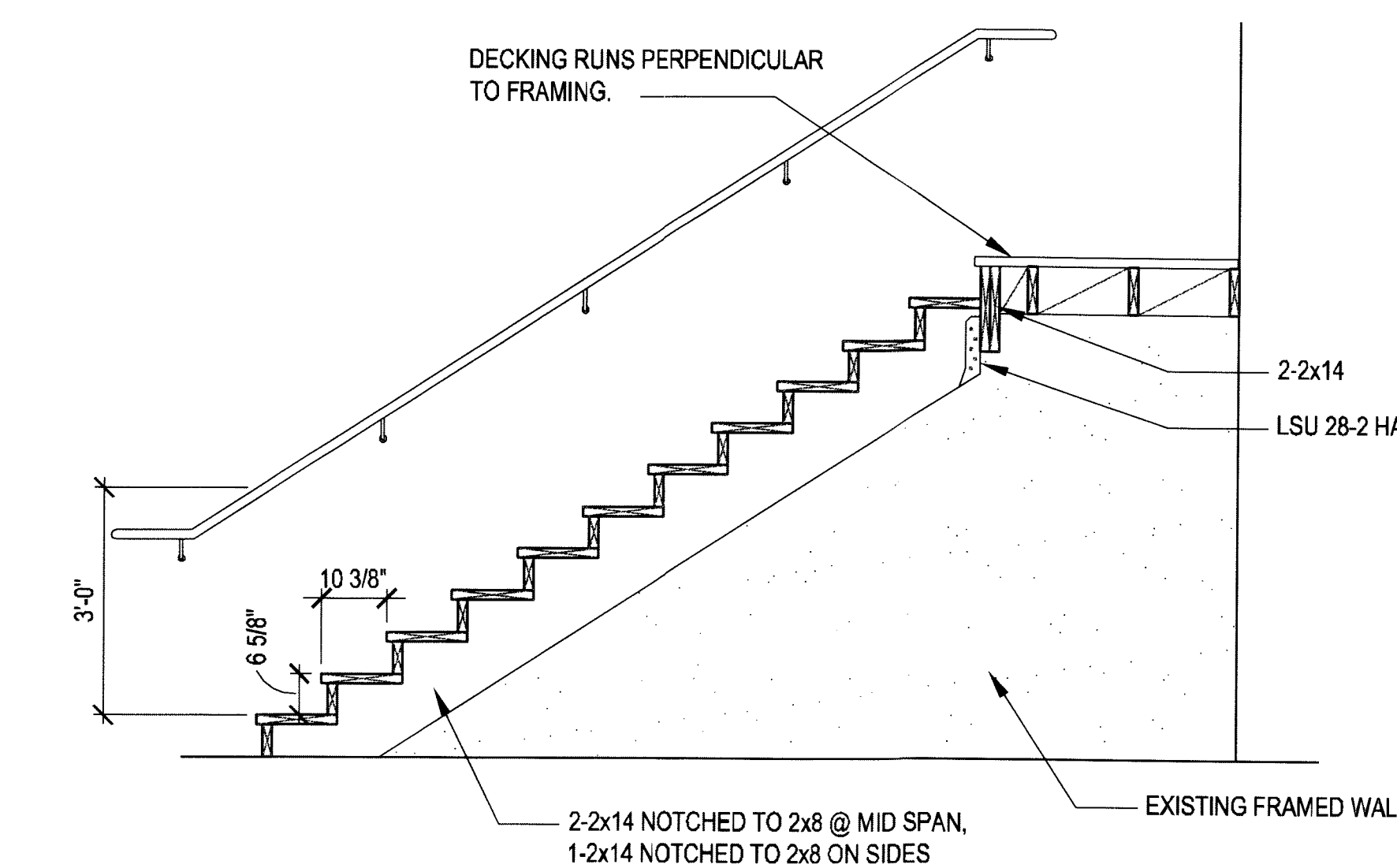
ANCHORED VENEERS:
 A. SHALL BE SUPPORTED ON FOOTINGS, FOUNDATIONS OR OTHER NONCOMBUSTIBLE SUPPORT U.N.O.
 B. MASONRY AND STONE UNITS NOT EXCEEDING 5 INCHES IN THICKNESS MAY BE ANCHORED DIRECTLY TO STRUCTURAL MASONRY, CONCRETE OR STUDS IN ONE OF THE FOLLOWING MANNERS:

- ANCHOR TIES SHALL BE CORROSION RESISTANT, AND IF MADE OF SHEET METAL, SHALL HAVE A MINIMUM SIZE OF NO. 22 GAUGE BY 2-INCH OR, IF WIRE, SHALL BE A MINIMUM OF NO. 9 GAUGE. ANCHOR TIES SHALL BE SPACED SO AS TO SUPPORT NOT MORE THAN 2 SQUARE FEET OF WALL AREA BUT NOT MORE THAN 24 INCHES ON CENTER HORIZONTALLY. ANCHOR TIES SHALL HAVE A LIP OR HOOK ON THE EXTENDED LEG THAT WILL ENGAGE CONTINUOUS WITH BUTT SPLICES BETWEEN TIES PERMITTED. WHEN APPLIED OVER STUD CONSTRUCTION, THE STUDS SHALL BE SPACED A MAXIMUM OF 16 INCHES ON CENTERS AND APPROVED PAPER SHALL FIRST BE APPLIED OVER THE SHEATHING OR WIRES BETWEEN STUDS EXCEPT, U.N.O., AND MORTAR SHALL BE SLUSHED INTO THE 1-INCH SPACE BETWEEN FACING AND PAPER. AS AN ALTERNATE, AN AIR SPACE OF AT LEAST 1-INCH MAY BE MAINTAINED BETWEEN THE BACKING AND THE VENEER IN WHICH CASE SPOT BEDDING AT ALL TIES SHALL BE OF CEMENT MORTAR. *NOTE: ANCHORS MUST EXTEND A MIN. OF 1 1/2" INTO VENEER MATERIAL SINCE 7/8" WIRE IS USED.*
- VENEER MAY BE APPLIED WITH 1-INCH MINIMUM GROUTED BACKING SPACE WHICH IS REINFORCED BY NOT LESS THAN 2-INCH BY 2-INCH NO. 18 GAUGE GALVANIZED WIRE MESH PLACED OVER WATERPROOF CENTER. THE GALVANIZED WIRE MESH SHALL BE ANCHORED TO WOOD STUDS BY NOT GALVANIZED STEEL WIRE FURRING NAILS AT 4 INCHES ON CENTER OR BY BARBED GALVANIZED NAILS AT 6 INCHES ON CENTER WITH A 1-1/8" MINIMUM PENETRATION. THE GALVANIZED WIRE MESH MAY BE ATTACHED TO STEEL STUDS BY GROUT. THE WIRE MESH MUST BE ATTACHED AT THE TOP AND BOTTOM WITH NOT LESS THAN 8d COMMON WIRE NAILS. THE GROUT FILL SHALL BE PLACED TO FILL THE SPACE INTIMATELY AROUND THE MESH AND VENEER FACING.

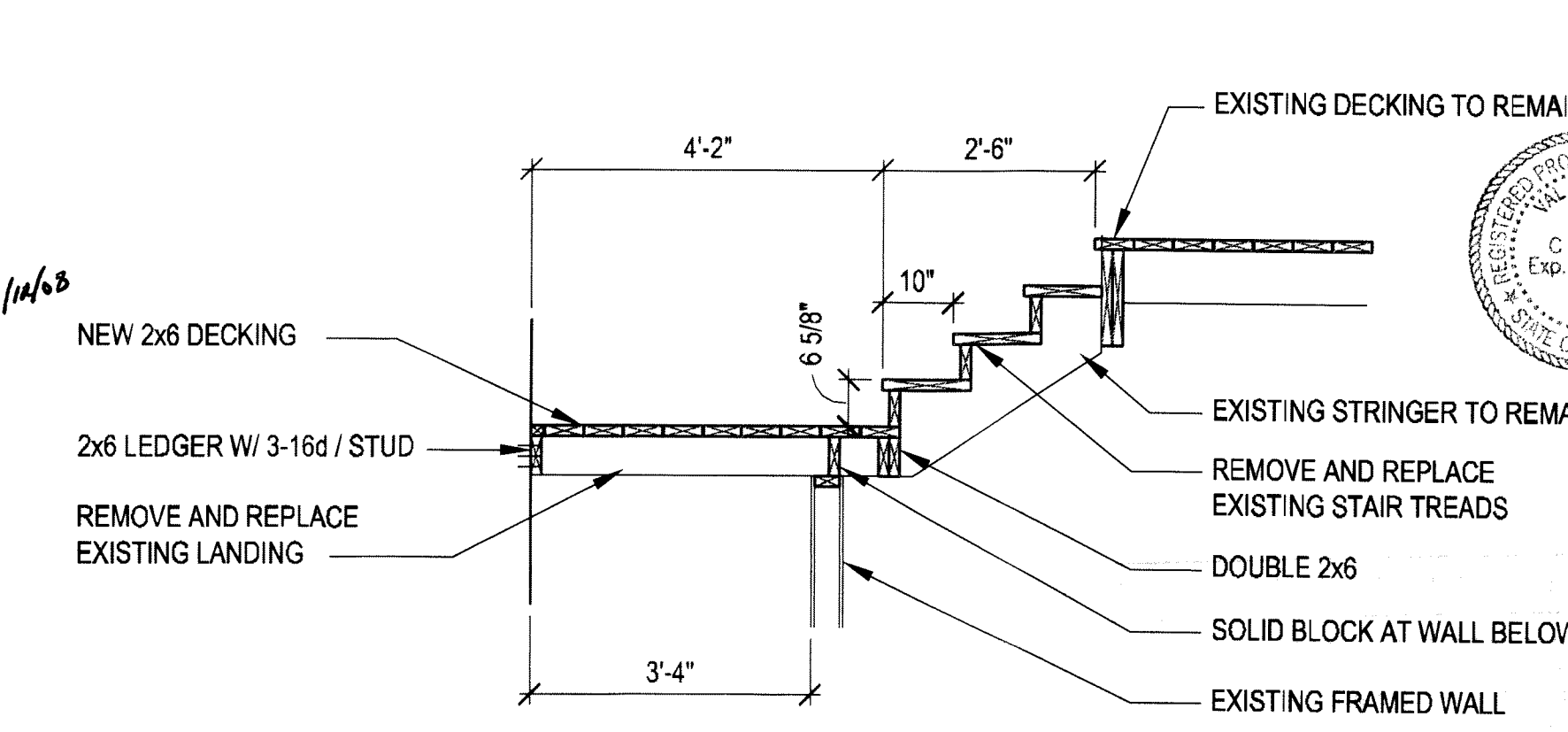
LUMBER NOTE:
 ALL LUMBER D.F. CONST. GRADE EXCEPT AS NOTED. ALL EXPOSED LUMBER D.F. CONST. SELECT. ALL 6x AND LARGER D.F. CONST. #1 STRUCTURAL GRADE. ALL LUMBER IN ENCLOSED CRAWL SPACE OVER SOIL TO BE P.T.D.F. CONST. GRADE.



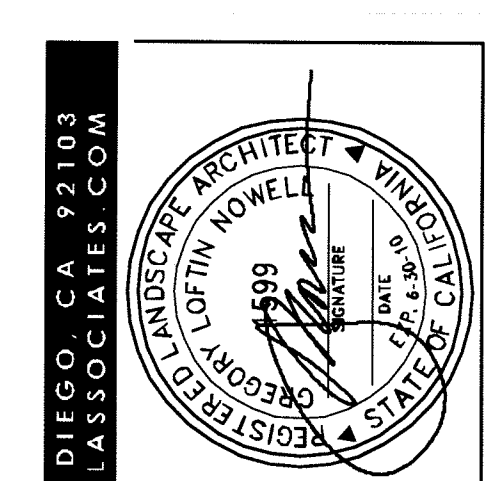
A STAIR PLAN SCALE: 1/2" = 1'-0"



B STAIR AND LANDING SECTION A SCALE: 1/2" = 1'-0"



C STAIR AND LANDING SECTION B SCALE: 1/2" = 1'-0"



2605 STATE STREET SAN DIEGO, CA 92103
 T 619.325.1990 F 619.325.1997 E MAIL@NOWELLSOCIATES.COM

EXISTING PORCH / DECK REPAIRS &
 PORCH ADDITION TO EXISTING RESIDENCE

BREMER FAMILY WINERY
 LAURA BREMER
 975 DEER PARK ROAD
 ST. HELENA, CA 94574
 APN: 021 - 400 - 002
 APP: B08 - 00074

NOWELL & ASSOCIATES LANDSCAPE ARCHITECTURE
 JOB 04030
 DATE OCT. 1, 2008
 REVISIONS
 C-20503
 ENG. 2012.12.14
 DETAILS
2.2

Attachment 4

APP

PERMIT APPLICATION
COUNTY OF NAPA DEVELOPMENT DIVISION

Bremer



1195 Third St., Suite 210
Napa CA. 94559
Phone (707) 253-4416
Fax (707) 253-4336
www.co.napa.ca.us

JOBSITE OWNER INFORMATION

JOBSITE ADDRESS: 975 DEER PARK ROAD
ST. HELENA CA 94574
OWNERS NAME: LAURA & John Bremer PHONE NO.: 707-943-1214
MAILING ADDRESS: 150 Pine Place
CITY: St Helena STATE: CA ZIP: 94574

CONTACT PERSON/FIRM

NAME: _____ PHONE NO: _____
ADDRESS: _____
CITY: _____ STATE: _____ ZIP: _____

CONTRACTOR

NAME: _____ LICENSE NO.: _____ CLASS: _____ EXPIRES: _____
MAILING ADDRESS: _____ CITY: _____ STATE: _____ ZIP: _____ PHONE: _____

I HEREBY AFFIRM UNDER PENALTY OF PERJURY that I am licensed under provisions of Chapter 8 (commencing with Section 7000 of Division 3 of the Business and Professions Code, and my license is in full force and effect.

X _____ SIGNATURE _____ DATE _____

OWNER BUILDER DECLARATION

I HEREBY ATTEST UNDER PENALTY OF PERJURY that I am exempt from the Contractors' State License Law for the following reason (Sec. 7031.5) Business and Professions Code. Any city or county which requires a permit to construct, alter, improve, demolish or repair any structure prior to it's issuance, also requires the applicant for such permit to file a signed statement that he or she is licensed pursuant to the provisions of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions' Code) or that he or she is exempt therefrom and basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars (\$500).

I, AS OWNER OF THE PROPERTY, OR MY EMPLOYEES WITH WAGES AS THEIR SOLE COMPENSATION, WILL DO THE WORK, AND THE STRUCTURE IN NOT INTENDED OR OFFERED FOR SALE. (Sec. 7044 Business and Professions Code: The Contractors' State License Law does not apply to an owner of the property, who builds or improves thereon, and who does such work himself or herself or through his or her employees, provided that such improvements are not intended or offered for sale. If, however, the building or improvements is sold within one year of completion, the builder will have the burden of proving that he or she did not build or improve for the purpose of sale.)

I, AS OWNER OF THE PROPERTY, AM EXCLUSIVELY CONTRACTING WITH LICENSED CONTRACTORS TO CONSTRUCT THE PROJECT (Sec. 7004, Business and Professions Code. The Contractor's License Law does not apply to an owner of property who builds or improves thereon, and who contracts for such projects with a Contractor's State License Law.

I AM EXEMPT under section _____ B & P.C. for this reason _____
X _____ SIGNATURE _____ DATE 8/29/06

WORKERS COMPENSATION DECLARATION

I HEREBY AFFIRM UNDER PENALTY OF PERJURY one of the following declarations:

I HAVE AND WILL MAINTAIN A CERTIFICATE OF CONSENT TO SELF-INSURE FOR WORKERS' COMPENSATION, as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.

I HAVE AND WILL MAINTAIN A CERTIFICATE OF WORKERS' COMPENSATION INSURANCE, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation carrier and policy No. are: Carrier _____ Policy # _____ Exp. Date _____

I CERTIFY THAT IN THE PERFORMANCE OF THE WORK FOR WHICH THE PERMIT IS ISSUED, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that if I should become subject to the worker's compensation provisions of Section 3700 of the Labor Code, I shall herewith comply with those provisions.

WARNING: Failure to secure workers' compensation coverage is unlawful, and subjects an employer to criminal penalties and civil fines up to one hundred thousand dollars (\$100,000), in addition to the cost of compensation, damages as provided for in Section 3706 of the Labor Code, interest and attorney's fees

X _____ SIGNATURE _____ DATE _____

DISCLOSURE

I certify that I have read this application and state that the above information is correct, I agree to comply with all local ordinances and state laws relating to building construction and I make this statement under penalty of law, and hereby authorize representatives of the county to enter upon the above-mentioned property for inspection purposes.

NOTICE: This permit will expire by limitation if work is not started in one year or if work is abandoned for more than 180 days. A request for an extension of time must be submitted in writing to the Chief Building Official within one year of issuance or 180 days from last inspection.

I (We) agree to save, indemnify and keep harmless the County of Napa against, judgments, cost and expenses which may in any way accrue against said County in consequence of the granting of this permit

X _____ SIGNATURE _____ PRINT NAME: LAURA BREMER DATE: 8/29/06

Owner Contractor or Agent for Owner Agent for Contractor

Darrell Mayes - Chief Building Official

APP/PERMIT NO: B06-0434 BIN NO: 101
021-400-002 ANG
PARCEL NO: 85001 INSP AREA: 2017
TAX RATE AREA: Aw CENSUS TRACT: 26.65
ZONING: _____ ACREAGE: _____
DATE ISSUED: _____ BY: _____

PLAN INFORMATION

- Residential Commercial Accessory
 NEW ADD ALTER REPAIR REPLACE
 DEMO POOL T.I. SIGN OTHER

WORK DESCRIPTION: _____

General rehab
of ag storage

VALUATION: 27,000 ~~15,000~~ 5000

ESTIMATED SUBMITTAL FEES PAID

0101 - PLAN REVIEW		
0112 - INVESTIGATION		
0113 - DEMOLITION		
0116 - FIRE DEPARTMENT		
0119 - EROSION CONTROL		
0121 - PLANNING REVIEW		
0133 - FIRE ADMINISTRATION		

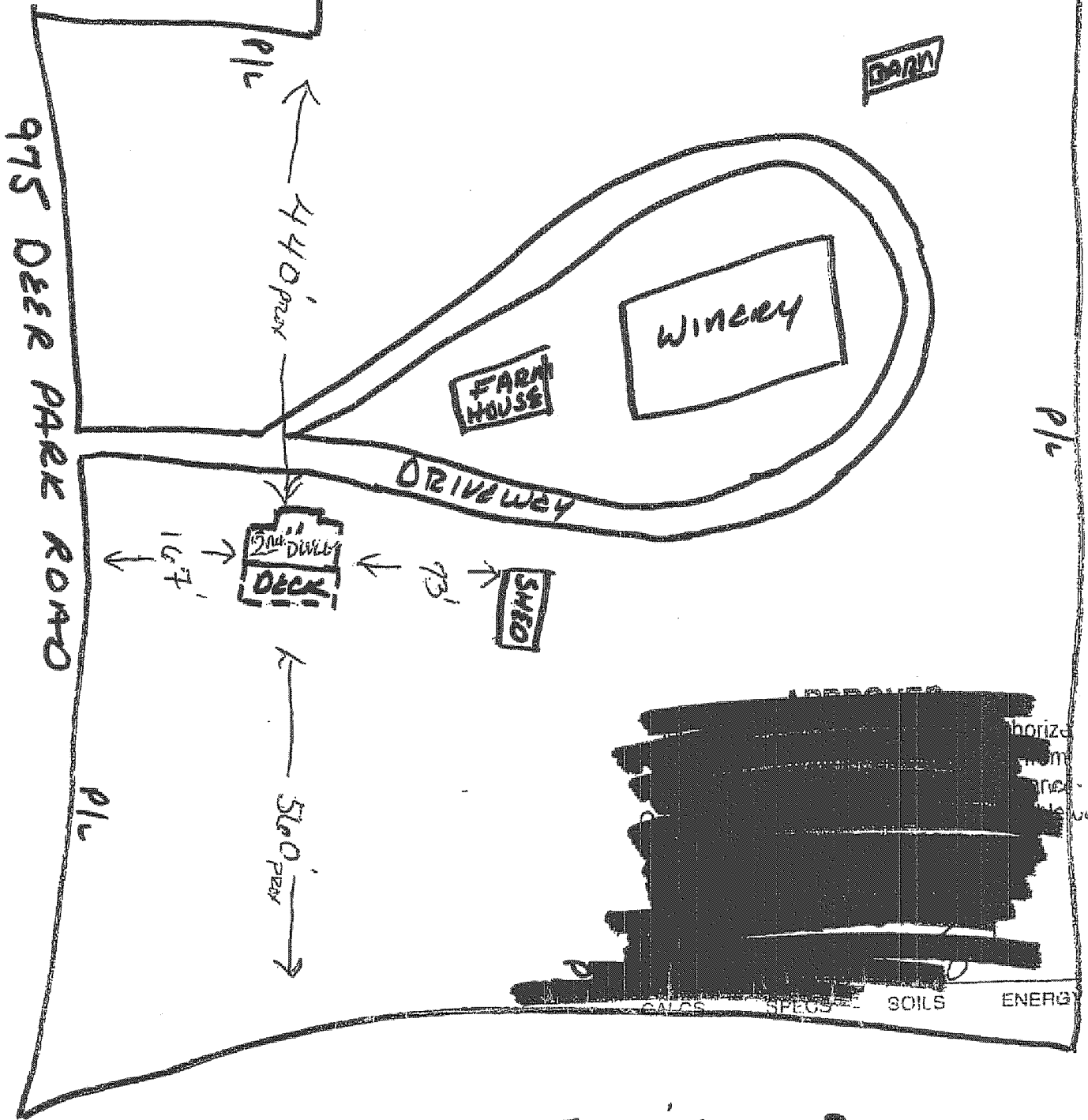
AMOUNT: _____
CHECK NUMBER: _____
RECEIPT NUMBER: _____
DATE REC'D: _____ BY: _____

Quick Permit Yes No
Permit Type _____

Bldg.
PL
EM-Sin
CAF
PW

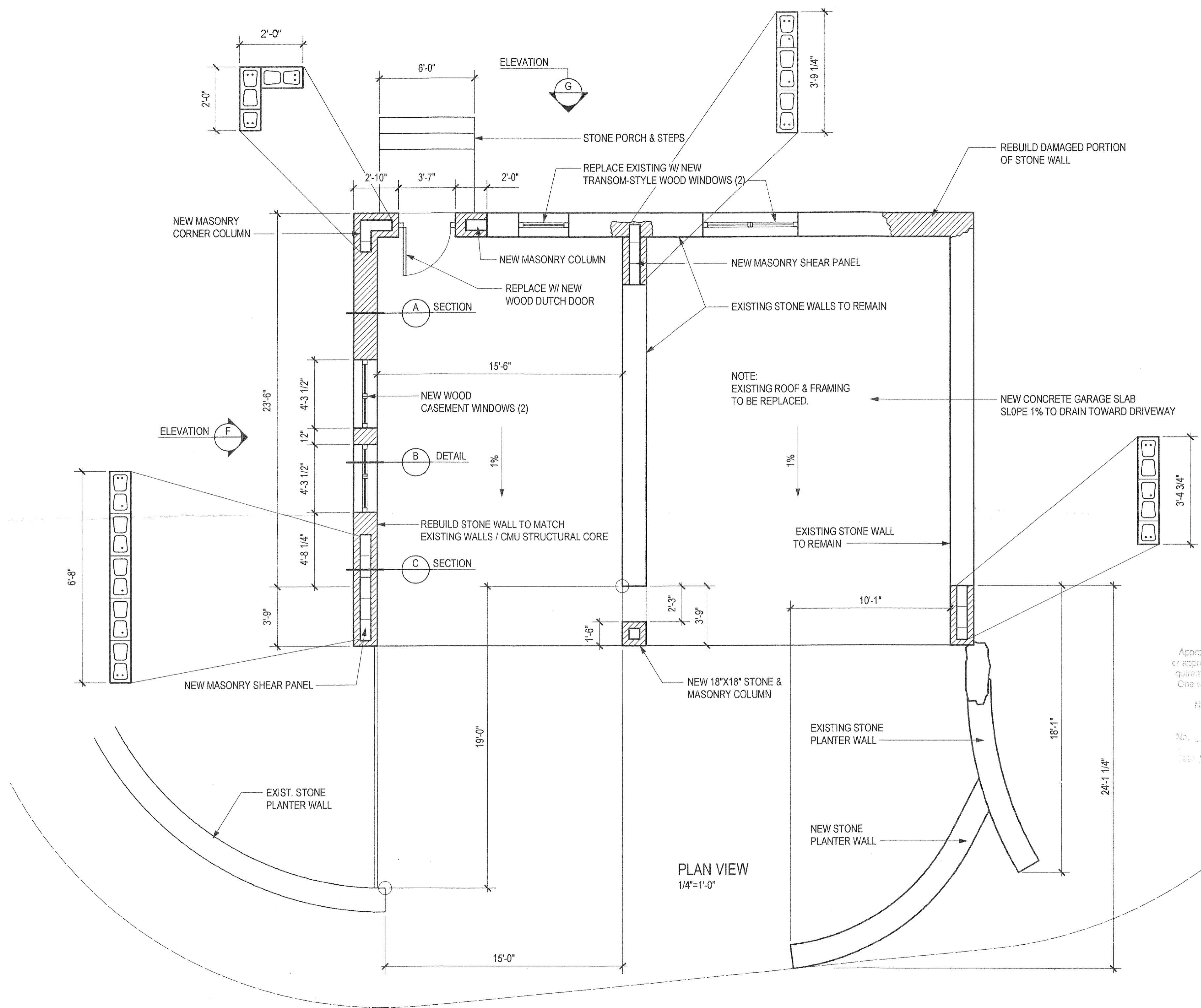
OFFICE SET

BB-01434
021-400-002
B-PLM
10/12/06



JOHN & LAURA BREMER
975 DEER PARK RD
ST. HELENA, CA

B06-01434
 021-400-002
 B-PLNS
 10/12/06

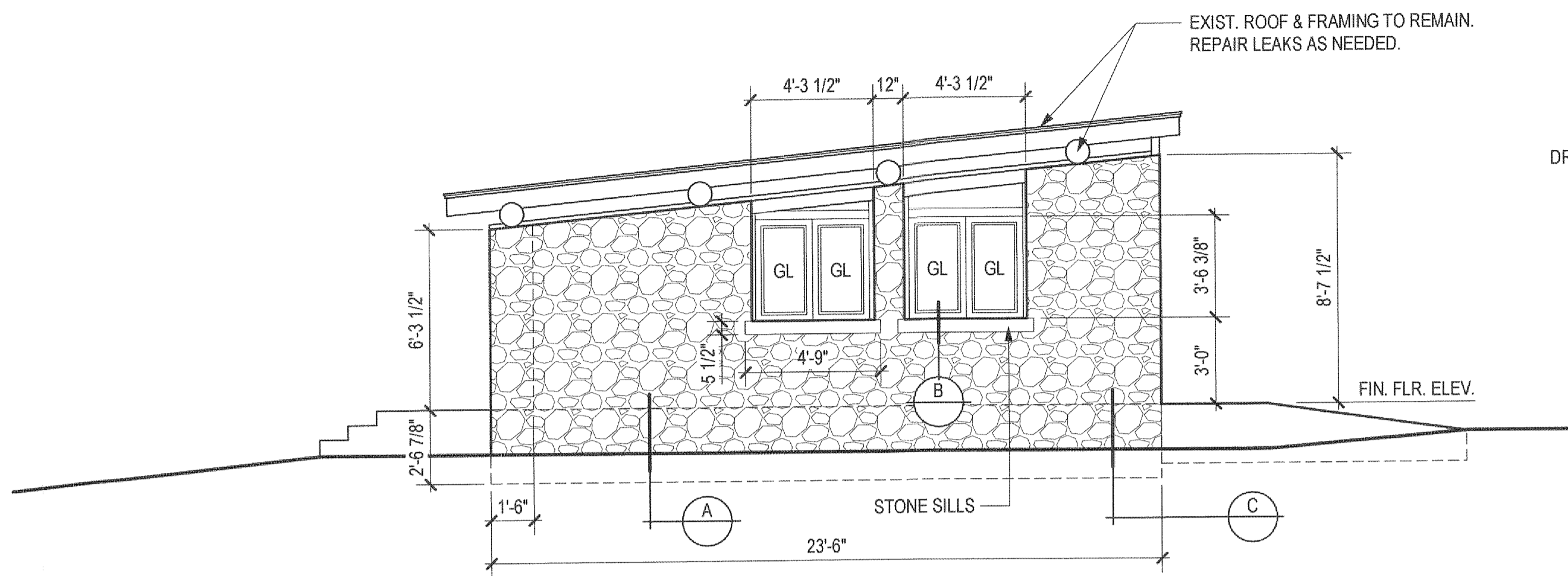


APPROVED
 Approval of these plans does not authorize or approve any omission or deviation from requirements of State laws or local ordinances. One set of approved plans shall be available on the project site at all times.
 Napa County, Building Department
 Napa, California

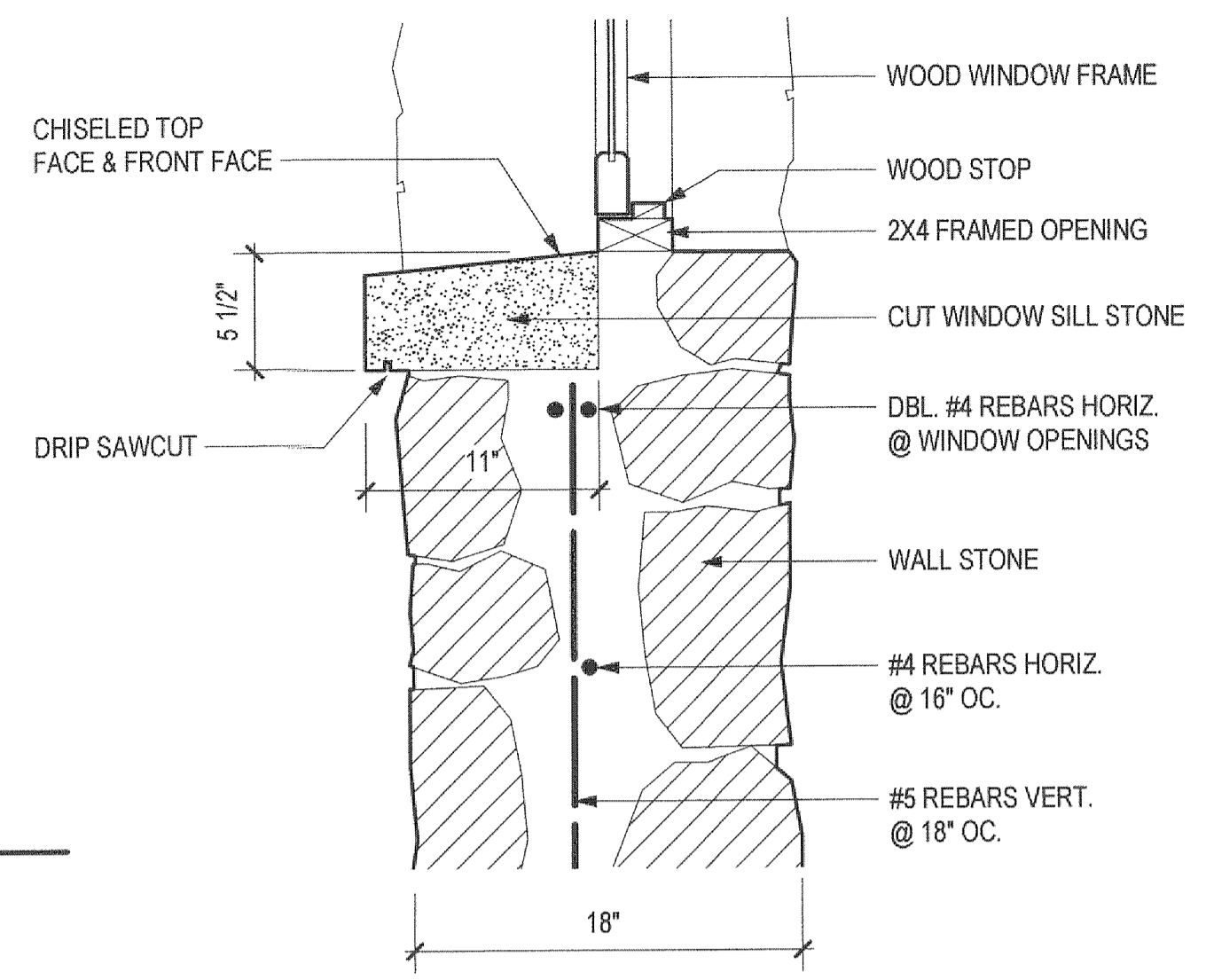
No. B06-01434
 Date 10/12/06 by WJC

OFFICE
 SET

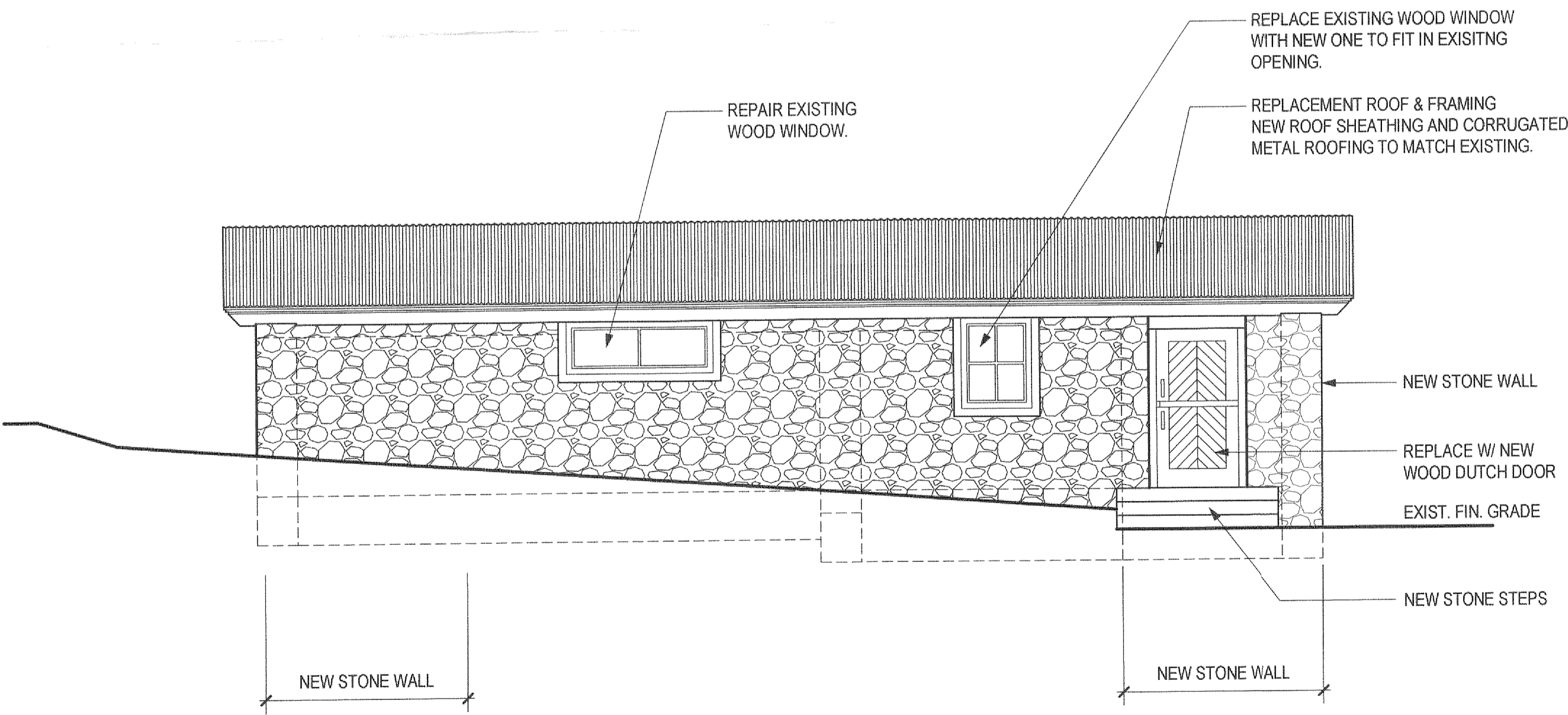
183



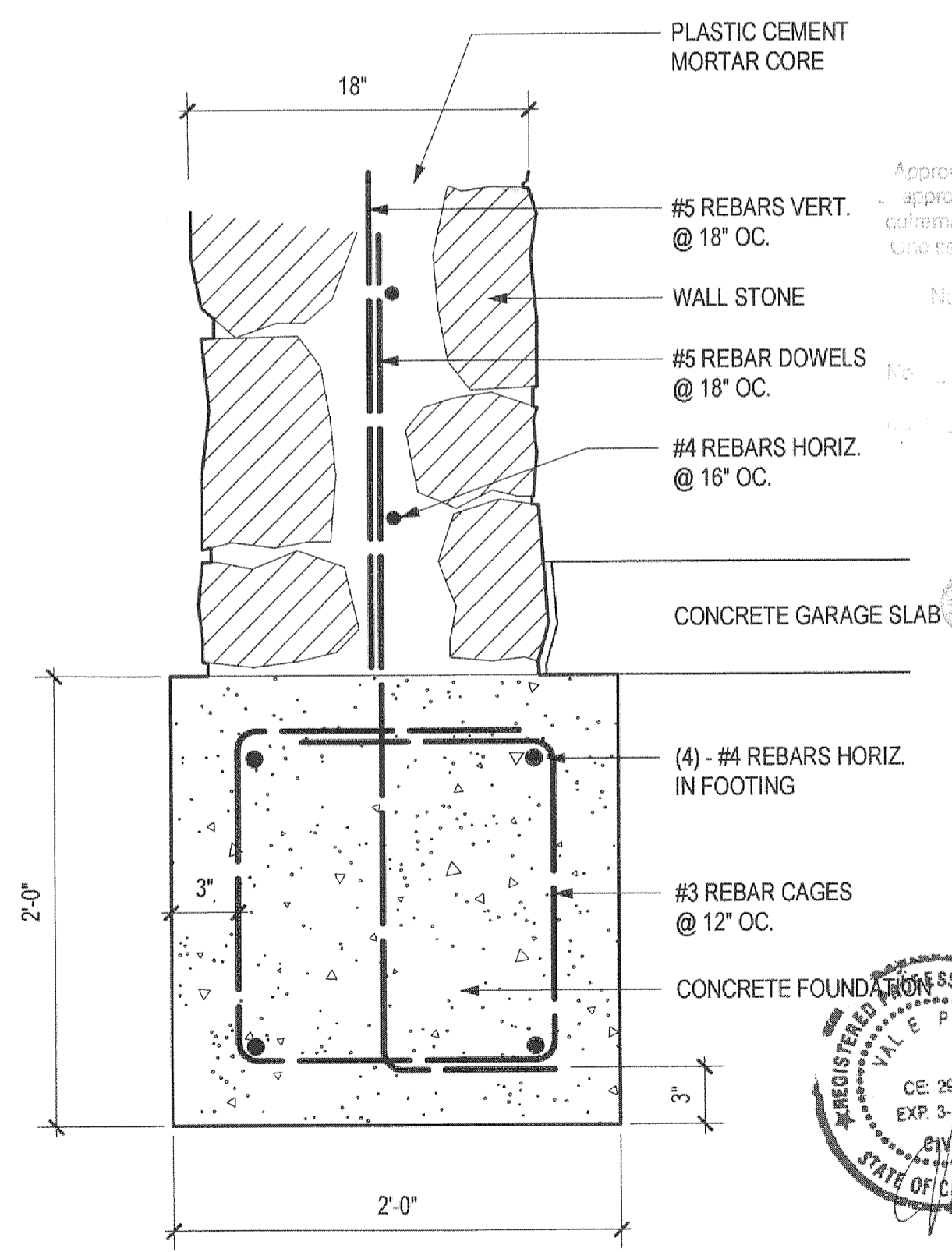
F RIGHT SIDE (SOUTH) ELEVATION
1/4"=1'-0"



B WINDOW OPENING DETAIL
1-1/2"=1'-0"



G REAR (WEST) ELEVATION
1/4"=1'-0"



A WALL & FOUNDATION SECTION
1-1/2"=1'-0"

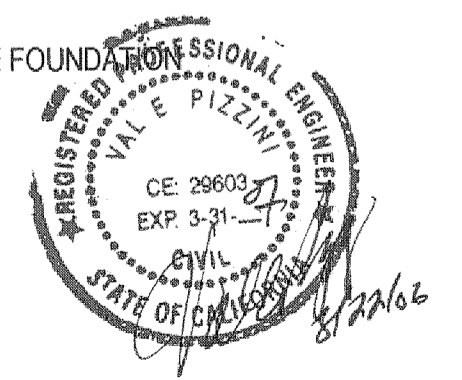
APPROVED

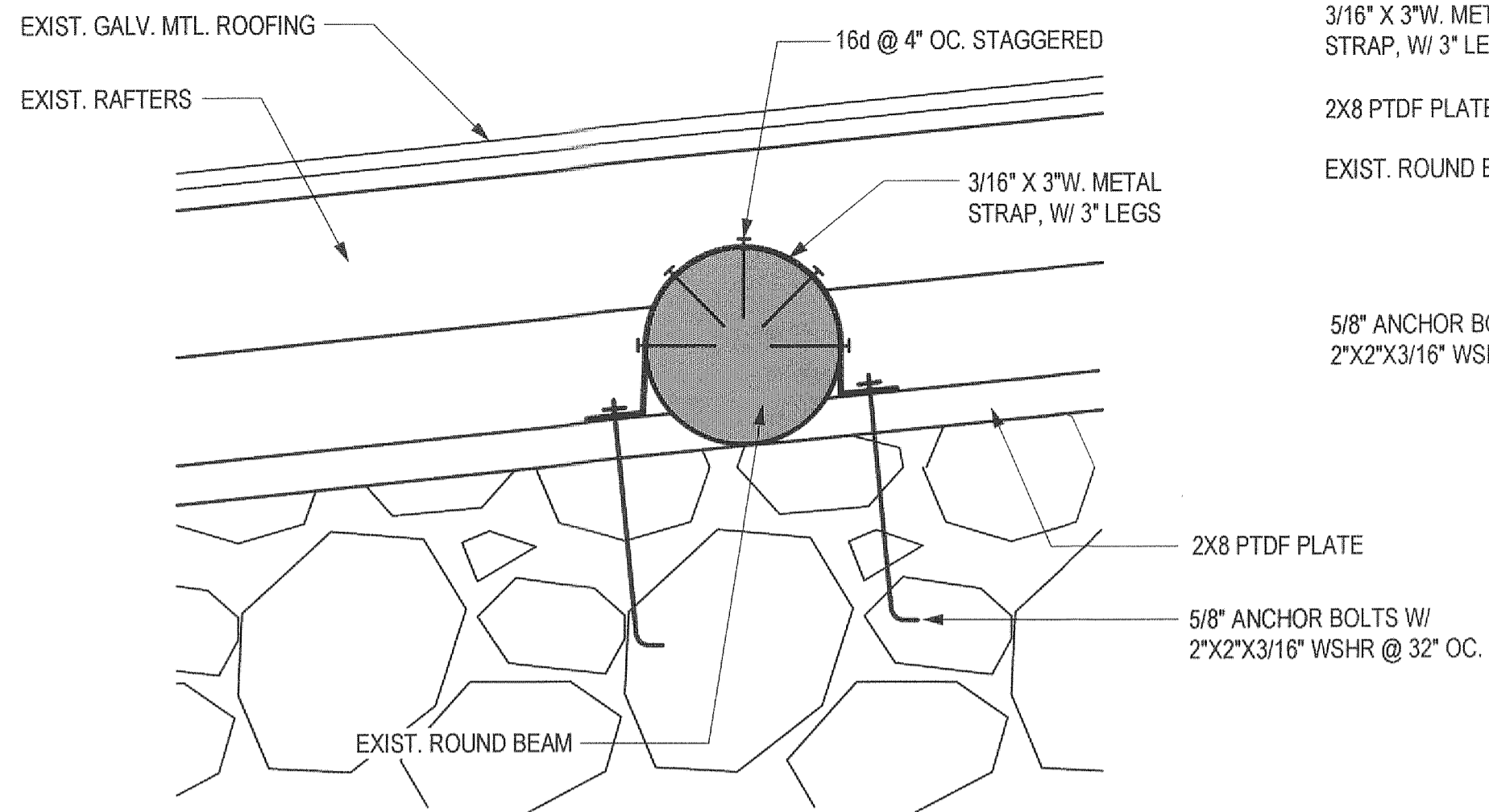
Approval of these plans does not authorize approval of any omission or deviation from requirements of State laws or local ordinances. One set of approved plans shall be available on the project site at all times.

Napa County, Building Department
Napa, California

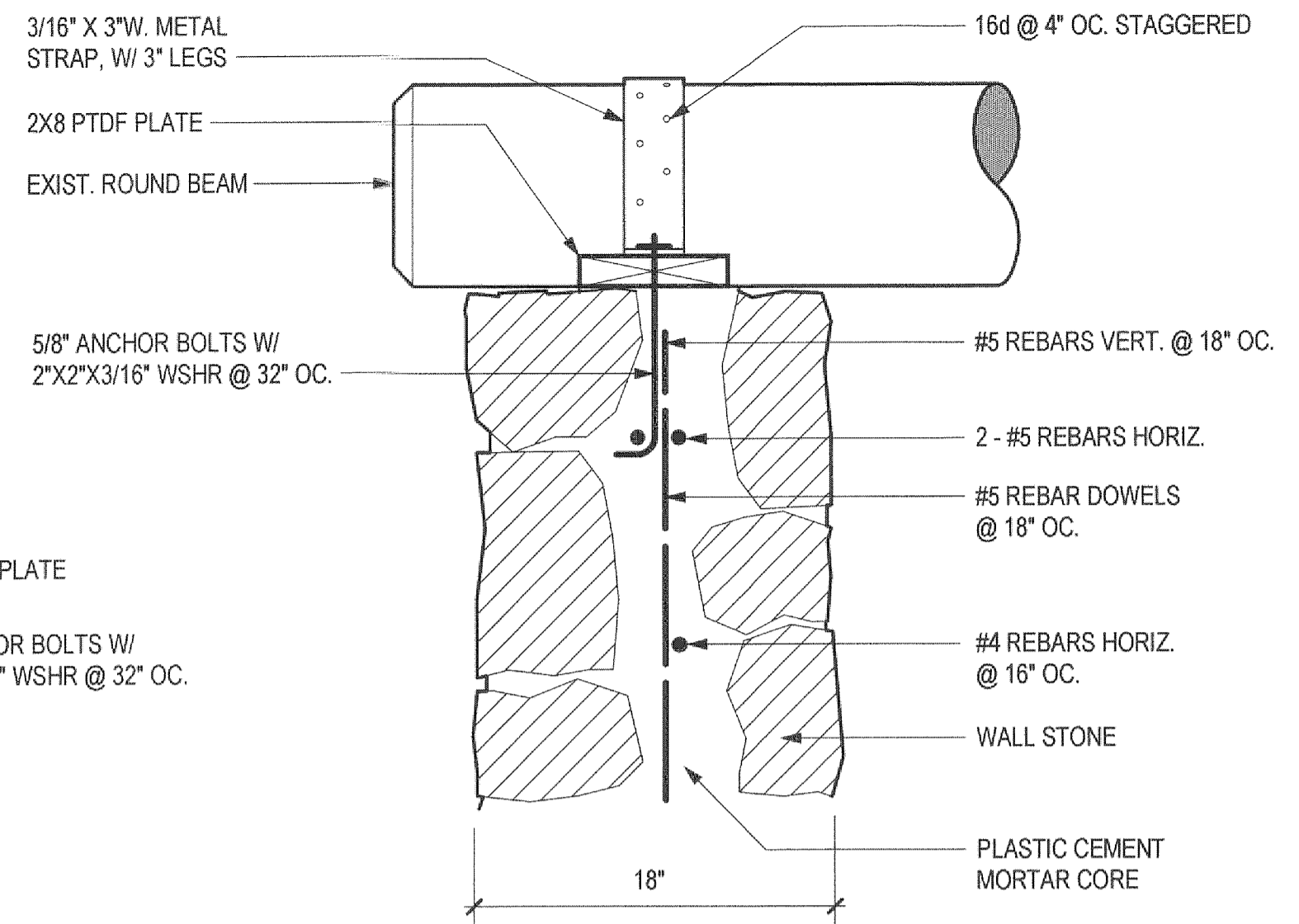
REC-0143A
10/12/06 by MJC

OFFICE SET

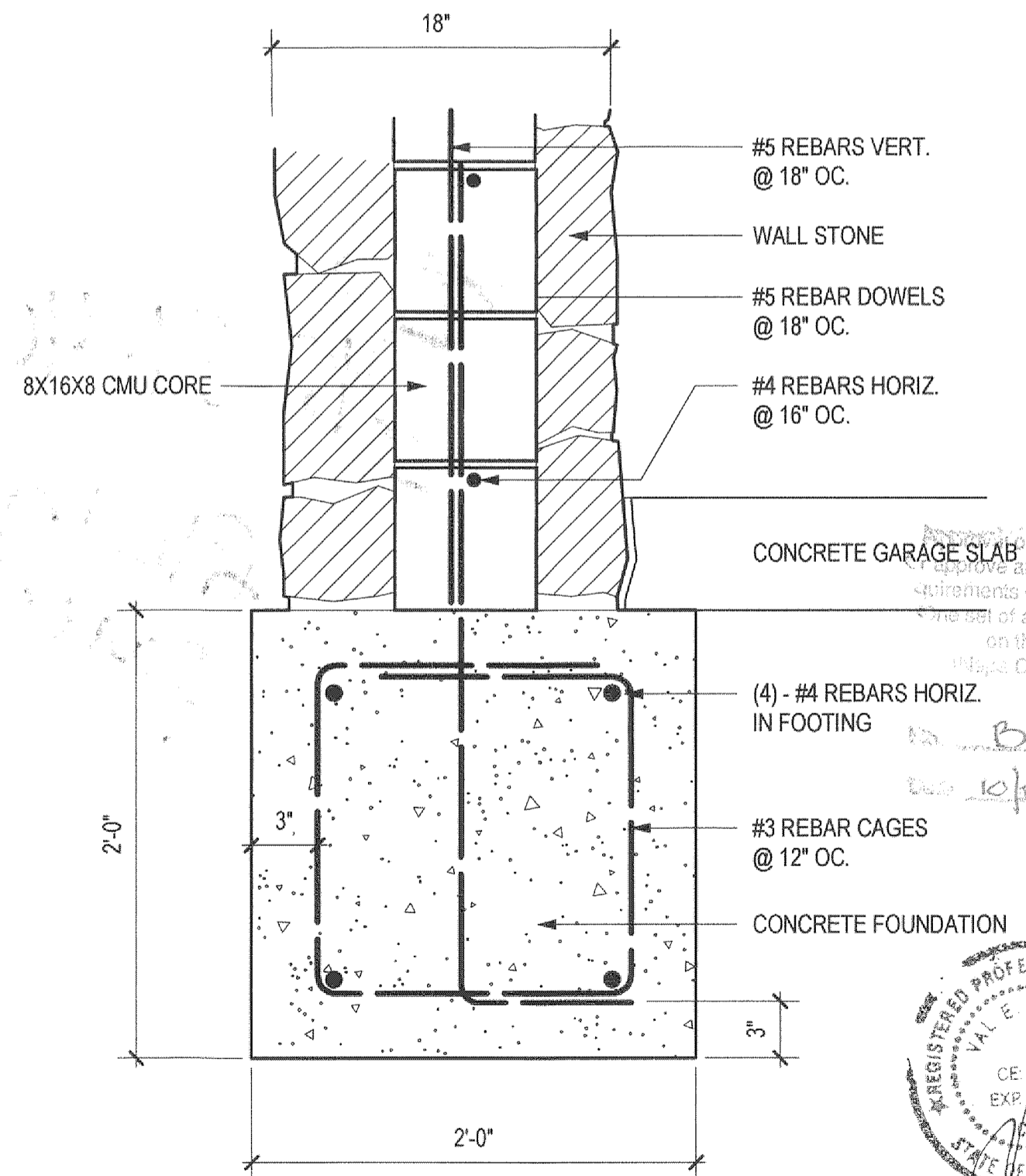




E BEAM CONNECTION DETAIL
1-1/2"=1'-0"



D BEAM CONNECTION DETAIL
1-1/2"=1'-0"



C WALL SECTION
1-1/2"=1'-0"

OFFICE SET

APPROVED

I hereby approve these plans and do not authorize any other person to approve any omission or deviation from requirements of State laws or local ordinances. A complete set of approved plans shall be available on the project site at all times.

Shane County, Building Department
Napa, California

10/12/06 By Mac

8/22/06

REGISTERED PROFESSIONAL ENGINEER
VAL E. PIZZINI
CE 29693
EXP. 3-31-09
STATE OF CALIFORNIA

Attachment 5

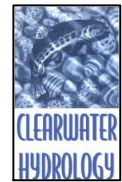
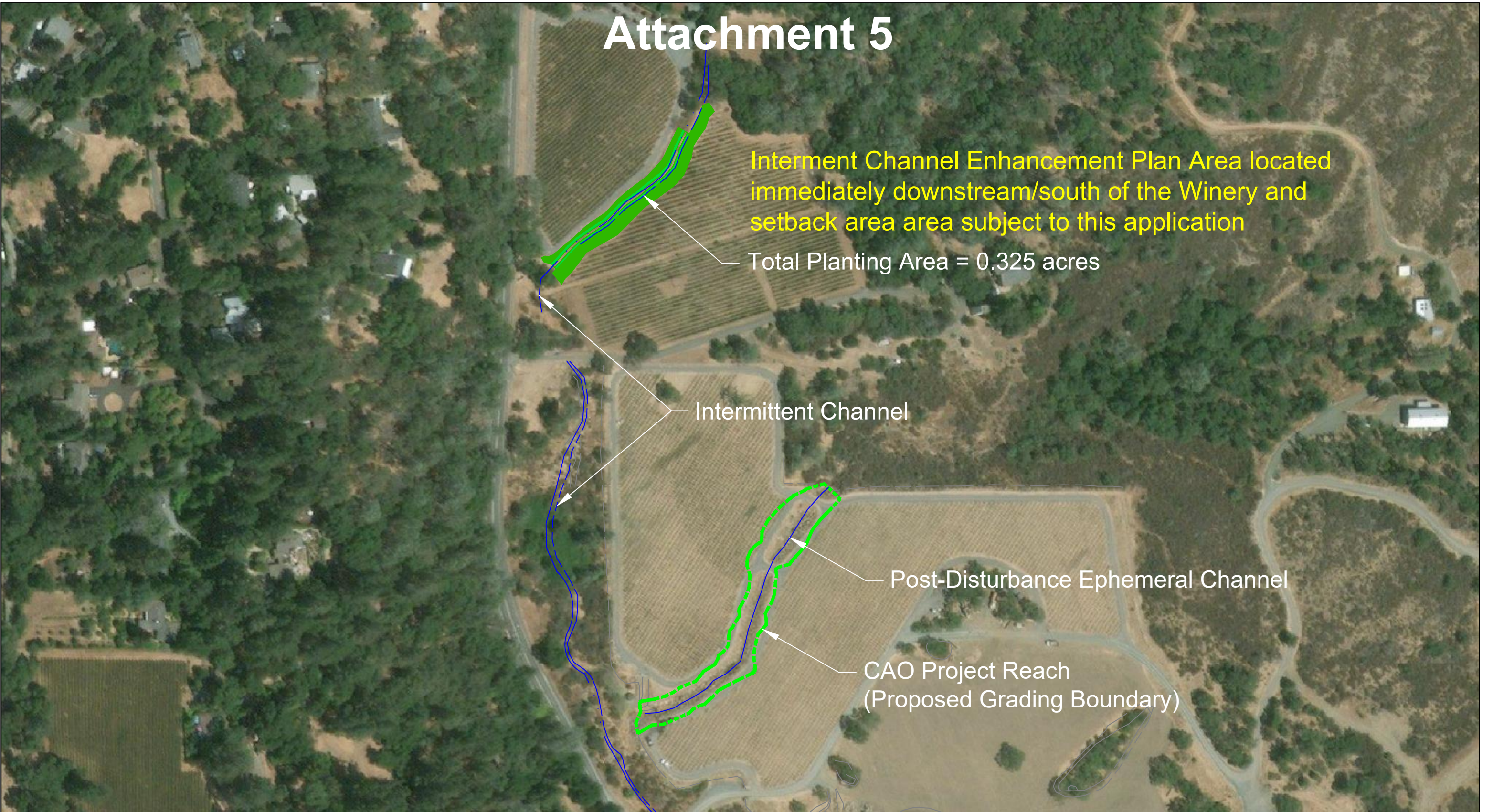
Interment Channel Enhancement Plan Area located immediately downstream/south of the Winery and setback area area subject to this application

Total Planting Area = 0.325 acres

Intermittent Channel

Post-Disturbance Ephemeral Channel

CAO Project Reach
(Proposed Grading Boundary)



2974, Adeline Street
Berkeley, California 94703
Ph: 510.841.836

INFORMATION SOURCE:
Terra Firma Surveys, Inc.
Napa Valley Vineyard
Engineering, Inc.

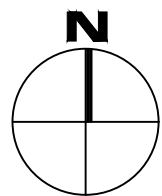


Figure 5 : Location Map of CAO Project and Mitigation Channel Reaches

Project: Bremer Family Winery Cleanup and Abatement Order

90% Corrective Action Workplan

Date: 05-23-2018

Total CH Planting Area = 0.328 acres

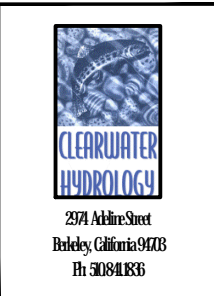
- Mitigation Planting Area
- Blue Oak (5) (3 Acorns/site)
- Coast Live Oak (6) (3 Acorns/site)
- Chemise (14)
- Sticky Monkey Flower (10)
- Scrub Oak (5)
- Common Manzanita (6)

At least 10' between shrub plantings

At least 20' between oak trunk & shrubs



REVISIONS	DATE



PROJECT:
Bremer Family Winery Cleanup and Abatement Order
 975 Deer Park Rd, St Helena, CA 94574
 90% Corrective Action Workplan
 Mitigation Area Planting Plan

INFORMATION SOURCE:
 Terra Firma Surveys, Inc.
 Napa Valley Vineyard Engineering, Inc.
 Clearwater Hydrology Survey

DRAWN BY: EJKK PROJECT NO.:
 CHECKED BY: W.B.V. DATE: 11-08-2018
 SHEET: