manatt

Christian E. Baker
Manatt, Phelps & Phillips, LLP
Direct Dial: (415) 291-7463
CBaker@manatt.com

March 28, 2023

Ms. Jen Chard
Permit Sonoma
2550 Ventura Avenue
Santa Rosa, CA 95403

Re: Proposed Parking Changes, 275 Highway 128 Geyserville, California 9544: Application ADR23-0008

Dear Ms. Chard:

My firm represents Cyrus 2.0, LLC ("Cyrus"), the tenant of a commercial building located at 275 Highway 128, Geyserville, California 95441 ("Property"). On March 22, 2023, Summit Engineering, Inc. ("Summit") submitted Design Review Application ADR23-0008 ("Application") on behalf of the property's owner, Walden Geyserville, LLC ("Walden")[1], to add 9 parking spots without my client's knowledge. This seemingly innocuous request is anything but harmless. In reality, the primary reason Walden has submitted this Application is to evade existing contractual duties owed to my client which are the subject of current litigation. We write to strongly oppose these proposed changes not only because the proposal is misleading and submitted in bad faith, but also because approving these unnecessary changes would be extremely harmful to my client's business operations.

My client operates Cyrus Restaurant on the Property pursuant to Use Permit PLP20-0017, issued by your office on December 30, 2020. As you are aware, the issuance of such a permit to operate a restaurant is conditioned on the existence of one parking space per 60 square feet of dining space, as required by Sonoma County Zoning Regulations, Article 86, Section 26-86-010. Cyrus and Walden are currently engaged in litigation in the Superior Court of the County of Napa (Case Number: SCV-272053) over Walden's failure to provide Cyrus the number of parking spaces required by the Lease Agreement and the Use Permit. The legal determination sought in this litigation will have a direct impact on the parking plan that the Application seeks to alter. The changes included in the Application are not feasible or necessary. Walden's only intention in submitting this proposal is to evade parking agreements it made with Cyrus and to sidestep the litigation.

[1] The Project Description included with the Application lists the property owner as "275 Highway 128, LLC" which is the predecessor company to Walden Geyserville, LLC.

Accordingly, we request that you deny this application or defer reviewing it until the completion of the attendant litigation. If your intent is to consider the Application, we request a full review. Additionally, we encourage you or a representative of your office to visit the site to assess the feasibility of this proposed change in person to gain a better understanding of the deficiencies laid out below.

I. The Proposal Will Not Improve Onsite Parking Flow.

The submitted Application states that the project will "increase parking stalls by 9 stalls to better accommodate onsite parking flow" without explaining *how* the increase would achieve that improvement. This is because the change would not, in fact, improve onsite parking flow. The sloppy proposal includes mismeasurements and suggests changes that are impossible or would worsen the existing and functioning parking flow on the Property.

A. There Is No Current Issue With Parking Flow.

The Application proposes the addition of three parking spaces to be placed along the vineyard road and six parking spaces to be added to the north end of the existing parking area in order to "improve parking flow." These changes are entirely unnecessary, and this reasoning is pretextual. Walden filed the Application to preclude Cyrus from using parking spaces by the cottage, despite that they are included in the existing parking plan.

The Property includes the restaurant and lounge as well as three approved work/live units (Use Permit: UPE06-0096) and an approved single-family dwelling caretaker unit (Use Permit: UPE01-0010). Pursuant to the Sonoma County Code, this Property would require a total of 61 parking spaces, including one covered space for the caretaker unit, six parking spaces for the work/live units, and 54 spaces for the restaurant and lounge. These calculations were approved by your office and are reflected in Cyrus' application for the Use Permit. (*See* Attachment 1 for the parking calculations submitted with the Use Permit application).

In the six months since opening Cyrus Restaurant, the parking plan included in the Use Permit has not resulted in *any* parking flow issues. The only parking issues that have occurred are related to Walden's insistence on parking in spaces adjacent to the caretaker's unit that were dedicated to Cyrus' sole use pursuant to the Use Permit application, despite the fact that Walden's dedicated spaces remain unused. Walden also seeks to deny Cyrus use of these spots by erecting "No Parking" signage, sending warning emails, and threatening to tow Cyrus' vehicles. The threat of having their cars towed has deterred several Cyrus staff, who have sought street parking instead. (*See* Attachment 2 for email from Walden's counsel. Photos can be supplied). Walden's proposal seeks to address a non-existent parking flow problem while simultaneously failing to address the *real* issue by refraining from parking in spaces dedicated to Cyrus' sole use.

B. The Proposal Includes Inaccurate Measurements That Would Create Additional Parking Issues.

The measurements shown on the site plan for the new proposed parking submitted as part of the Application are not accurate. The proposed six new spaces on the North End of the lot do not synchronize with actual field conditions and would create serious issues for staff, guests, deliveries, trash, and recycling pick-ups. (*See* Attachment 3 for the site map).

First, the Application claims that there are 25 feet between the end of the proposed three new spots to be placed along the vineyard road and the thruway where cars and trucks would turn; this is not true. (*See* Attachment 4, Image 1). If a standard pickup truck or SUV was parked in those spots, restaurant deliveries or trash and recycling trucks could not make that turn, as they do now. They would have to turn around on the Highway and back down the long driveway. Larger trucks would be forced to unload on the Highway. This would require the creation of a loading zone and would make transferring the items to the restaurant much more difficult, and likely would require the restaurant to add staff to receive goods. Further, the trash company may simply refuse to provide service to the existing approved and improved trash area, likely necessitating a study to relocate the trash closer to the street.

Second, two of the six newly proposed spots on the north end of the lot would require the removal of four spaces along the east side of the parking lot, as opposed to the proposed- "(2) Standard Spaces" to be removed from far northeast corner of the parking lot. (*See* Attachment 4, Image 2). As proposed, this would cause serious issues and would likely result in fender benders while parking or would render the spots effectively unusable.

C. The Proposed Changes Are Not Feasible.

The Application's proposal to replace the current 14 standard-sized spaces with 18 compact spaces is not feasible. Cyrus fully analyzed this possibility when drafting the parking calculations for the Use Permit application but, after reviewing numerous commissioned parking studies, came to the conclusion that the proposal was impractical, if not impossible. The majority of the restaurant's guests and employees drive full-size cars and many drive pickup trucks, none of which would fit into a compact spot. Summit and Walden were fully aware of this issue and discussed the problem with Cyrus while drafting the Use Permit application. At the time, Summit agreed it was not truthful to say more compact size parking spaces would suffice, yet now Walden is making this very proposal even though no circumstances at the Property or restaurant have changed.

If this proposal was feasible, Cyrus would have included it in the original Use Permit application – but it is not and this has been confirmed in the first six months of Cyrus' operation. If the existing parking spots were reduced to compact size, parking in the tight spaces would be so difficult that it would require additional staff to oversee the parking and to valet park cars.

Alternatively, guests with large vehicles would be required to park across two spaces, filling the lot prematurely and causing other guests to seek street parking.

Additionally, since the opening of Cyrus restaurant, Walden has permitted vineyard workers to park in spots that were to be dedicated to Cyrus' sole use pursuant to the Use Permit. (*See* Attachment 4, Image 3). The vineyard workers park their large trucks in these spots early in the morning, taking spots employees would normally use. Shrinking of the size of stalls would exasperate this situation and necessitate more street parking on these days.

Lastly, the location for the three spots proposed along the vineyard has been underwater for much of the winter season, rendering the spaces unusable. (*See* Attachment 4, Image 4). These spaces are not reliably available during the rainy season, which increases reliance on street parking. Even if guests and employees could pull into the spaces during the dry months, the location of the spots would cause the passenger sides of the automobiles' door to scratch against the first row of vines. This would likely require the removal of one row of vines to create passenger exit space. Further, the three spots do not allow for a turnaround for people parking or leaving from those spots.

III. The Proposed Changes Are Extremely Harmful to Cyrus' Business Operations.

The three spots proposed to be placed along the vineyard would be extremely harmful to Cyrus' business operations. The entire restaurant was built on the premise of unobstructed vineyard views. The restaurant principals spent nearly a decade seeking to create a Sonoma County destination featuring a pastoral location floating above the vines. Great care was taken in the design of the restaurant to mitigate the visual obstruction of the views and the impact of headlights on the dining spaces. These three spots put cars directly in front of the restaurant's windows and impact guest views and experience. Considerable investment was made in landscaping a board-form concrete wall to hide the parking lot from our guests and block that sweep of light from cars making the circle from the lot to the driveway. Additionally, the restaurant purposefully installed a floor to ceiling window in the dining room to permit diners to enjoy the breathtaking views. (*See* Attachment 4, Image 5). Now with parking on the road in front of the restaurant all that careful effort is lost. The impact of high beams sweeping a dining room is disastrous.

Obstructing or otherwise impacting these views will cause irreparable damage to Cyrus' reputation, existing good will, and, ultimately, the success of the business. It cannot be overstated that allowing these three spots to exist will spoil the very concept of the restaurant.

A. The Application Was Submitted in Bad Faith.

As stated above, Walden's claim that its Application is necessary to address parking flow or other issues is completely pretextual; the proposed changes would, in fact, make parking more

difficult and negatively impact the restaurant's operations. There is no purpose for these proposed spaces other than to deny Cyrus staff parking in the agreed upon open area adjacent to the caretakers unit as negotiated with Walden in the submission of the original Use Permit application. Walden has repeatedly claimed that it was unaware of the original agreement that Cyrus staff would park by caretaker's unit. However, emails and signatures show that to be false. (*See* Attachment 5 for Mr. Oliver's signature on the Use Permit application, including the parking analysis and calculations).

Summit's Engineer Principal, who previous served as a consultant to Cyrus and submitted the original Use Permit application, confirmed to Cyrus in a phone call on Thursday March 2, 2023 that Walden's principal, Mr. Oliver, acknowledged that Walden *did* in fact participate in and approve the parking calculations included in the Use Permit application, despite repeatedly denying this to Cyrus. (*See* Attachment 5). Indeed, the sole intent of submitting the current Application was to free up the spaces by the caretaker's unit rather than to improve parking flow as attested to by Walden in the Application.

Ultimately, Walden submitted its Application in bad faith. Walden has been retaliating against Cyrus after previous business issues among the parties led to a failing in their business relationship. Cyrus previously removed Mr. Oliver's construction company, Oliver & Company, Inc., who was the initial general contractor for the restaurant's construction. Additionally, Cyrus refused to lease the caretaker's unit despite Walden's demands. Finally, Cyrus refused to purchase the property from Walden. Altogether, this has soured the business relationship between Cyrus and Walden and, as a result, Walden has repeatedly and intentionally interfered with Cyrus' business operations. The submission of this Application is no exception.

IV. Conclusion

Cyrus is a business that has transformed this previously empty Property that had been languishing for over 15 years into a source of esteem and pride for Geyserville and Sonoma County. Cyrus dedicates itself to business practices that benefit local vendors and attracts visitors to the County at large. It is setting the standard for how restaurants can thrive and lead in this community, and inspire and cultivate their employees.

Cyrus submitted a thoughtfully analyzed Use Permit application in good faith to operate the restaurant. Over the last six months that the restaurant began operations the current parking has worked for the business and other tenants. The only non-constant is the deterioration of Walden and Cyrus' business relationship; Walden is unhappy with the terms that it negotiated with Cyrus, but instead of complying with its agreement allowing Cyrus management and employees to park adjacent to the caretaker's unit, it is using the County to unilaterally compel Cyrus to comply with a parking arrangement to which it did not agree. The Use Permit and Lease Agreement, both of which Walden signed, grant Cyrus sole use of these spaces. There has been no event necessitating the amendment of this initial plan.

While we acknowledge that the County may not be compelled to consider an applicant's contractual obligations with a lease when granting a design application, we do think it is necessary that the County consider Walden's true intentions and motivations for its Application. Walden's new parking proposal claims to improve parking flow but makes no mention of how it achieves this goal. In fact, it reduces the number of usable spaces, creates flow issues, will cause the restaurant to add staff, and will interfere with essential services, such as trash retrieval and supplier access, which will threaten the business and, ultimately, its Use Permit. If the parking plan in the Application is approved, it will require additional street parking, a loading zone, and a street-side area for trash.

Walden has failed to identify any legitimate reason for a change to the existing parking plan, and the County, therefore, has no reason to approve it. The Application is Walden's latest attempt to evade its contractual obligations with Cyrus, and nothing more. Walden's Application is a waste of the County's valuable time and resources, particularly since this very parking issue is already the subject of pending litigation, the outcome of which may render this Application irrelevant. We respectfully request that this Application be denied or deferred until the completion of the attendant litigation. Alternatively, Cyrus requests that the County conduct a full review so that it may properly consider Cyrus' objections to Walden's new and unapproved plan.

We are available to discuss at your convenience.

Very truly yours,

Christian E. Baker

Cc: Scott Orr
Tennis Wick
Douglas Keene
Nick Peyton

ATTACHMENT 1

From: Jan A. Gruen <JGruen@g3mh.com>
Sent: Tuesday, February 14, 2023 11:17 AM
To: Baker, Christian <CBaker@manatt.com>
Cc: Alex Grasso <agrasso@g3mh.com>; JImperatore@RodriguezWright.com
Subject: RE: Oliver and Co: Cyrus
Importance: High

Dear Christian,

Attached please find the parking plan that will govern the Premises and Cyrus' tenancy. As you can see, this plan addresses the parking count requirements of the Conditional Use Permit, so this issue is now moot.

[redacted]

In case you were not advised, the parking spaces at the Caretaker Residence were never "available" and are not now available. Mr. Keane is well aware of this, and should he claim the contrary, we have repeatedly reminded him of this fact. At the time the First Amendment was signed by all, the Caretaker Residence was fully occupied (and had been for many years) and all parking spots adjacent thereto were in use by the occupants and reserved for them. That is, they were not available parking spots at the time either the Lease or the First Amendment were signed. Of great concern is the parking depiction unilaterally created by Mr. Keane as part of the application for a Conditional Use Permit ("CUP), which depiction was not attached to and never provided to Mr. Oliver before he signed the application; rather Mr. Keane presented Mr. Oliver with the CUP application and told Mr. Oliver he was signing a document in support of a restaurant use on the 1st floor of the property only. Mr. Keane's parking depiction includes non-existent potential spaces and unavailable spaces and was not approved by or even known to Mr. Oliver at the time of submission to the County. Finally, please note that under all circumstances, Paragraph 2.6 (a) expressly prohibits Lessee from parking in or permitting or allowing "any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

Cyrus had the opportunity to Lease the Caretaker Residence and declined to do so. To ensure clarity, Lessor is now actively marketing that residence for lease. At present, "No Parking" signs are posted in and around the Caretaker Residence; Towing Signs will be installed shortly. As a courtesy, this serves as notice that once the residence is occupied, towing will take place.

[redacted]

Best,
Jan A. Gruen

g3mh
GOLDSTEIN, GELLMAN, MELBOSTAD, HARRIS & McSPARRAN LLP

Jan A. Gruen, Attorney at Law
Goldstein, Gellman, Melbostad, Harris & McSparran, LLP
1388 Sutter Street, Suite 1000
San Francisco CA 94109-5494
Volce: 415/673-5600, Ext. 258
Fax: 415/673-5606
Email: jgruen@g3mh.com

ATTACHMENT 2

Parking

The project was analyzed to determine whether the proposed parking supply would be sufficient for the anticipated demand even during maximum occupancy of the restaurant. The project site as proposed would provide 69 on-site parking spaces, three of which would be accessible spaces and four of which would be covered, and 68 additional on-site valet parking spaces for a total supply of 137 parking spaces.

Parking supply requirements for the County of Sonoma are related to the area of a building and are based on the County's Code of Ordinances, Article 86 Section 26-86-010, Required Parking. Per the County Code, the caretaker unit must have one covered space, the work/live units would be required to have parking at a rate of two spaces per unit, and the restaurant would need one parking space for every 60 square feet of dining area. Because the County Code does not indicate parking requirements for lounges, the parking requirement for the restaurant was applied to the 1,078 square-foot lounge. With the addition of this space to the 1,166 square-foot main dining room, 274 square-foot private dining room, 562 square-foot dining-in-kitchen area, and 149 square-foot dining feature room, the total square footage of the restaurant and lounge applied to the parking analysis is 3,229 square feet. Overall, these parking requirements translate to a required supply of 61 spaces. The proposed permanent on-site parking supply of 69 spaces would therefore exceed the County requirement by eight parking spaces.

The anticipated peak parking demand during the proposed maximum occupancy of 200 guests was also estimated using standard rates published by ITE in *Parking Generation*, 5th Edition, 2019. The parking demand of the restaurant and the lounge were estimated using the published standard rates for "Quality Restaurant" (ITE LU #931) as the manual does not include parking demand rates for lounges. The expected peak parking demand for the proposed project is 104 parking spaces; therefore, the total proposed parking supply would exceed the peak demand with a surplus of 33 valet parking spaces. A summary of the parking analysis is indicated in Table 1.

Table 1 – Parking Analysis

Land Use	Units	Rate	Parking Spaces
County Required Parking			
Single-Family Dwellings	1 du	1 covered space/unit	1
Work/Live Units	3 du	2 spaces/unit	6
Restaurants	3.229 ksf	1 space/60 sf dining area	54
County Required Parking Total			*61*
ITE Parking Demand Estimate			
Quality Restaurant	200 seats	0.52 space/seat	104
Proposed Parking Supply			
Covered Caretaker Spaces			**4**
Work/Live Spaces			**6**
Restaurant/Lounge Spaces			**59**
On-Site Valet Parking Spaces			**68**
Total Proposed Parking Supply			**137**

Notes: ksf = 1,000 square feet; sf = square foot; du = dwelling unit

The proposed parking supply for the project is sufficient whether determined based on the square footage of the restaurant and lounge area or the building's maximum occupancy.

Finding – The proposed parking supply would be adequate based on County standards and would accommodate the anticipated peak parking demand.

Security:

The existing security gate at the driveway entrance will remain open while the restaurant building is occupied. Otherwise, the gate will be closed for security purposes.

Trash Enclosure:

The existing trash enclosure located northwest of the restaurant building will remain and a new grease interceptor will be installed for the kitchen. The trash enclosure will be modified to include a new roof, a drain inlet, and an accessible doorway. The drain inlet will connect to the existing sewer system.

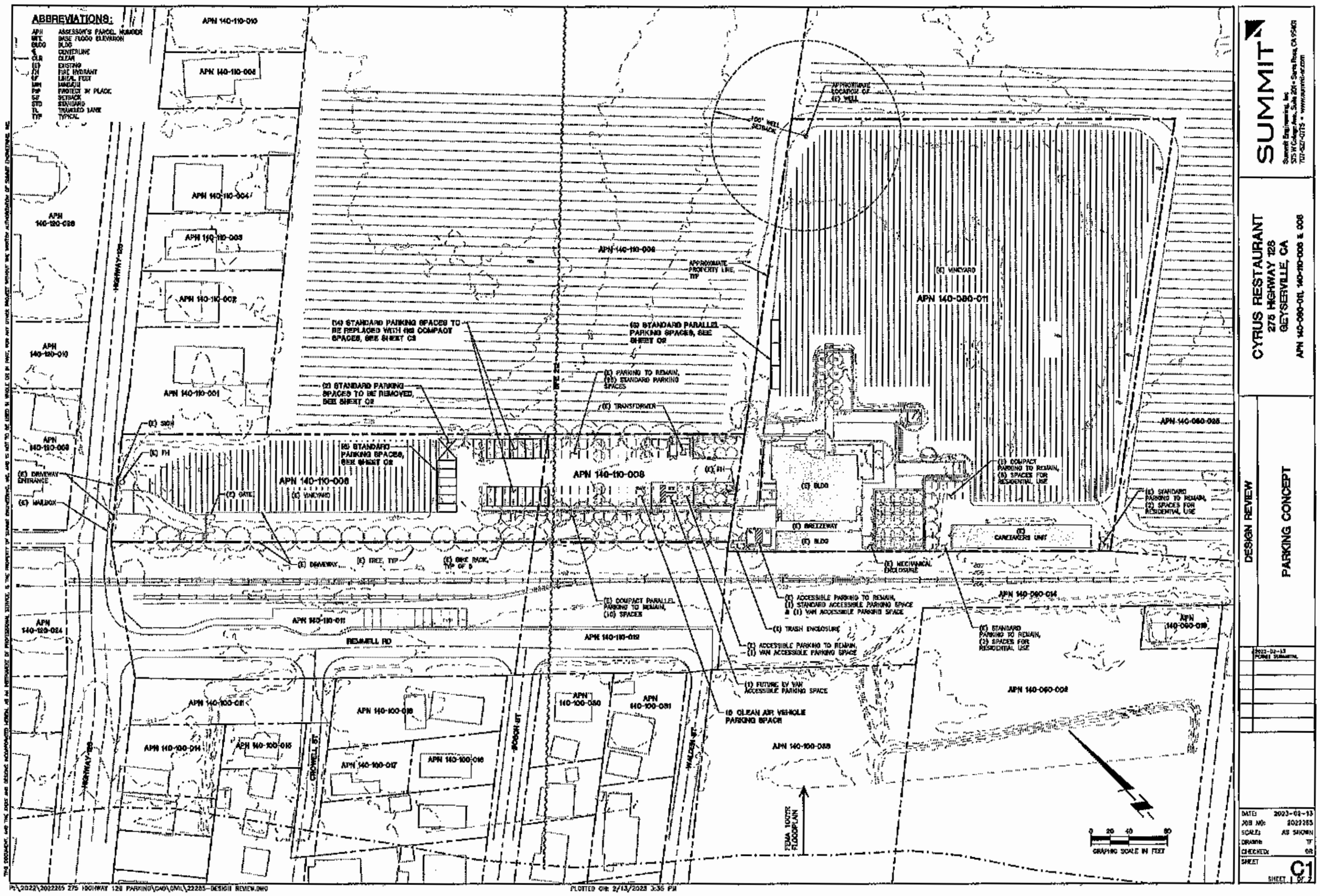
Parking Calculation:

The parking calculation for restaurants is one parking space for every 60 sq. ft. of dining area. To assure adequate parking is provided for this restaurant, a parking analysis has been prepared for the project. [See Attachment #4: Draft Parking Analysis, W-Trans]

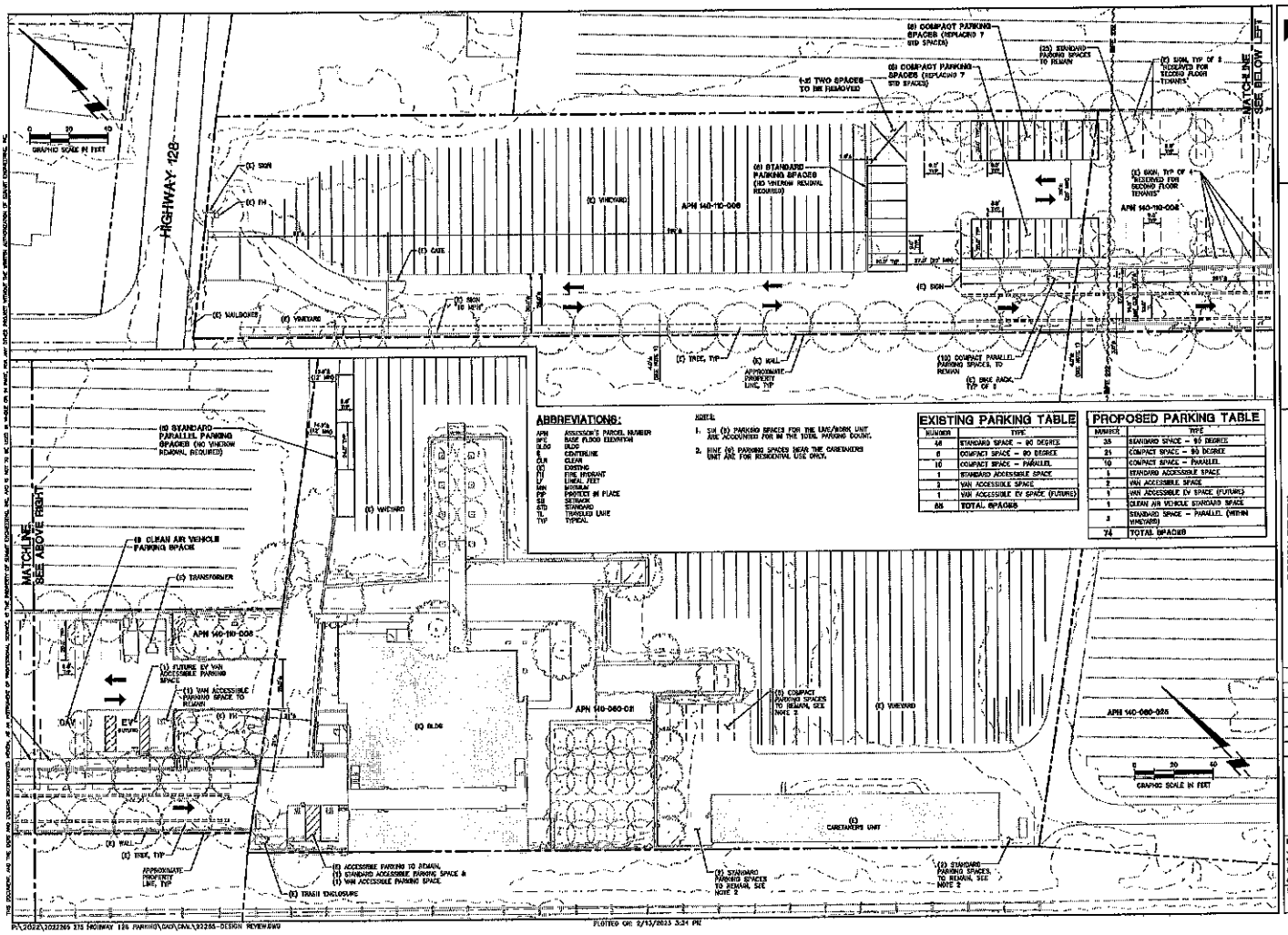
Here, the Applicant is voluntarily reducing the guest occupancy to 200 guests. A total of 65 proposed on-site parking spaces are located on-site. There will be no on-street parking. The three work/live units require a total of six parking spaces (two per unit); therefore, a total of 59 parking spaces are dedicated to the restaurant. An additional 68 valet parking spaces will be added when valet parking is utilized (total proposed restaurant parking spaces: 127). The caretaker unit has an existing attached four-car garage which will remain available to the caretaker residence; those four parking spaces are not included in the total of 65 on-site spaces.

Parking in the front parking lot (north) will include 42 standard parking spaces, 10 compact spaces added along the project driveway; one standard accessible space; two van accessible spaces; and one EV van accessible parking space. An additional nine parking spaces will be located in the existing rear parking lot located south of the building and adjacent to the caretaker unit (four standard spaces and five compact spaces). [See Attachment #5: Site Plan] There are an additional four parking spaces in the garage adjacent to the caretaker unit; these four spaces are not being used as part of the restaurant parking calculation. When valet parking is utilized, such parking will be located in the front parking lot, in the north vineyard vine rows, and along the vineyard access road to the east of the front parking lot as needed. [See Attachment #6: Valet Parking Plan]

ATTACHMENT 3



ABBREVIATIONS:
APN 140-110-008
APN 140-080-011
(E) VINEYARD
(E) BLDG
(E) BREEZEWAY
(E) CARETAKERS UNIT
HIGHWAY 128
BENNETT RD
CROWELL ST
SODOM ST
WALKER ST
FEMA 100YR FLOODPLAIN
GRAPHIC SCALE IN FEET
SUMMIT
CYRUS RESTAURANT
275 HIGHWAY 128
GEYSERVILLE, CA
APN 140-080-011, 140-110-006 & 008
DESIGN REVIEW
PARKING CONCEPT
DATE: 2023-02-13
JOB NO: 2022265
SCALE: AS SHOWN
DRAWN: TF
CHECKED: GR
SHEET C1
SHEET 1 OF 2



ABBREVIATIONS:

APN	ASSESSOR'S PARCEL NUMBER
BFE	BASE FLOOD ELEVATION
BLDG	BLDG
℄	CENTERLINE
CLR	CLEAR
(E)	EXISTING
FH	FIRE HYDRANT
LF	LINEAL FEET
MIN	MINIMUM
PIP	PROTECT IN PLACE
SB	SETBACK
STD	STANDARD
TL	TRAVERSE LINE
TYP	TYPICAL

NOTES:

1. SIX (6) PARKED SPACES FOR THE LMC/BORK UNIT ARE ACCOUNTED FOR IN THE TOTAL PARKING COUNT.
2. NINE (9) PARKING SPACES NEAR THE CARETAKERS UNIT ARE FOR RESIDENTIAL USE ONLY.

EXISTING PARKING TABLE

NUMBER	TYPE
46	STANDARD SPACE – 90 DEGREE
6	COMPACT SPACE – 90 DEGREE
10	COMPACT SPACE – PARALLEL
1	STANDARD ACCESSIBLE SPACE
2	VAN ACCESSIBLE SPACE
1	VAN ACCESSIBLE EV SPACE (FUTURE)
68	TOTAL SPACES

PROPOSED PARKING TABLE

NUMBER	TYPE
35	STANDARD SPACE – 90 DEGREE
21	COMPACT SPACE – 90 DEGREE
10	COMPACT SPACE – PARALLEL
1	STANDARD ACCESSIBLE SPACE
2	VAN ACCESSIBLE SPACE
1	VAN ACCESSIBLE EV SPACE (FUTURE)
1	CLEAN AIR VEHICLE STANDARD SPACE
3	STANDARD SPACE – PARALLEL (WITHIN VINEYARD)
74	TOTAL SPACES

SUMMIT
Summit Engineering, Inc.
575 W College Ave., Suite 201 • Santa Rosa, CA 95401
707-527-0773 • www.summit-sr.com

CYRUS RESTAURANT
275 HIGHWAY 128
GEYSERVILLE, CA
APN 140-060-016, 140-060-008 & 005

DESIGN REVIEW

PARKING LAYOUT

2023-02-13
PERMIT SUBMITTAL

DATE: 2023-02-13
JOB NO: 2022.055
SCALE: AS SHOWN
DRAWN: TF
CHECKED: DR
SHEET: C2
SHEET 2 OF 3

P:\2022\2022055 275 HIGHWAY 128 PARKING\CAD\CIVIL\22055-DESIGN REVIEW.DWG

PLOTTED ON: 2/13/2023 3:31 PM

ATTACHMENT 4

IMAGE 1:

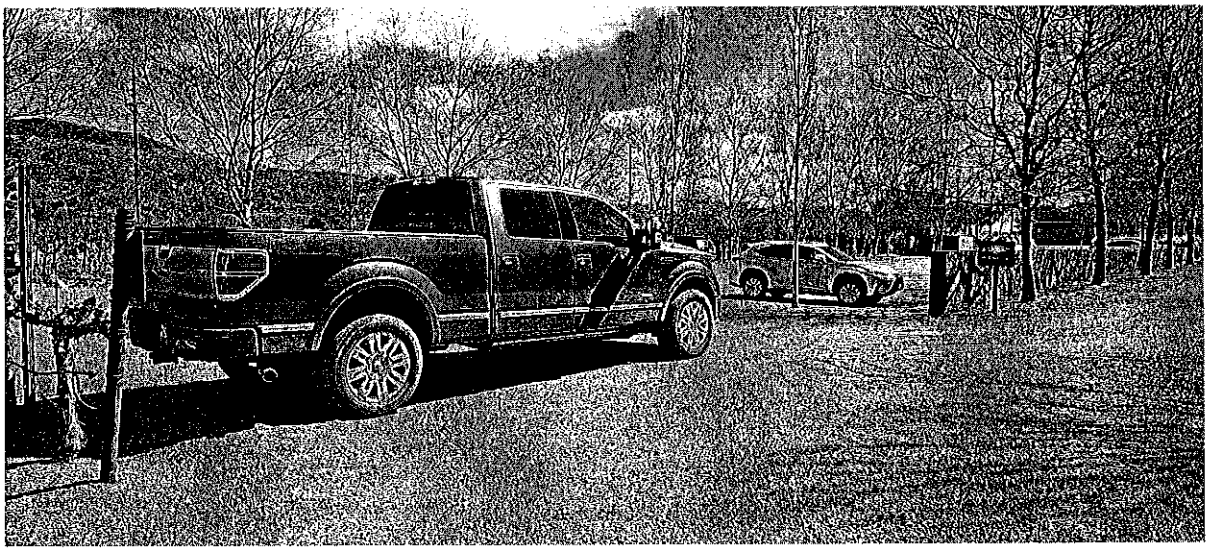


IMAGE 2:

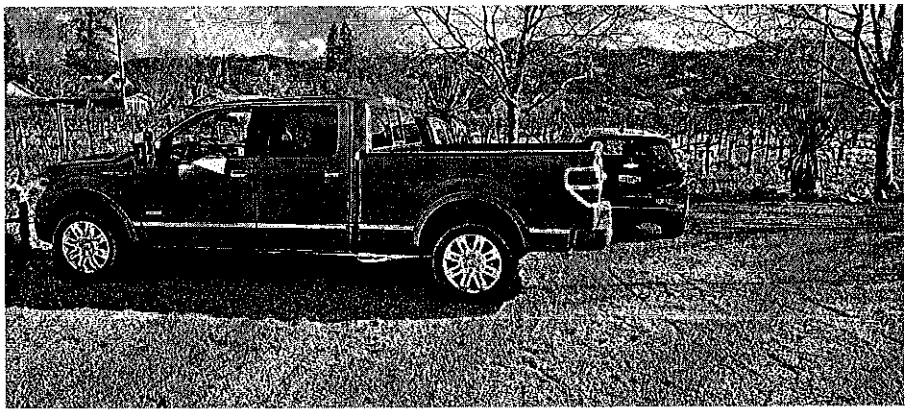


IMAGE 3:

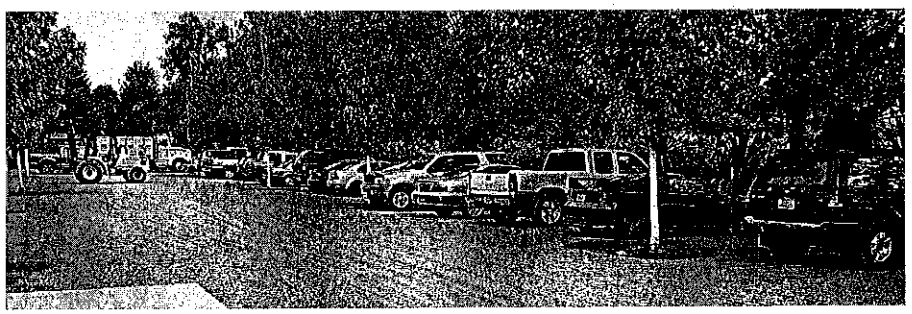
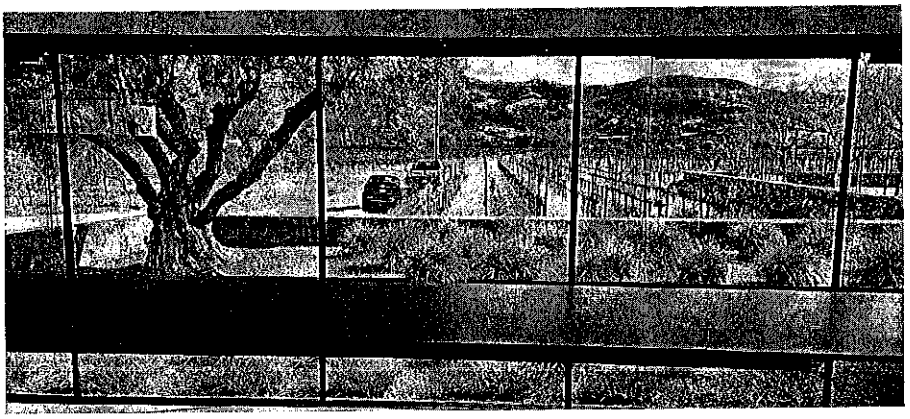


IMAGE 4:

IMAGE 5:



ATTACHMENT 5

Planning Application
PJR-001

Application Type(s):

File # _____

- ☐ Admin Cert. Compliance
- ☐ Ag. or Timber Preserve/Contract
- ☐ Conditional Cert. of Compliance
- ☐ Cert. of Modification
- ☐ Coastal Permit
- ☐ Zoning Permit for: _____
- ☐ Design Review Admin.
- ☐ Design Review Full
- ☐ General Plan Amendment
- ☐ Lot Line Adjustment
- ☐ Major Subdivision
- ☐ Minor Subdivision
- ☐ Voluntary Merger
- ☐ Ordinance Interpretation
- ☐ Second Unit Permit
- ☐ Specific/Area Plan Amendment
- ☐ Use Permit
- ☐ Variance
- ☐ Zone Change
- ☐ Other: _____

By placing my contact information (name, address, phone number, email address, etc.) on this application form and submitting it to Sonoma County PRMD, I understand and authorize PRMD to post this application to the internet for public information purposes, including my contact information.

PRINT CLEARLY

APPLICANT				OWNER (IF OTHER THAN APPLICANT)			
Name Daniel Welles - Summit Engineering				Name 275 Highway 128, LLC			
Mailing Address 463 Aviation Blvd., Suite 200				Mailing Address 1300 South 51st Street			
City Santa Rosa	State CA	Zip 95403		City Richmond	State CA	Zip 94804	
Day Ph (707-978-5732	Email daniel@summit-sr.com			Day Ph ( )	Email steve@oliverandco.net		
Signature Daniel A. Welles	Date 5/1/20			Signature		Date 5/4/2020	

Billing Responsible Party (At-Cost Only) ☐ Applicant ☐ Owner ■ Other: Cyrus 2.0, LLC

OTHER PERSONS TO RECEIVE CORRESPONDENCE

Name/Title Douglas Keane at Cyrus 2.0, LLC				Name/Title Kimberly Corcoran at Carle, Mackie, Power & Ross, LLC			
Mailing Address 5100 W Soda Rock Ln				Mailing Address 100 B Street			
City Healdsburg	State CA	Zip 95448		City Santa Rosa	State CA	Zip 95401	
Day Ph ( )	Email douglaskeane@cyrusrestaurant.com			Day Ph ( )	Email kcorcoran@cmprlaw.com		

PROJECT INFORMATION

Address(es) 275 Highway 128	City Geyserville
Assessor's Parcel Number(s) 140-110-006, 140-110-008, 140-080-011	
Project Description See enclosed project description	

Acreage 6.07	Number of new lots proposed N/A
Site Served by Public Water? ☒ Yes ☐ No	Site Served by Public Sewer?. ☒ Yes ☐ No

TO BE COMPLETED BY PRMD STAFF

Planning Area	Supervisorial District	☐ Critical Habitat ☐ Urban Service	Groundwater Availability ☐ 1/2 ☐ 3/4
Current Zoning		☐ NPDES ☐ Williamson Act	
		Specific/Area Plan	Subject to CEQA ☐ EX ☐ YES
General Plan Land Use		Parcel Specific Policy	
Application resolve planning violation? ☐ Yes ☐ No		Violation? ☐ Yes ☐ No	File No.
Previous Files		Penalty application? ☐ Yes ☐ No	
Application accepted by		Date	
Approved by		Date	

manatt

Christian Baker
Manatt, Phelps & Phillips, LLP
Direct Dial: (415) 291-7463
CBaker@manatt.com

June 8, 2023

Jen Chard
PERMIT SONOMA
2550 Ventura Avenue
Santa Rosa, CA 95403

Re: Revisions to Proposed Parking Changes, 275 Highway 128 Geyserville, California 9544: Application ADR23-0008

Dear Ms. Chard:

My firm represents Cyrus 2.0, LLC ("Cyrus"), the tenant of a commercial building located at 275 Highway 128, Geyserville, California 95441 ("Property"). On March 22, 2023, Summit Engineering, Inc. ("Summit") submitted Design Review Application ADR23-0008 ("Application") on behalf of the property's owner, Walden Geyserville, LLC ("Walden"), to add 9 parking spots without my client's knowledge. On March 28, 2023, we submitted a letter expressing our client's opposition to the application and detailing how the proposed changes are unnecessary and would be extremely disruptive to the current flow of the parking lot. The letter also highlighted that Walden likely submitted the application in bad faith to avoid on-going litigation. On April 20, 2023, Walden submitted revisions to the Application. Not only were these revisions submitted for second time without my client's knowledge, but they continue to advocate for alterations to the parking plan that are both unnecessary and extremely harmful to Cyrus' business operations.

As stated in my previous letter, my client operates Cyrus Restaurant on the Property pursuant to Use Permit PLP20- 0017, issued by your office on December 30, 2020. As you are aware, the issuance of such a permit to operate a restaurant is conditioned on the existence of one parking space per 60 square feet of dining space, as required by Sonoma County Zoning Regulations, Article 86, Section 26- 86-010. Cyrus and Walden are currently engaged in litigation in the Superior Court of the County of Napa (Case Number: SCV-272053) over Walden's failure to provide Cyrus the number of parking spaces required by the Lease Agreement and the Use Permit. The legal determination sought in this litigation will have a direct impact on the parking plan that the Application seeks to alter. The changes included in the Application are not feasible, nor are they necessary. Through the submission of its second proposal to this office, Walden seeks only to evade its contractual obligations to provide parking to Cyrus and to sidestep the litigation. (Exh 1.)

I. All Problems With the Initial Application Remain.

As detailed in my March 28 letter, the CUP plan currently in place functions appropriately to serve both owner and tenant. Both parties agreed to the current plan, and there are no logistical problems with the current parking layout. Walden claims that the Application is needed to improve flow, however, the proposed changes will only create confusion for drivers in the restaurant parking lot, along Highway 128 and, in the event of an emergency, first responders.

A. The Current CUP Plan Functions Without Flaw and Does not Require a Redesign.

The current CUP was designed by both parties to meet their needs. It has now been almost nine months since Cyrus Restaurant opened, and parking flow has functioned as planned. Summit Engineering and Walden have not submitted any evidence with their most recent Application supporting a need to alter the current flow of traffic. (Exh. 2.) All of following concerns and issues with Walden's parking plan raised in my March 28 Letter remain unaddressed by the revised plan.

- Converting the parking lot from primarily standard sized spaces to primarily compact sized spaces is illogical given the reality of parking needs. Cyrus fully analyzed the possibility of having more compact-space focused parking when initially applying for the Use Permit. All analyses revealed a compact-centric parking plan would be impracticable, if not impossible, to effectively carry out.

- Maintaining the current configuration of standard sizes spots only in the parking lot and compact sized spots only on the outside makes it easy for patrons and staff to find the appropriately sized space. Creating two sections, with two differently sized spacing will increase traffic, confusion, and the risk of accidents.

- Walden's Application fails to explain how the changes to the parking lot will improve parking flow.

- The proposal contains inaccurate measurements regarding the six proposed spots on the North end of the parking lot.

- Walden continues to use "No Parking" signs along with threats and intimidation to prevent Cyrus staff members from using their assigned parking spaces.

- Walden's Application was submitted in bad faith to avoid on-going litigation caused by their breach of the lease agreement.

B. Fire Trucks Will Face Extreme Difficulty Navigating the Parking Lot Under Walden's Proposed Plan.

Walden's revised application contains newly added fire truck maneuver plans. These plans reveal additional problems that will occur if the Application is granted. As noted in my March 28 letter, the proposed modification to the North end of the parking lot creates a substantial risk in parking disruption and accidents. Adding these six spaces will narrow the entry into the parking lot. Should a patron with a larger car park in the outermost spot, the entry could be effectively eliminated altogether. (Exh. 3.) Beyond causing havoc on a patron's ability to arrive and depart the restaurant, this unnecessary narrowing could prevent fire trucks from reaching the restaurant.

Whereas the current CUP Plan leaves ample room for fire trucks to maneuver through the Northern parking lot entrance, under the Application's proposed plan, fire trucks will have to navigate through and around whatever car has parked in the outermost spot. By keeping the Northern side of the lot vacant, the current CUP plan creates substantial space for fire trucks to maneuver. In contrast, the Revised Application continues to propose adding six additional spots in that formerly vacant space. As seen in Walden's map, this creates a noticeably tighter curve for any fire truck entering the lot. (Exh. 4.)

Other types of truck will similarly suffer increased difficulty navigating the parking lot as a result of these additional six spaces. Cyrus Restaurant requires numerous deliveries to function on a daily basis, and any special events could require additional trucks. Under the Application, large trucks would have to navigate past cars parked in these six spots and then swing carefully left to clear more parked cars that would be parked north/south. Because these six spots are some of the few remaining standard size spots included in the Revised Application, the chances of those spots containing larger than average vehicles is quite high. As a result, any truck's ability to safely pass through this opening would vary on a day-to-day basis.

Not only are these six spots unnecessary, but they have the potential to prevent emergency services from effectively reaching the restaurant and will substantially disrupt a large truck's ability to safely navigate the parking lot. This disruption subjects patrons, staff, and their vehicles to a myriad of unnecessary risks, all so that Walden may avoid litigating these issues raised by Cyrus' pending lawsuit.

C. Walden Revised the Application Without Consulting Cyrus, Which Further Demonstrates that the Application Was Submitted in Bad Faith.

The series of events that contributed to the deterioration of Cyrus' and Walden's business relationship is detailed in the March 28 letter. Walden's failure to once again consult Cyrus is yet another instance of Walden's campaign of retaliation.

Walden's unilaterally revised submission without input from Cyrus, the tenant who utilizes the current parking system on a daily basis, demonstrates that Walden's goal is not to increase parking flow but rather to circumnavigate the current litigation in Sonoma County Superior Court related to these issues. Cyrus has painstakingly curated an upscale dining experience for guests from the moment they first view the main building from the highway until their departure after a flawless evening. If there were any true issues with parking flow that could disrupt the guests' experiences, Cyrus would be advocating for any needed changes. Indeed, if Walden were truly concerned about parking flow, they would have leaned on Cyrus' first-hand experiences to assess future needs. Instead, Walden has failed to consult Cyrus on these proposed changes, not once, but twice.

II. The Revised Application Contains Additional Problems.

A. Proposed Parking Spots Along the Entry Drive Will Create Confusion.

One of the main changes contained in the Revised Application includes Walden's request to re-locate three proposed parking spots from the vineyard road in front of the restaurant to the entry driveway. As discussed in my March 28 letter, those three parking spaces along the vineyard road would have been disastrous to the ambiance of the restaurant's dining theme. However, relocating them to the entrance drive near the gate is not a viable solution.

Patrons parked in those spaces will be forced to drive up to the restaurant and loop around, creating unnecessary traffic. Additionally, permitting three spots near this entrance gate will create confusion among patrons and other visitors regarding whether parking near the gate is or is not permitted. A reasonable person could assume that the entire area by the entrance is a parking lot, not just those spots. Common sense would suggest that if there are three cars parked there, than more are allowed. The end result will be extra cars parked along the entrance, which is neither scenic, nor practical.

B. Current Signage Is Clear, Easy To Understand, and Creates Efficient Flow.

Signage needed under the current CUP is clear, easy to understand, and creates efficient flow. This is because the current plan is intuitive and makes sense. In contrast, the Revised Application would require the addition of numerous other signs pointing out where and what type (compact or standard) of parking is permitted. Any new proposed signage would confuse drivers and cause unnecessary efforts. There is no proposed grading or striping according to the newly revised submittal, which would make it impossible to know whether spots are truly compact spaces. Full size car widths without striping make it possible to judge how many spaces exist between the demarcation of the landscaping trees that surround the lot. Guests and employees naturally park accordingly, whether they drive a full-size SUV or a smaller car. They do not have to search for their section of the lot.

Another source of confusion that will require signage are the proposed six spaces on the north end. Guests will not know the north end of the parking lot is available, or that certain areas contain dead spaces where parking is not permitted so as to accommodate the newly added north/south parking. This is nonsensical, especially since there are no current issues with parking flow or parking needs. Walden failed to address all of these issues in its Revised Application. The proposed changes will cause the restaurant enormous stress, yet provide no tangible benefit.

C. Walden Continues to Improperly Use the Caretaker's Garage in Violation of the Current CUP.

The approved CUP submitted mutually by landlord and Cyrus Restaurant states that the four-car garage at the caretaker's unit is reserved parking for residents of the caretaker's unit. Walden refuses to allow caretaker residents to park in the garage and instead uses it for storage for a construction company's materials, which include flooring, unused paint, propane, and small equipment. (Exhs. 2 and 5.) Caretaker residents have been instructed to park in Cyrus' dedicated staff parking spaces, thus causing less usable spaces for Cyrus guests. Walden's co-opting of the caretaker's garage has the dual detriment of leaving potentially hazardous construction materials near a dining establishment and disrupting the mutually agreed upon parking plan.

III. Conclusion

Cyrus has begun to establish its reputation as a dining destination, bringing more visitors to the surrounding area. Drastic changes to the parking layout, especially those as ill-conceived as those contained in the Revised Application, could be devastating to its early growth.

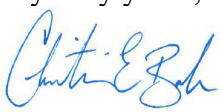
As stated in our March 28 letter, we believe it is necessary for the County to consider Walden's true intentions and motivations for its Application. Walden's revisions to its parking proposal claims does nothing to alleviate or reduce the myriad of problems contained in the Initial Application. In fact, the revisions continue to cavalierly move Cyrus' designated parking spaces without any regard for guest experience or the logistics of large vehicle access.

Walden has failed to identify any legitimate reason for a change to the existing parking plan, and the County, therefore, has no reason to approve it. The Revised Application is Walden's latest attempt to evade its contractual obligations with Cyrus. Walden's Application is a waste of the County's valuable time and resources, particularly since this very parking issue is already the subject of pending litigation, the outcome of which would render this Application irrelevant.

We respectfully request that this Application be denied or deferred until the completion of the attendant litigation. Alternatively, Cyrus requests that the County conduct a full review so that it may properly consider Cyrus' objections to Walden's new and unapproved plan.

We are available to discuss at your convenience.

Very truly yours,



Christian Baker

Enclosures

EXHIBIT 1

EXHIBIT 1

From: Jeremy L. Little
To: Steve Oliver
Cc: Douglas Keane
Subject: RE: Easement
Date: Thursday, April 23, 2020 12:47:33 PM
Attachments: image002.png
Quitclaim - Easement (00617972x9C71C).docx
Amendment to Commercial Lease (00617805-2x9C71C).docx

Hi Steve and Doug –

I am attaching slightly revised versions of the lease amendment and quitclaim deed.

Let me know if you have any questions about these.

If not – please sign both. Doug – you need only sign the lease amendment.

NOTE – The quitclaim deed will need to be notarized.

Steve – do you have access to a notary?

Thanks again for your help.

Best,
Jeremy

Jeremy Little – *Attorney*
Carle, Mackie, Power & Ross LLP
100 B Street, Suite 400, Santa Rosa, CA 95401
Tel: 707-526-4200 • Fax: 707-526-4707
jlittle@cmprlaw.com • *www.cmprlaw.com*

From: Steve Oliver <steve@oliverandco.net>
Sent: Thursday, April 23, 2020 9:06 AM
To: Jeremy L. Little <jlittle@cmprlaw.com>
Cc: 'Douglas Keane' <douglaskeane@cyrusrestaurant.com>
Subject: RE: Easement

Sounds like a plan, Steve

From: Jeremy L. Little [mailto:jlittle@cmprlaw.com]
Sent: Wednesday, April 22, 2020 12:25 PM
To: Steve Oliver
Cc: 'Douglas Keane'
Subject: RE: Easement

Thanks. Agreed – that lays out the parking arrangement well.

My fear with this agreement is that a County staffer will see the circled area in the main parking lot labeled "10 Spaces Designated for 21101 Geyserville Ave."

Because of that, I think it's best to quitclaim this easement – have the document recorded and then this easement should not show up in any title report or County staff review.

Best,
Jeremy

Jeremy Little – *Attorney*
Carle, Mackie, Power & Ross LLP
100 B Street, Suite 400, Santa Rosa, CA 95401
Tel: 707-526-4200 • Fax: 707-526-4707
jlittle@cmprlaw.com • *www.cmprlaw.com*

From: Steve Oliver <sho.oliverandco@gmail.com> **On Behalf Of** Steve Oliver
Sent: Wednesday, April 22, 2020 8:34 AM
To: Jeremy L. Little <jlittle@cmprlaw.com>
Cc: 'Douglas Keane' <douglaskeane@cyrusrestaurant.com>
Subject: RE: Easement

When you open the agreement , rotate the plan image and blow up the mgr's house you can see how the added 10 spaces are layed out. That may help Doug define the employee spaces to park, Steve

---

From: Jeremy L. Little [mailto:jlittle@cmprlaw.com]
Sent: Tuesday, April 21, 2020 5:24 PM
To: steve@oliverandco.net
Subject: Easement

Hi Steve – Great to talk with you just now. Thanks for your time.

Here is the easement agreement that I was looking at – page 6 contains the map.

I will work on a quitclaim deed that will remove this easement from title and will complete an amendment to the lease. Once both are done I will email those to you as well.

Thanks again.

Best,
Jeremy

Jeremy Little
Attorney

100 B Street, Suite 400, Santa Rosa, CA 95401
Tel: 707-526-4200 • Fax: 707-526-4707
jlittle@cmprlaw.com • *www.cmprlaw.com*

EXHIBIT 2

EXHIBIT 2

From: Demae Rubins
To: Douglas Keane
Cc: Tania Schram; 2020034@newforma.summit-sr.com
Subject: FW: Cyrus Exhibit A Parking
Date: Friday, November 18, 2022 4:49:03 PM
Attachments: image001.png
Pages from Project Description-Proposal Statement Keane-Cyrus 05-08-2020 (00621013x9C71C).pdf

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Good afternoon,
Please find attached for your records and reference.

DEMAE RUBINS
PRINCIPAL
Division Manager | Planning/Permitting

SUMMIT ENGINEERING, INC.
575 W COLLEGE AVE. STE 201
SANTA ROSA, CA 95401
707.527.0775 EXT.166
707.636.9166 DIRECT
707.478.5008 MOBILE
www.summit-sr.com

From: Demae Rubins
Sent: Friday, November 18, 2022 4:45 PM
To: Steve Oliver <steve@oliverandco.net>; Josh Oliver <josh@oliverandco.net>
Cc: Jean DeFries <JDeFries@oliverandco.net>
Subject: RE: Cyrus Exhibit A Parking

Good afternoon,
I believe that my previous email addressed this but the use permit itself doesn't assign locations for parking. Only the number of stalls by use. I have attached an excerpt from the use permit project description that defines the parking requirements by use according to County code.

DEMAE RUBINS
PRINCIPAL
Division Manager | Planning/Permitting

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707.636.9166 DIRECT
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From: Steve Oliver <steve@oliverandco.net>
Sent: Thursday, November 17, 2022 10:16 AM
To: Josh Oliver <josh@oliverandco.net>; Demae Rubins <demae@summit-sr.com>
Cc: Jean DeFries <JDeFries@oliverandco.net>
Subject: RE: Cyrus Exhibit A Parking

Another question is , does all the space outside the house have to be dedicated to Cyrus as that is not part of our lease. How about like the last ten years by who lived there for a vege. garden and personal and guest parking as the garage was leased to Oliver and Co for equipment storage from the ranch, and also recreation/open space for his family as the property is adjacent to the SMART train easement and there is no other open property except the open space in front of the house and up to the vineyard. Steve

Steven H. Oliver
Oliver & Company, Inc.
1300 South 51st Street
Richmond, CA 94804
P: 510-412-9090 F: 510-412-9095

From: Josh Oliver <josh@oliverandco.net>
Sent: Thursday, November 17, 2022 8:57 AM
To: 'Demae Rubins' <demae@summit-sr.com>
Cc: Steve Oliver <steve@oliverandco.net>; Jean DeFries <JDeFries@oliverandco.net>
Subject: RE: Cyrus Exhibit A Parking

Thanks, we are looking for general thoughts about reallocating the 9 spots by the caretaker house to other equivalent parking locations down the dirt road
or in the main parking lot onsite by adding diagonal or more compact.

Happy to talk further. Josh

From: Demae Rubins <demae@summit-sr.com>
Sent: Wednesday, November 16, 2022 12:32 PM
To: Josh Oliver <josh@oliverandco.net>
Cc: Steve Oliver <steve@oliverandco.net>; Jean DeFries <JDeFries@oliverandco.net>
Subject: RE: Cyrus Exhibit A Parking

Good afternoon Josh,
My apologies for the delay. I was out for a family emergency Monday and am now in jury duty. I'll review our records and your request by end of day Friday and get back to you.

DEMAE RUBINS
PRINCIPAL
Division Manager | Planning/Permitting

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707.527.0775 EXT.166
707.636.9166 DIRECT
707.478.5008 MOBILE

www.summit-sr.com

From: Josh Oliver <josh@oliverandco.net>
Sent: Monday, November 14, 2022 11:50 AM
To: Demae Rubins <demae@summit-sr.com>
Cc: Steve Oliver <steve@oliverandco.net>; Jean DeFries <JDeFries@oliverandco.net>
Subject: FW: Cyrus Exhibit A Parking

Hello Demae,

Please see the attached parking diagram exhibit A showing parking previously shown on one of your use permit drawing, UP1

We did not approve of the parking around the caretakers house and have proposed a different layout per the attached.

In addition to the attached we would like explore additional compact spaces and or diagonal parking on the entry road
to eliminate the new added spaces in the vineyard.

Thanks for review.

Josh

From: Jean DeFries <JDeFries@oliverandco.net>
Sent: Monday, November 14, 2022 11:37 AM
To: Josh Oliver <josh@oliverandco.net>
Subject: Cyrus Exhibit A Parking

Josh,

Attached is an Exhibit A Parking for the Rules and Regs assuming we add 9 spaces along the vineyard road. The question remains is it possible to get more parking spaces out of the main parking lot (not near the rental house) and not need as many along the road.
thank you,

Jean DeFries -- Director of Real Estate
Oliver & Company, Inc.
1300 South 51st Street
Richmond, CA 94804
P: 510-412-9090
Corporate DRE 01290124

Personal DRE 02051664

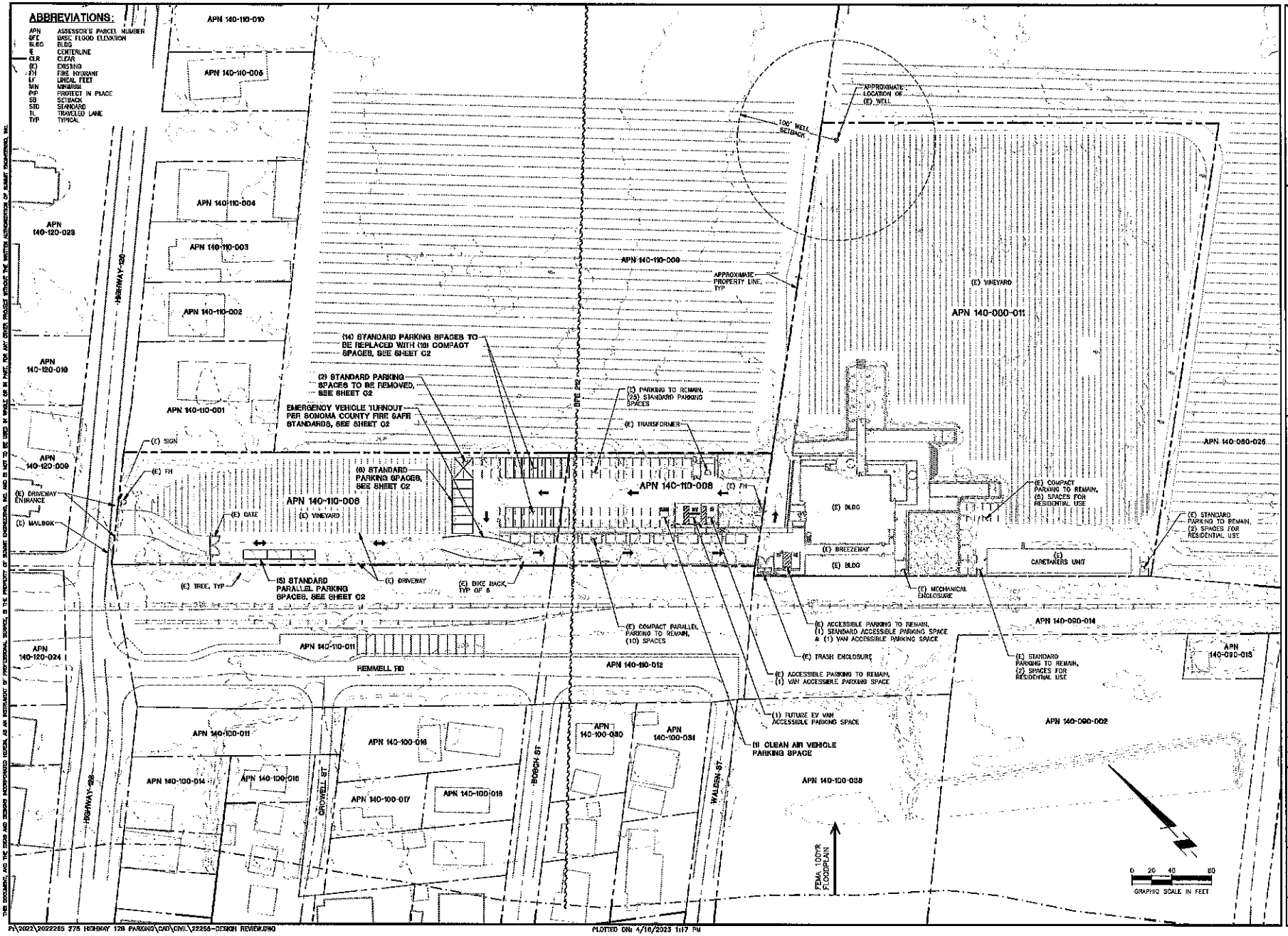
EXHIBIT 3

IMAGE 1:

IMAGE 2:

IMAGE 3:

EXHIBIT 4



P:\2022\2022265 275 HIGHWAY 128 PARKING\CAD\CIVIL\22265-DESIGN REVIEW.DWG

PLOTTED ON: 4/18/2023 1:17 PM

SUMMIT
Summit Engineering, Inc.
575 W College Ave., Suite 201 • Santa Rosa, CA 95401
707-527-0775 • www.summit-ei.com

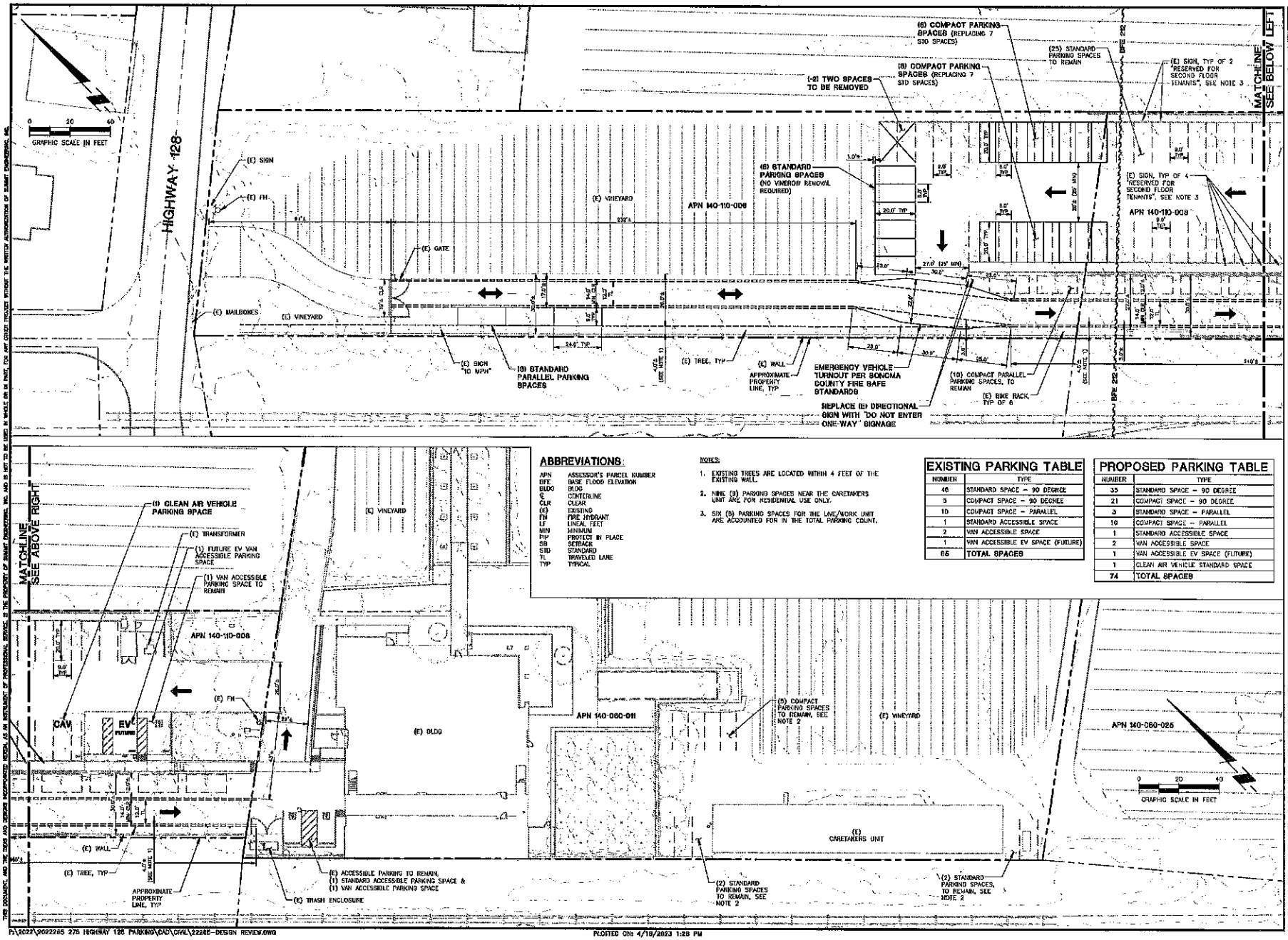
CYRUS RESTAURANT
275 HIGHWAY 128
GEYSERVILLE, CA
APN 140-080-011, 140-110-006 & 008

DESIGN REVIEW

PARKING CONCEPT

2023-02-13	PERMIT SUBMITTAL

DATE: 2023-02-13
JOB NO: 2022265
SCALE: AS SHOWN
DRAWN: TF
CHECKED: DR
SHEET: C1
SHEET 1 OF 2



ABBREVIATIONS:

APN	ASSESSOR'S PARCEL NUMBER
BFE	BASE FLOOD ELEVATION
BLDG	BLDG
℄	CENTERLINE
CLR	CLEAR
(E)	EXISTING
FH	FIRE HYDRANT
LF	LINEAL FEET
MIN	MINIMUM
PIP	PROTECT IN PLACE
SB	SETBACK
STD	STANDARD
TL	TRAVELED LANE
TYP	TYPICAL

NOTES:

1. EXISTING TREES ARE LOCATED WITHIN 4 FEET OF THE EXISTING WALL.
2. NINE (9) PARKING SPACES NEAR THE CARETAKERS UNIT ARE FOR RESIDENTIAL USE ONLY.
3. SIX (6) PARKING SPACES FOR THE LIVE/WORK UNIT ARE ACCOUNTED FOR IN THE TOTAL PARKING COUNT.

EXISTING PARKING TABLE

NUMBER	TYPE
46	STANDARD SPACE – 90 DEGREE
5	COMPACT SPACE – 90 DEGREE
10	COMPACT SPACE – PARALLEL
1	STANDARD ACCESSIBLE SPACE
2	VAN ACCESSIBLE SPACE
1	VAN ACCESSIBLE EV SPACE (FUTURE)
66	TOTAL SPACES

PROPOSED PARKING TABLE

NUMBER	TYPE
35	STANDARD SPACE – 90 DEGREE
21	COMPACT SPACE – 90 DEGREE
3	STANDARD SPACE – PARALLEL
10	COMPACT SPACE – PARALLEL
1	STANDARD ACCESSIBLE SPACE
2	VAN ACCESSIBLE SPACE
1	VAN ACCESSIBLE EV SPACE (FUTURE)
1	CLEAN AIR VEHICLE STANDARD SPACE
74	TOTAL SPACES

SUMMIT
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379 W College Ave., Suite 201 • Santa Rosa, CA 95401
707-527-0775 • www.summit-e.com

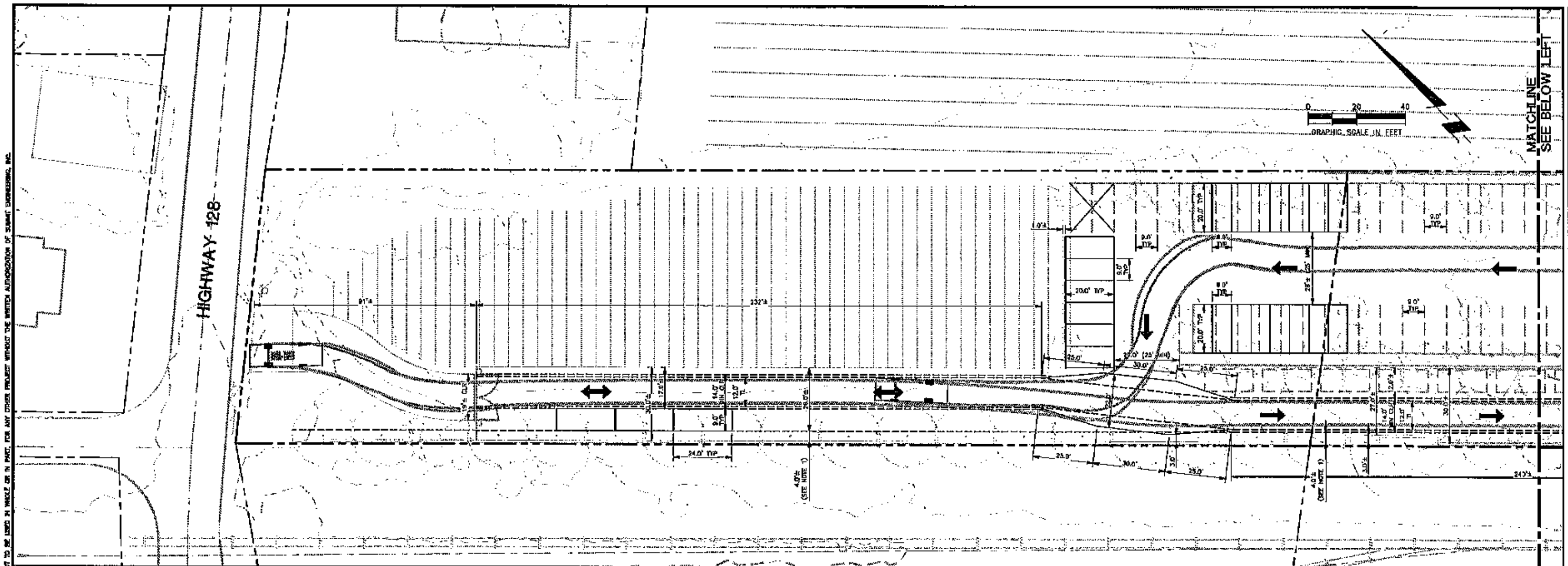
CYRUS RESTAURANT
275 HIGHWAY 128
GEYSERVILLE, CA
APN 140-080-011, 140-110-008 & 008

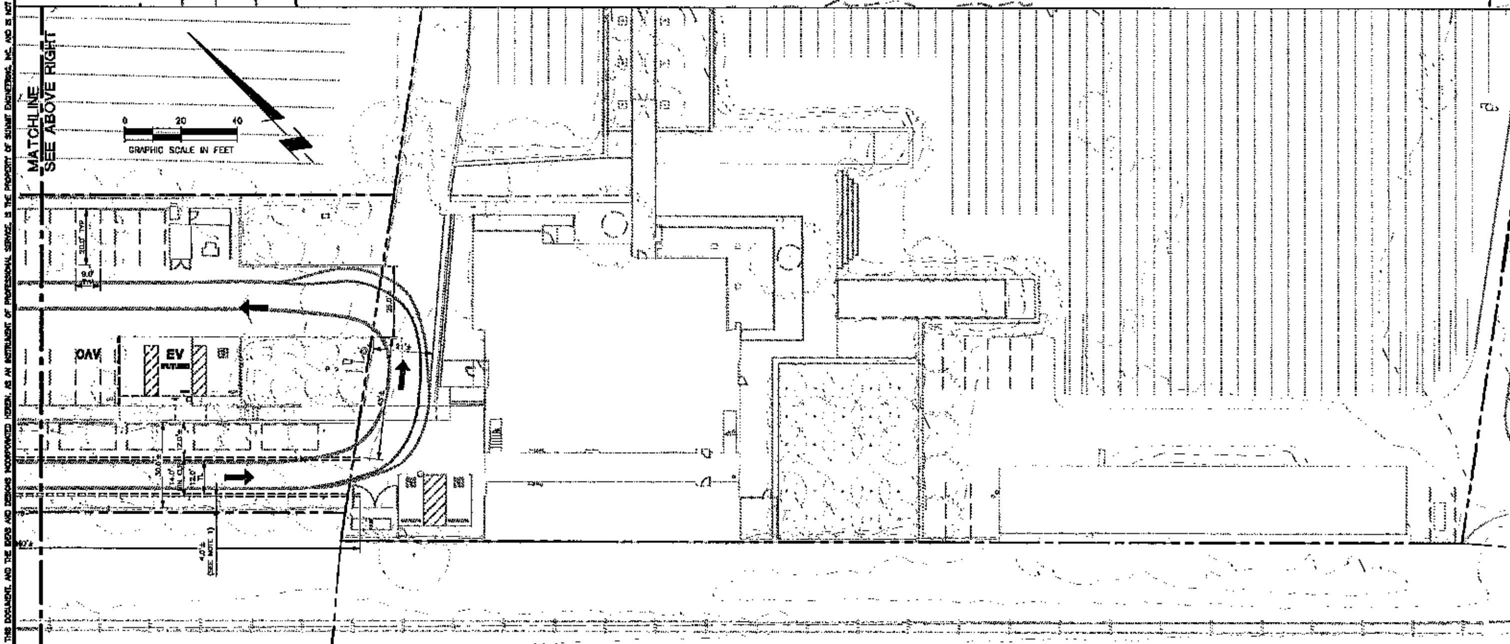
DESIGN REVIEW

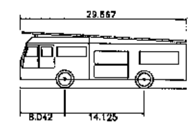
PARKING LAYOUT

2023-02-13	PERMIT SUBMITTAL

DATE:	2023-02-13
JOB NO:	2022265
SCALE:	AS SHOWN
DRAWN:	TF
CHECKED:	BR
SHEET	C2
	SHEET 2 OF 2







FIRE-TYPE1

OVERALL LENGTH	29.667ft
OVERALL WIDTH	9.015ft
OVERALL BODY HEIGHT	10.000ft
MIN BODY GROUND CLEARANCE	1.608ft
TRACK WIDTH	9.560ft
LOCK-TO-LOCK TIME	5.00s
CURB TO CURB TURNING RADIUS	26.417ft

LIMITS OF VEHICLE CHASSIS

LIMITS OF VEHICLE CHASSIS (IN REVERSE)

LIMITS OF VEHICLE BODY

NOTES:

1. EXISTING TREES ARE LOCATED WITHIN 4 FEET OF THE EXISTING WALL.

ABBREVIATIONS:

APN	ASSESSOR'S PARCEL NUMBER
BFE	BASE FLOOD ELEVATION
BLDG	BLDG
℄	CENTERLINE
CLR	CLEAR
(E)	EXISTING
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LF	LINEAL FEET
MIN	MINIMUM
PIP	PROTECT IN PLACE
SB	SETBACK
STD	STANDARD
TL	TRAVELED LANE
TYP	TYPICAL

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CYRUS RESTAURANT
275 HIGHWAY 128
GEYSERVILLE, CA
APN 140-080-011, 140-110-006 & 008

CYRUS RESTAURANT 2.0

FIRE TRUCK MANEUVER

2023-04-18 FOR REVIEW

DATE: 2023-02-13
JOB NO: 2022285
SCALE: AS SHOWN
DRAWN: TF
CHECKED: DR
SHEET 1
SHEET 1 OF 1

EXHIBIT 2

EXHIBIT 2

From: Demae Rubins
To: Douglas Keane
Cc: Tania Schram; 2020034@newforma.summit-sr.com
Subject: FW: Cyrus Exhibit A Parking
Date: Friday, November 18, 2022 4:49:03 PM
Attachments: image001.png
Pages from Project Description-Proposal Statement Keane-Cyrus 05-08-2020 (00621013x9C71C).pdf

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DEMAE RUBINS
PRINCIPAL
Division Manager | Planning/Permitting

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P: 510-412-9090 F: 510-412-9095

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To: 'Demae Rubins' <demae@summit-sr.com>
Cc: Steve Oliver <steve@oliverandco.net>; Jean DeFries <JDeFries@oliverandco.net>
Subject: RE: Cyrus Exhibit A Parking

Thanks, we are looking for general thoughts about reallocating the 9 spots by the caretaker house to other equivalent parking locations down the dirt road
or in the main parking lot onsite by adding diagonal or more compact.

Happy to talk further. Josh

From: Demae Rubins <demae@summit-sr.com>
Sent: Wednesday, November 16, 2022 12:32 PM
To: Josh Oliver <josh@oliverandco.net>
Cc: Steve Oliver <steve@oliverandco.net>; Jean DeFries <JDeFries@oliverandco.net>
Subject: RE: Cyrus Exhibit A Parking

Good afternoon Josh,
My apologies for the delay. I was out for a family emergency Monday and am now in jury duty. I'll review our records and your request by end of day Friday and get back to you.

DEMAE RUBINS
PRINCIPAL
Division Manager | Planning/Permitting

SUMMIT ENGINEERING, INC.
575 W COLLEGE AVE. STE 201
SANTA ROSA, CA 95401
707.527.0775 EXT.166
707.636.9166 DIRECT
707.478.5008 MOBILE

www.summit-sr.com

From: Josh Oliver <josh@oliverandco.net>
Sent: Monday, November 14, 2022 11:50 AM
To: Demae Rubins <demae@summit-sr.com>
Cc: Steve Oliver <steve@oliverandco.net>; Jean DeFries <JDeFries@oliverandco.net>
Subject: FW: Cyrus Exhibit A Parking

Hello Demae,

Please see the attached parking diagram exhibit A showing parking previously shown on one of your use permit drawing, UP1

We did not approve of the parking around the caretakers house and have proposed a different layout per the attached.

In addition to the attached we would like explore additional compact spaces and or diagonal parking on the entry road
to eliminate the new added spaces in the vineyard.

Thanks for review.

Josh

From: Jean DeFries <JDeFries@oliverandco.net>
Sent: Monday, November 14, 2022 11:37 AM
To: Josh Oliver <josh@oliverandco.net>
Subject: Cyrus Exhibit A Parking

Josh,

Attached is an Exhibit A Parking for the Rules and Regs assuming we add 9 spaces along the vineyard road. The question remains is it possible to get more parking spaces out of the main parking lot (not near the rental house) and not need as many along the road.
thank you,

Jean DeFries -- Director of Real Estate
Oliver & Company, Inc.
1300 South 51st Street
Richmond, CA 94804
P: 510-412-9090
Corporate DRE 01290124

Personal DRE 02051664

EXHIBIT 5

manatt

David C. Smith
Manatt, Phelps & Phillips, LLP
Direct Dial: (415) 291-7452
DCSmith@manatt.com

July 31, 2023

Client-Matter: 47414-060

VIA E-MAIL (DESIGNREVIEW@SONOMA-COUNTY.ORG)

Honorable Members of the Sonoma County Design Review Committee
Jen Chard, Project Manager
Permit Sonoma
2550 Ventura Avenue
Santa Rosa, California 95403

Re: Agenda Item No. 2 – August 2, 2023 Design Review Committee Meeting
File No.: ADR23-008

Dear Ms. Chard and Members of the Sonoma County Design Review Committee:

We represent Cyrus 2.0, LLC ("Cyrus") and its principal, Douglas Keane, with regard to the operation of Cyrus Restaurant at 275 Highway 128, Geyersville, California 95411 ("Property"), the operation of which was authorized by Sonoma County Use Permit PLP20-0017 (ADR20-0034 & UPE20-0032) ("Use Permit"). The referenced agenda matter is scheduled for your consideration on August 2, 2023, having been presented by Cyrus' lessor, Walden Geyersville, LLC ("Lessor"), as a mere Design Review request for an additional nine (9) parking spaces at the Property. In fact, the pending matter is a de facto request to amend the Use Permit for material alteration of the parking and internal circulation pattern that were foundational aspects and express components of the Use Permit application as approved. The Use Permit application states that the application is made on behalf of Mr. Keane in addition to Lessor. Mr. Keane vigorously objects to any amendment of the Use Permit, including the referenced agenda matter. Additionally, the Superior Court has granted Cyrus' request for a preliminary injunction halting Lessor's efforts to alter the parking plan as adopted as a component of the Use Permit. While the County is not a party to that litigation, given the ongoing pendency of the litigation and Mr. Keane's status as the beneficial interest holder in the Use Permit and opposition to the referenced matter, we ask that the Design Review Committee deny and dismiss Lessor's request.

The County approved the Use Permit on December 30, 2020. Included with the approval is this admonition: "Any modification of the use, expansion, or alteration must be submitted for review and approval prior to implementation, and may, at the discretion of the Department, require a new Use Permit." In making the pending Design Review application, Lessor failed to reference or in any manner alert the County that his request for Design Review would affect a material "modification of the use [and] alteration" of the Use Permit as approved. Rather, on the face of the application, any uninformed individual or staff member would consider the Design

Review request a rather simple and inconsequential proposed action. Nothing could be further from the truth.

The application package for the Use Permit was submitted to the County on May 8, 2020. While the "Applicant" was Daniel Welles of Summit Engineering, the Project Statement in support of the application states: "Applicant is Summit Engineering, Inc., on behalf of Mr. Keane and [Lessor]." (Project Statement, pg. 1 of 15.) The application and Project Statement include extensive discussion, calculation, and precise depiction of the parking and circulation dynamics of the Property which are essential to the operation of Cyrus Restaurant. Contrary to representations of the pending Design Review request, the matter is not just a request to add additional parking spaces. Rather, it is a material alteration of the parking plan submitted with and adopted as a material component of the Use Permit.

Given Cyrus and Mr. Keane's lack of inclusion in and express opposition to the pending Design Review request, we respectfully ask that the Design Review Committee reject and dismiss the proposed modifications, as the Superior Court has effectively ordered in preliminarily enjoining Lessor from proceeding.

We will participate in the Design Review Committee meeting via the remote virtual access option should you have any questions, or you may contact the undersigned at dcsmith@manatt.com at any time. Many thanks for your consideration of this matter.

DCS

cc: Douglas Keane, Cyrus Restaurant
Christian Baker, Manatt, Phelps & Phillips

402321825.1

From: Hannah Spencer
To: Liz Goebel; Stacie Groll
Cc: Jen Chard
Subject: New public comment for DRC Item 8/2/23 ADR23-0008
Date: Friday, July 28, 2023 8:42:06 AM
Attachments: image001.png
image002.png
image003.png
image004.png
Importance: High

Please ensure this public comment is entered into the DRC public comment record for Committee Members to review. Jen's item is scheduled next Wednesday.

From: Douglas Keane <douglaskeane@cyrusrestaurant.com>
Sent: Tuesday, July 25, 2023 3:41 PM
To: Tennis Wick <Tennis.Wick@sonoma-county.org>
Cc: Jen Chard <Jen.Chard@sonoma-county.org>
Subject: preliminary injunction

Motion for Preliminary Injunction

Preliminary Injunction **GRANTED** in part, conditioned on Plaintiffs posting an undertaking of $10,000. Upon Plaintiffs' positing of the undertaking the preliminary injunction will issue, prohibiting Defendants from undertaking actions which impedes or interferes Plaintiff's use of the 59 parking spaces allocated by the Use Permit, including unauthorized use of those spaces by Defendants, their agents or their employees, and blocking, discouraging or otherwise attempting to control those spaces designated by the Use Permit.

1. **Facts and Procedural History**

In the Complaint, Plaintiff alleges that 275 and Walden are the lessors of the Property. 275 and Plaintiff entered into a lease agreement on February 8, 2020. See Declaration of Douglas Keane ("Keane Decl."), Exhibit A (the "Original Lease"). Thereafter, on or around May 1, 2020, the parties amended the lease to provide, "Lessor shall provide all parking spaces available on the real property in order to accommodate Lessee's business operations and the Agreed Use set forth in

Paragraph 1.8 of the Lease." See Keane Decl., Exhibit B (the "Amendment", together with the "Original Lease", the "Lease"). On April 27, 2020, Steven Oliver effectuated a conveyance of real property interests by quit claim which provided additional parking spaces to Defendant as Lessor. See Keane Decl., Exhibit D. This was done in conjunction and coordination with Plaintiff. See Keane Decl., Exhibit C. Plaintiff proceeded to file an application with the County in order to obtain a use permit for their restaurant. See Keane Decl., Exhibit E (the "Application" or "Use Permit Application"). Particularly, the Application delineates 69 total parking spaces at the Property. *Ibid*, Keane Decl. pg. 83, 89 and 131. Four spaces are covered parking within a garage which constitutes designated parking for the caretakers residence. *Ibid*. Six spaces were designated for the three residential units on the party. *Ibid*. The balance of 59 spaces were designated for Plaintiff's use in order to exceed the minimum 54 spaces required by the County Code for their restaurant. *Ibid*. While the Application was pending, Steven Oliver, as principle for the Defendants, wrote a letter to the County's agency, Permit Sonoma, asking that the agency continue processing "our" use permit modification. See Keane Decl., Exhibit G. Plaintiff's Application was approved, and Plaintiff therefore received a use permit in accordance with the conditions of their application. See Keane Decl., Exhibit H. Since then, Plaintiff alleges that Defendants have repeatedly acted in a manner which interferes with the parking designations laid out in the Use Permit. See Keane Decl., Exhibits J-N. Defendants have also now moved the County to amend the Use Permit without Plaintiff's input. See Keane Decl., Exhibits O and P.

1. Motion for Preliminary Injunction

The matter now before the court is the Plaintiff's motion for preliminary injunction. Plaintiffs seeks to enjoin Defendants from interfering with Plaintiff's use and control of their designated 59 parking spaces, and to enjoin Defendants from attempting to modify the Use Permit until the conclusion of this action.
The ultimate purpose of a preliminary injunction is to preserve the status quo. *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528. The court may only grant such a preliminary injunction where the

Plaintiff has a right to equitable relief if the case goes to trial. *Voorhies v. Greene* (1983) 139 Cal.App.3d 989, 995-998. CCP §526 lists the specific circumstances where an injunction would be appropriate. These grounds include whether Plaintiff appears entitled to the requested relief, whether the requested relief includes a prayer to restrain the actions at issue, whether continued activity would create waste or great or irreparable injury to a party, and whether a party is about to do something regarding the subject matter of the action and tending to render judgment ineffectual, among others. CCP §526(a). As is usual with all injunctions, a preliminary injunction will issue only if there is no adequate legal remedy. CCP § 526. The party seeking the injunction must show an imminent threat of irreparable injury, often equated with an "inadequate legal remedy." CCP § 526(a)(2); *Korean Philadelphia Presbyterian Church v. Cal. Presbytery* (2000) 77 Cal.App.4th 1069, 1084.

The requirement that the injury be "imminent" simply means that the party to be enjoined is, or realistically is likely to, engage in the prohibited action. *Korean Philadelphia Presbyterian Church*, supra. The court should not grant the injunction if the conduct or injury complained of is not occurring. *Cisneros v. U.D. Registry, Inc*. (1995) 39 Cal.App.4th 548, 574. The irreparable injury will exist if the party seeking the injunction will be seriously injured in a way that later cannot be repaired. *People ex rel. Gow v. Mitchell Bros., Etc.* (1981) 118 Cal.App.3d 863, 870-871.

The party seeking a preliminary injunction must also demonstrate a reasonable probability of success. See CCP § 526(a)(1); *San Francisco Newspaper Printing Co., Inc. v. Sup.Ct. (Miller)* (1985) 170 Cal.App.3d 438, 442. Plaintiff must make a prima facie showing that he is entitled to relief under these standards, but need not rise to the requirements for a final determination. *Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal.App.3d 131, 138. *Scaringe v. J.C.C. Enterprises, Inc.* (1988) 205 Cal.App.3d 1536, at 1543, provides an example of how to determine whether the plaintiff has satisfied this requirement. The plaintiff in *Scaringe* sought to halt construction that would block his view. The court stated that in order to show a reasonable probability of success, the plaintiff had to demonstrate an enforceable servitude or CCRs.

The court must conduct a two-prong equitable balancing test, weighing the probability of prevailing on the merits against the determination as to who is likely to suffer greater harm. *Robbins v. Sup.Ct.* (1985) 38 Cal.3d 199, 206. *Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 633. This determination involves a mix of the two elements, and the greater the Plaintiff's showing on one element, the weaker it may be on the other. *Butt v. State of Calif.* (1992) 4 Cal.4th 668, 678.

If the court grants a preliminary injunction, it must require an undertaking or a cash deposit. CCP § 529. The amount must cover any damages to defendant if the court finally determines that plaintiff was not entitled to the injunction. CCP § 529; see *Top Cat Productions, Inc. v. Michael's Los Feliz* (2002) 102 Cal.App.4th 474, 478. The court should thus determine the potential likely harmful effect of the injunction as the basis for the amount. *Abba Rubber Co. v. Seaquist* (1991) 235 Cal.App.3d 1, 14. The court should include lost profits or other damages as well as costs of defense, but should not consider the strength of plaintiff's case on this point. *Abba Rubber*, supra, 15-16.

1. Evidentiary Issues

Defendants raise multiple objections to the evidence presented by the Declaration of Douglas Keane. Defendants have failed to number their objections, therefore the Court has simply numbered them sequentially. Objections 1-8, and 10-16 are OVERRULED. Objection 9 is SUSTAINED, on the grounds of lack of foundation.

Judicial notice of official acts and court records is statutorily appropriate. See Cal. Evid. Code § 452(c) and (d) (judicial notice of official acts). Yet since judicial notice is a substitute for proof, it "is always confined to those matters which are relevant to the issue at hand." *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301. Factual findings found within a prior judicial opinion are not an appropriate subject of judicial notice. *Kilroy v. State* (2004) 119 Cal.App.4th 140, 148.

Defendants seek judicial notice of the Plaintiff's Complaint and the County Code. The Court may judicially notice these, what they say, and their purported intended effect. The Court may not, however,

judicially notice the truth of factual assertions made therein. With this limitation, the request is GRANTED.

Defendant's Supplemental Declaration in Opposition is untimely and not supported by the briefing schedule set by the CCP. It is disregarded.

1. "Prohibitory" vs. "Mandatory" Injunctions

Plaintiffs argue that the injunction should be issued because it simply maintains the status quo of the parties.
"[A]n injunction is prohibitory if it requires a person to refrain from a particular act and mandatory if it compels performance of an affirmative act that changes the position of the parties." *Davenport v. Blue Cross of California* (1997) 52 Cal.App.4th 435, 446-448. (rejecting "preservation of status quo" as test for prohibitory injunction). An order that a party not encumber or dispose of assets is prohibitory because "[i]t directs affirmative inaction by defendant, not affirmative action" *Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1048. In general, an order will be prohibitory if the effect is to leave parties in the same position as they were prior to the order and mandatory if it will change their positions. *URS Corp. v. Atkinson/Walsh Joint Venture* (2017) 15 Cal.App.5th 872, 884; *Paramount Pictures Corp. v. Davis* (1964) 228 Cal.App.2d 827, 835; *Musicians Club of L. A. v. Superior Court* (1958) 165 Cal.App.2d 67, 71.
With respect to preliminary injunction, courts should only grant mandatory preliminary injunctions "in extreme cases where the right thereto is clearly established." *Teachers Ins. & Annuity Ass'n v. Furlotti* (1999) 70 Cal.App.4th 1487, 1493; see also, *Integrated Dynamic Solutions, Inc. v. VitaVet Labs, Inc.* (2016) 6 Cal.App. 5th 1178, 1184; *Brown v. Pacifica Found., Inc.* (2019) 34 Cal.App.5th 915, 925; *Board of Supervisors v. McMahon* (1990) 219 Cal.App.3d 286, 295; *Hagen v. Beth* (1897) 118 Cal. 330, 331.

In this instance, Plaintiffs clearly and expressly seek only a prohibitory injunction. The injunction requested is solely to prohibit Defendants from conducting themselves in a way that breaches either the Lease or the Use Permit. It does not require that Defendants undertake any affirmative action. Defendants make no argument to the contrary.

1. The Motion is not "Procedurally Flawed"

Defendant also argues that 275 is a non-party to the lease and therefore is not properly enjoined. As was addressed in the Court's June 14, 2023 minutes for Defendant's motion to quash, 275 has not yet raised any meritorious jurisdictional issue which would preclude it from being a party to this case, and has been used interchangeably with Walden at multiple points after it's purported dissolution. Therefore, it remains proper to enjoin 275's conduct here.

Similarly, the Defendants attempt to argue that the Court does not have jurisdiction to enjoin whatever action the County might make in Walden's application to amend the Use Permit. This is irrelevant to the relief requested here, which is that Defendants be required to act in a manner which does not violate the Lease or the Use Permit. Defendants remain responsible for their own actions in this manner. Walden has undertaken to modify the Use Permit, despite being constrained by the contractual obligations of the Original Lease and Amendment. For Walden to act as though the County has now set the August 2, 2023 hearing sua sponte is disingenuous.
Defendant's assertion of the Anti-SLAPP statute is unpersuasive, alleging that Plaintiff is attempting to abridge Defendants' right to participate in an official proceeding in a manner which would conflict with the Anti-SLAPP statute. The reason this makes no sense is that Defendants attempted to modify the Use Permit **after this lawsuit was filed.** The allegations therefore cannot be targeted to an official proceeding of which Plaintiff was not aware when the Complaint was filed. Second, even if this action was capable of a special motion to strike, the Court notes that Anti-SLAPP motions are a two prong analysis, and that Plaintiff may be able to demonstrate that their case has sufficient merit to survive, even if Defendant's actions are protected activity. As the Court notes here, Plaintiff's case does have probability of prevailing. Therefore, Defendants' argument in this regard is ill taken.

1. Irreparable Injury

There is a threat of irreparable harm where there is an "inadequate legal remedy" or where the injury cannot be readily repaired or

undone. CCP § 526(a)(2); see *People ex rel. Gow v. Mitchell Brothers' Santa Ana Theater* (1981) 118 Cal.App.3d 863, 870-871.

Plaintiff has argued two distinguishable harms here based on two distinct courses of action by Defendants. First, Plaintiff argues that the Use Permit is subject to revocation by the County in the event that the terms therein are not complied with. They allege that the use of the parking lot in a manner not in compliance with the Use Permit is a violation of its terms, and that revocation would be a devastating loss for the Plaintiff, as it would result in closure of their business until a new Use Permit could be obtained. The Court notes Keane Decl. Exhibit J contains several photos depicting substantially more than the allowable number of parking spaces occupied for a non-restaurant purpose. See also, Keane Decl. Exhibit N. Second, the Plaintiff alleges that Defendants' efforts to modify the Use Permit through the County would damage the restaurant's atmosphere and overall experience. Defendants argue that the harm elucidated by Plaintiff is entirely in the past, and therefore an injunction is improper, as there has been no showing that this will continue into the future. While it may be true that the actions alleged by Plaintiff are in the past, **that is the nature of all civil actions**. Courts do not make their determinations based on what has yet to come to pass. For injunctions, the Court must determine what is likely to happen based on evidence of past conduct. *Korean Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1084. Here, Defendants have continued to undertake actions which facially violate either the Lease or the Use Permit (or both), even since this lawsuit was filed. The Court particularly looks to the Keane Decl., ¶ 12, and the attached Exhibit J, as evidence that Defendants are likely to continue this course of conduct into the future unless enjoined.
Defendants also argue that the harm elucidated by Plaintiff is insufficiently actualized, and that the harm which Defendants would suffer is greater than that of Plaintiff's harm. Defendant's argument citing *Coral Construction, Inc. v. City and County of San Francisco* (2004) 116 Cal.App.4th 6, 17, borders on specious. This case has nothing to do with preliminary injunctions, or showings of harm thereon. To offer the complete quotation provided in part by Defendants, "The second half of the 'injury in fact' test requires that **the party seeking future**

relief from the provisions of an allegedly unconstitutional ordinance show 'actual or imminent' as opposed to 'conjectural or hypothetical' harm from its application." This applies to injunctive relief as a cause of action, and not the balancing test for preliminary injunctions. A more accurate depiction of a similar, but not identical principle, is that an application for preliminary injunction "must be supported by actual evidence that there is a realistic prospect that the party enjoined intends to engage in the prohibited activity." *Korean Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1084. However, it is also true that "plaintiffs are not required to wait until they have suffered actual harm before they apply for an injunction, but may seek injunctive relief against the threatened infringement of their rights." *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1292. Here, Plaintiff has provided voluminous evidence of Defendant's flouting of the designations established in the Use Permit. The harm here is actual and demonstrated.

With that said the Court finds the two types of harm demonstrated should likely be addressed separately. Where Defendants, through violation of the terms of the Use Permit, might cause its revocation, the Court sees irreparable harm, in the form of the potential loss of the Use Permit. It is clear that defendants will continue to act in a manner inconsistent with the Use Permit unless enjoined, blocking several spaces and potentially reducing the available parking below that required by the Use Permit. Revocation of the Use Permit would be obviously devastating, causing damage not easily calculable. The Court finds this is adequate to constitute irreparable harm. In contrast, Defendants' attempts to amend the Use Permit by way of application to the County allegedly will cause some traffic flow problems on the property. However, Plaintiffs have not particularly offered admissible evidence to this effect. Plaintiff makes arguments regarding the fact that the terms of the Use Permit were particularly bargained for as part of the Lease, however this just provides Plaintiff with additional avenues for causes of action and damages. It does not provide a form of harm that cannot be adequately compensated through financial means. Therefore, the Court does not find the harm posed by the Defendants application to the County irreparable.

Defendant's only attempts to show harm are vague, conclusory, and ill-supported. Defendants allege that they are exposed to "hundreds of thousands of dollars" of damages, but only support this with a conclusory statement by declaration from Steven Oliver. The Court cannot see how the Defendants can be exposed to such damages by merely complying with the Use Permit, which allocates sufficient parking to all the Property's current uses. While Defendants claim that the use permits that preceded the Use Permit obtained by Plaintiff would be irreparably injured by Plaintiff's behavior, Defendants have not provided these purported use permits. The Court also notes that the Use Permit obtained by the Plaintiff accounts for all the County Code requirements implicated by the current property uses. The caretaker's unit needs to be allocated one covered space per the County Code. It is allocated four covered spaces per the Use Permit Application. Each of the three residential units must be allocated two spaces, which accounted for by the Application and granted by the Use Permit. Defendants' argument essentially amounts to that they are not entitled to additional discretionary parking, but this argument is entirely defeated by Defendants' willing acceptance of the Amendment. Defendant has shown no concrete harm not imposed by their own willingly bargained for contractual duties.

1. Likelihood of Success on the Merits

Plaintiffs provide detailed evidence supporting their allegations and claims. *See*, *generally*, Keane Decl. In brief, these declarations and the exhibits essentially set forth exactly what the Complaint alleges. They detail how, among other things, Defendants have repeatedly used spaces that Plaintiff alleges are designated restaurant parking under the Use Permit. Plaintiffs have also shown that the Amendment modifies the Original Lease terms to grant to Plaintiffs "all parking spaces available on the real property in order to accommodate (Plaintiff's) business operations". See Amendment.

Defendants attempt to argue that the Plaintiff is only entitled to 54 spaces under the equation required by the County Code. This argument is nonsensical, as the County Code merely sets the **minimum** number of spaces necessary to display under the Use Permit. Once the Use Permit is approved, it established the conduct to be undertaken.

Second, Defendants attempt to prevaricate by alleging that Defendants had no access to the parking section of the Use Permit prior to its approval. This contention is not credible based on multiple exhibits provided by Plaintiff. Particularly, the letter from Steve Oliver to Permit Sonoma requesting that Permit Sonoma continue processing the building permit application concurrent with "our" use permit modification, and the efforts made by Steve Oliver in clarifying the employee parking prior to the permit application. *See* Keane Decl. Ex. G; *see also*, *Id*. at Ex. E1. Defendants do not dispute its authenticity of either of these statements by Steve Oliver, and they are admissible as admissions of a party. *See* Evid. Code § 1220. As such, this argument by Defendants is unconvincing.
Defendants' argument that the Original Lease gives Defendants the right to amend parking arrangements at their sole discretion under §§ 2.6 and 2.9. The Court finds this unavailing under basic principles of contract law. Specific terms will always override general terms of contracts. *See* CCP § 1859. Furthermore, the Amendment being later in time means whatever original terms are incongruous with it are assumed to be overridden, as the parties intentionally amended the contract to accommodate the language of the Amendment.

Based on the evidence presented, the Court finds a strong probability that Plaintiff will prevail in this action.

1. Balancing Test

Both factors support the injunction here. The likelihood of injury to Defendants from the injunction seems insignificant by comparison to Plaintiffs' injuries without it, and much less irreparable. Plaintiff has shown substantial contractual rights, and Defendants have shown little defense to the Plaintiff's allegations. The strong language contained in the Amendment represents strong evidence that Defendants are ignoring Plaintiff's contractual rights under the Lease.

The Court finds that the balancing test weighs strongly in favor of restricting Defendant from violating the terms of the Use Permit. In contrast, the Court finds that restricting Defendants' ability to modify the Use Permit is not adequately supported at this time, as it does not represent the same irreparable injury as would be caused by

revocation of the Use Permit.

1. Status Quo

Finally, the injunction would preserve the status quo, as discussed above, which Defendants fail to rebut. Absent the injunction, the status quo would potentially be altered fundamentally, and quite possibly permanently.

1. Undertaking

As noted above, if the court grants a preliminary injunction, it must require an undertaking or a cash deposit. CCP § 529. The amount must cover any damages to defendant if the court finally determines that plaintiff was not entitled to the injunction. CCP § 529; see *Top Cat Productions, Inc. v. Michael's Los Feliz* (2002) 102 Cal.App.4th 474, 478. The court should thus determine the potential likely harmful effect of the injunction as the basis for the amount. *Abba Rubber Co. v. Seaquist* (1991) 235 Cal.App.3d 1, 14. The court should consider lost profits or other damages as well as costs of defense where trial is necessary to defeat the preliminary injunction, but should not consider the strength of plaintiff's case on this point. *Abba Rubber*, supra, 15-16. The court also has the authority to waive the bond requirement if it finds that the plaintiff is indigent or unable to obtain sufficient sureties, but the court must weigh all relevant factors. CCP § 995.240

Defendants ask the Court deny the motion because the Plaintiff has neither provided nor proposed an amount for the undertaking. Plaintiff argues that Defendants have shown no merit to their position, and therefore have not provided any basis for damages in the event Plaintiff does not prevail.

First, the motion shall not be denied because Plaintiff has yet to provide an undertaking, and Defendants' argument in this regard is frivolous. CCP § 529 requires the Court to set the undertaking amount. Plaintiff cannot provide an undertaking that has yet to be set by the Court.

Second, Plaintiffs' position here is again persuasive. Defendants have not displayed any concrete risks or damages stemming from their own

failure to follow what is clearly within the Use Permit. Defendants' damages will be minimal in the event that Defendants prevail. However, the Court finds that Defendants basic property rights should they prevail have value, and an undertaking, nominal or not, is appropriate. Plaintiff does not demonstrate that requiring an undertaking would be an undue hardship or impossible. The court therefore conditions the issuance of this preliminary injunction on Plaintiffs posting an undertaking of $10,000.

1. **Conclusion**

Preliminary Injunction GRANTED in part, conditioned on Plaintiffs posting an undertaking of $10,000. Upon Plaintiffs' positing of the undertaking the preliminary injunction will issue, prohibiting Defendants from undertaking actions which impedes or interferes Plaintiff's use of the 59 parking spaces allocated by the Use Permit, including unauthorized use of those spaces by Defendants, their agents or their employees, and blocking, discouraging or otherwise attempting to control those spaces designated by the Use Permit.

The Plaintiffs shall post an undertaking of $10,000.

Plaintiffs' counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

THIS EMAIL ORIGINATED OUTSIDE OF THE SONOMA COUNTY EMAIL SYSTEM.
Warning: If you don't know this email sender or the email is unexpected,
do not click any web links, attachments, and never give out your user ID or password.

From:	Douglas Keane
To:	Tennis Wick
Cc:	Jen Chard
Subject:	preliminary injunction
Date:	Tuesday, July 25, 2023 3:40:58 PM

Motion for Preliminary Injunction

Preliminary Injunction **GRANTED** in part, conditioned on Plaintiffs posting an undertaking of $10,000. Upon Plaintiffs' positing of the undertaking the preliminary injunction will issue, prohibiting Defendants from undertaking actions which impedes or interferes Plaintiff's use of the 59 parking spaces allocated by the Use Permit, including unauthorized use of those spaces by Defendants, their agents or their employees, and blocking, discouraging or otherwise attempting to control those spaces designated by the Use Permit.

I. **Facts and Procedural History**

In the Complaint, Plaintiff alleges that 275 and Walden are the lessors of the Property. 275 and Plaintiff entered into a lease agreement on February 8, 2020. See Declaration of Douglas Keane ("Keane Decl."), Exhibit A (the "Original Lease"). Thereafter, on or around May 1, 2020, the parties amended the lease to provide, "Lessor shall provide all parking spaces available on the real property in order to accommodate Lessee's business operations and the Agreed Use set forth in Paragraph 1.8 of the Lease." See Keane Decl., Exhibit B (the "Amendment", together with the "Original Lease", the "Lease"). On April 27, 2020, Steven Oliver effectuated a conveyance of real property interests by quit claim which provided additional parking spaces to Defendant as Lessor. See Keane Decl., Exhibit D. This was done in conjunction and coordination with Plaintiff. See Keane Decl., Exhibit C. Plaintiff proceeded to file an application with the County in order to obtain a use permit for their restaurant. See Keane Decl., Exhibit E (the "Application" or "Use Permit Application"). Particularly, the Application delineates 69 total parking spaces at the Property. *Ibid*, Keane Decl. pg. 83, 89 and 131. Four spaces are covered parking within a garage which constitutes designated parking for the caretakers residence. *Ibid*. Six spaces were designated for the three residential units on the party. *Ibid*. The balance of 59 spaces were designated for Plaintiff's use in order to exceed the minimum 54 spaces required by the County Code for their restaurant. *Ibid*. While the Application was pending, Steven Oliver, as principle for the Defendants, wrote a letter to the County's agency, Permit Sonoma, asking that the agency continue processing "our" use permit modification. See Keane Decl., Exhibit G. Plaintiff's Application was approved, and Plaintiff therefore received a use permit in

accordance with the conditions of their application. See Keane Decl., Exhibit H. Since then, Plaintiff alleges that Defendants have repeatedly acted in a manner which interferes with the parking designations laid out in the Use Permit. See Keane Decl., Exhibits J-N. Defendants have also now moved the County to amend the Use Permit without Plaintiff's input. See Keane Decl., Exhibits O and P.

II. Motion for Preliminary Injunction

The matter now before the court is the Plaintiff's motion for preliminary injunction. Plaintiffs seeks to enjoin Defendants from interfering with Plaintiff's use and control of their designated 59 parking spaces, and to enjoin Defendants from attempting to modify the Use Permit until the conclusion of this action.
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Plaintiffs argue that the injunction should be issued because it simply maintains the status quo of the parties.
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In this instance, Plaintiffs clearly and expressly seek only a prohibitory injunction. The injunction requested is solely to prohibit Defendants from conducting themselves in a way that breaches either the Lease or the Use Permit. It does not require that Defendants undertake any affirmative action. Defendants make no argument to the contrary.

V. <u>The Motion is not "Procedurally Flawed"</u>

Defendant also argues that 275 is a non-party to the lease and therefore is not properly enjoined. As was addressed in the Court's June 14, 2023 minutes for Defendant's motion to quash, 275 has not yet raised any meritorious jurisdictional issue which would preclude it from being a party to this case, and has been used interchangeably with Walden at multiple points after it's purported dissolution. Therefore, it remains proper to enjoin 275's conduct here.

Similarly, the Defendants attempt to argue that the Court does not have jurisdiction to enjoin whatever action the County might make in Walden's application to amend the Use Permit. This is irrelevant to the relief requested here, which is that Defendants be required to act in a manner which does not violate the Lease or the Use Permit. Defendants remain responsible for their own actions in this manner. Walden has undertaken to modify the Use Permit, despite being constrained by the contractual obligations of the Original Lease

and Amendment. For Walden to act as though the County has now set the August 2, 2023 hearing sua sponte is disingenuous.
Defendant's assertion of the Anti-SLAPP statute is unpersuasive, alleging that Plaintiff is attempting to abridge Defendants' right to participate in an official proceeding in a manner which would conflict with the Anti-SLAPP statute. The reason this makes no sense is that Defendants attempted to modify the Use Permit **after this lawsuit was filed.** The allegations therefore cannot be targeted to an official proceeding of which Plaintiff was not aware when the Complaint was filed. Second, even if this action was capable of a special motion to strike, the Court notes that Anti-SLAPP motions are a two prong analysis, and that Plaintiff may be able to demonstrate that their case has sufficient merit to survive, even if Defendant's actions are protected activity. As the Court notes here, Plaintiff's case does have probability of prevailing. Therefore, Defendants' argument in this regard is ill taken.

VI. Irreparable Injury

There is a threat of irreparable harm where there is an "inadequate legal remedy" or where the injury cannot be readily repaired or undone. CCP § 526(a)(2); see *People ex rel. Gow v. Mitchell Brothers' Santa Ana Theater* (1981) 118 Cal.App.3d 863, 870-871.

Plaintiff has argued two distinguishable harms here based on two distinct courses of action by Defendants. First, Plaintiff argues that the Use Permit is subject to revocation by the County in the event that the terms therein are not complied with. They allege that the use of the parking lot in a manner not in compliance with the Use Permit is a violation of its terms, and that revocation would be a devastating loss for the Plaintiff, as it would result in closure of their business until a new Use Permit could be obtained. The Court notes Keane Decl. Exhibit J contains several photos depicting substantially more than the allowable number of parking spaces occupied for a non-restaurant purpose. See also, Keane Decl. Exhibit N. Second, the Plaintiff alleges that Defendants' efforts to modify the Use Permit through the County would damage the restaurant's atmosphere and overall experience.
Defendants argue that the harm elucidated by Plaintiff is entirely in the past, and therefore an injunction is improper, as there has been no showing that this will continue into the future. While it may be true that the actions alleged by Plaintiff are in the past, **that is the nature of all civil actions**. Courts do not make their determinations based on what has yet to come to pass. For injunctions, the Court must determine what is likely to happen based on evidence of past conduct. *Korean Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1084. Here, Defendants have continued to undertake actions which facially violate either the Lease or the Use Permit (or both), even since this lawsuit was filed. The Court particularly looks to the Keane Decl., ¶ 12, and the attached Exhibit J, as evidence that Defendants are likely to

continue this course of conduct into the future unless enjoined.
Defendants also argue that the harm elucidated by Plaintiff is insufficiently actualized, and that the harm which Defendants would suffer is greater than that of Plaintiff's harm. Defendant's argument citing *Coral Construction, Inc. v. City and County of San Francisco* (2004) 116 Cal.App.4th 6, 17, borders on specious. This case has nothing to do with preliminary injunctions, or showings of harm thereon. To offer the complete quotation provided in part by Defendants, "The second half of the 'injury in fact' test requires that **the party seeking future relief from the provisions of an allegedly unconstitutional ordinance** show 'actual or imminent' as opposed to 'conjectural or hypothetical' harm from its application." This applies to injunctive relief as a cause of action, and not the balancing test for preliminary injunctions. A more accurate depiction of a similar, but not identical principle, is that an application for preliminary injunction "must be supported by actual evidence that there is a realistic prospect that the party enjoined intends to engage in the prohibited activity." *Korean Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1084. However, it is also true that "plaintiffs are not required to wait until they have suffered actual harm before they apply for an injunction, but may seek injunctive relief against the threatened infringement of their rights." *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1292. Here, Plaintiff has provided voluminous evidence of Defendant's flouting of the designations established in the Use Permit. The harm here is actual and demonstrated.

With that said the Court finds the two types of harm demonstrated should likely be addressed separately. Where Defendants, through violation of the terms of the Use Permit, might cause its revocation, the Court sees irreparable harm, in the form of the potential loss of the Use Permit. It is clear that defendants will continue to act in a manner inconsistent with the Use Permit unless enjoined, blocking several spaces and potentially reducing the available parking below that required by the Use Permit. Revocation of the Use Permit would be obviously devastating, causing damage not easily calculable. The Court finds this is adequate to constitute irreparable harm. In contrast, Defendants' attempts to amend the Use Permit by way of application to the County allegedly will cause some traffic flow problems on the property. However, Plaintiffs have not particularly offered admissible evidence to this effect. Plaintiff makes arguments regarding the fact that the terms of the Use Permit were particularly bargained for as part of the Lease, however this just provides Plaintiff with additional avenues for causes of action and damages. It does not provide a form of harm that cannot be adequately compensated through financial means. Therefore, the Court does not find the harm posed by the Defendants application to the County irreparable.

Defendant's only attempts to show harm are vague, conclusory, and ill-

supported. Defendants allege that they are exposed to “hundreds of thousands of dollars” of damages, but only support this with a conclusory statement by declaration from Steven Oliver. The Court cannot see how the Defendants can be exposed to such damages by merely complying with the Use Permit, which allocates sufficient parking to all the Property’s current uses. While Defendants claim that the use permits that preceded the Use Permit obtained by Plaintiff would be irreparably injured by Plaintiff’s behavior, Defendants have not provided these purported use permits. The Court also notes that the Use Permit obtained by the Plaintiff accounts for all the County Code requirements implicated by the current property uses. The caretaker’s unit needs to be allocated one covered space per the County Code. It is allocated four covered spaces per the Use Permit Application. Each of the three residential units must be allocated two spaces, which accounted for by the Application and granted by the Use Permit. Defendants’ argument essentially amounts to that they are not entitled to additional discretionary parking, but this argument is entirely defeated by Defendants’ willing acceptance of the Amendment. Defendant has shown no concrete harm not imposed by their own willingly bargained for contractual duties.

VII. Likelihood of Success on the Merits

Plaintiffs provide detailed evidence supporting their allegations and claims. *See, generally,* Keane Decl. In brief, these declarations and the exhibits essentially set forth exactly what the Complaint alleges. They detail how, among other things, Defendants have repeatedly used spaces that Plaintiff alleges are designated restaurant parking under the Use Permit. Plaintiffs have also shown that the Amendment modifies the Original Lease terms to grant to Plaintiffs “all parking spaces available on the real property in order to accommodate (Plaintiff’s) business operations”. See Amendment.

Defendants attempt to argue that the Plaintiff is only entitled to 54 spaces under the equation required by the County Code. This argument is nonsensical, as the County Code merely sets the **minimum** number of spaces necessary to display under the Use Permit. Once the Use Permit is approved, it established the conduct to be undertaken.

Second, Defendants attempt to prevaricate by alleging that Defendants had no access to the parking section of the Use Permit prior to its approval. This contention is not credible based on multiple exhibits provided by Plaintiff. Particularly, the letter from Steve Oliver to Permit Sonoma requesting that Permit Sonoma continue processing the building permit application concurrent with “our” use permit modification, and the efforts made by Steve Oliver in clarifying the employee parking prior to the permit application. *See* Keane Decl. Ex. G; *see also*, *Id*. at Ex. E1. Defendants do not dispute its authenticity of either of these statements by Steve Oliver, and they are admissible as admissions of a party. *See* Evid. Code § 1220. As such, this argument by Defendants is

unconvincing.
Defendants' argument that the Original Lease gives Defendants the right to amend parking arrangements at their sole discretion under §§ 2.6 and 2.9. The Court finds this unavailing under basic principles of contract law. Specific terms will always override general terms of contracts. *See* CCP § 1859. Furthermore, the Amendment being later in time means whatever original terms are incongruous with it are assumed to be overridden, as the parties intentionally amended the contract to accommodate the language of the Amendment.

Based on the evidence presented, the Court finds a strong probability that Plaintiff will prevail in this action.

VIII. Balancing Test

Both factors support the injunction here. The likelihood of injury to Defendants from the injunction seems insignificant by comparison to Plaintiffs' injuries without it, and much less irreparable. Plaintiff has shown substantial contractual rights, and Defendants have shown little defense to the Plaintiff's allegations. The strong language contained in the Amendment represents strong evidence that Defendants are ignoring Plaintiff's contractual rights under the Lease.

The Court finds that the balancing test weighs strongly in favor of restricting Defendant from violating the terms of the Use Permit. In contrast, the Court finds that restricting Defendants' ability to modify the Use Permit is not adequately supported at this time, as it does not represent the same irreparable injury as would be caused by revocation of the Use Permit.

IX. Status Quo

Finally, the injunction would preserve the status quo, as discussed above, which Defendants fail to rebut. Absent the injunction, the status quo would potentially be altered fundamentally, and quite possibly permanently.

X. Undertaking

As noted above, if the court grants a preliminary injunction, it must require an undertaking or a cash deposit. CCP § 529. The amount must cover any damages to defendant if the court finally determines that plaintiff was not entitled to the injunction. CCP § 529; see *Top Cat Productions, Inc. v. Michael's Los Feliz* (2002) 102 Cal.App.4th 474, 478. The court should thus determine the potential likely harmful effect of the injunction as the basis for the amount. *Abba Rubber Co. v. Seaquist* (1991) 235 Cal.App.3d 1, 14. The court should consider lost profits or other damages as well as costs of defense where trial is necessary to defeat the preliminary injunction, but should not consider the strength of plaintiff's case on this point. *Abba Rubber*, supra, 15-16. The court also has the authority to waive the bond requirement if it finds that the plaintiff is indigent or

unable to obtain sufficient sureties, but the court must weigh all relevant factors. CCP § 995.240

Defendants ask the Court deny the motion because the Plaintiff has neither provided nor proposed an amount for the undertaking. Plaintiff argues that Defendants have shown no merit to their position, and therefore have not provided any basis for damages in the event Plaintiff does not prevail.

First, the motion shall not be denied because Plaintiff has yet to provide an undertaking, and Defendants' argument in this regard is frivolous. CCP § 529 requires the Court to set the undertaking amount. Plaintiff cannot provide an undertaking that has yet to be set by the Court.

Second, Plaintiffs' position here is again persuasive. Defendants have not displayed any concrete risks or damages stemming from their own failure to follow what is clearly within the Use Permit. Defendants' damages will be minimal in the event that Defendants prevail. However, the Court finds that Defendants basic property rights should they prevail have value, and an undertaking, nominal or not, is appropriate. Plaintiff does not demonstrate that requiring an undertaking would be an undue hardship or impossible. The court therefore conditions the issuance of this preliminary injunction on Plaintiffs posting an undertaking of $10,000.

XI. **Conclusion**

Preliminary Injunction GRANTED in part, conditioned on Plaintiffs posting an undertaking of $10,000. Upon Plaintiffs' positing of the undertaking the preliminary injunction will issue, prohibiting Defendants from undertaking actions which impedes or interferes Plaintiff's use of the 59 parking spaces allocated by the Use Permit, including unauthorized use of those spaces by Defendants, their agents or their employees, and blocking, discouraging or otherwise attempting to control those spaces designated by the Use Permit.

The Plaintiffs shall post an undertaking of $10,000.

Plaintiffs' counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

From: Douglas Keane
To: Tennis Wick
Cc: Jen Chard
Subject: Re: preliminary injunction
Date: Tuesday, July 25, 2023 4:33:32 PM
Attachments: image001.png
image002.png
image003.png
image004.png

It's "tentative" but will be entered tomorrow after the 15 minute hearing.

> On Jul 25, 2023, at 4:32 PM, Tennis Wick <Tennis.Wick@sonoma-county.org> wrote:
>
> Thank you
>
> **Tennis Wick, AICP**
> Director
> www.PermitSonoma.org
> County of Sonoma
> 2550 Ventura Avenue, Santa Rosa, CA 95403
> Direct: 707-565-1925 |
> Office: 707-565-1900 | Fax: 707-565-1103
> <image001.png>
> <image002.png>
> <image003.png>
> <image004.png>
>
> <image005.jpg>
>
> **Access Permit Sonoma's extensive online services at www.PermitSonoma.org**
>
> **Permit Sonoma's public lobby is open Monday, Tuesday, Thursday, Friday from 8:00 AM to 4:00 PM, and Wednesday from 10:30 AM to 4:00 PM.**
>
> ---
>
> **From:** Douglas Keane <douglaskeane@cyrusrestaurant.com>
> **Sent:** Tuesday, July 25, 2023 3:41 PM
> **To:** Tennis Wick <Tennis.Wick@sonoma-county.org>
> **Cc:** Jen Chard <Jen.Chard@sonoma-county.org>
> **Subject:** preliminary injunction

Motion for Preliminary Injunction

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I. **Facts and Procedural History**

In the Complaint, Plaintiff alleges that 275 and Walden are the lessors of the Property. 275 and Plaintiff entered into a lease agreement on February 8, 2020. See Declaration of Douglas Keane ("Keane Decl."), Exhibit A (the "Original Lease"). Thereafter, on or around May 1, 2020, the parties amended the lease to provide, "Lessor shall provide all parking spaces available on the real property in order to accommodate Lessee's business operations and the Agreed Use set forth in Paragraph 1.8 of the Lease." See Keane Decl., Exhibit B (the "Amendment", together with the "Original Lease", the "Lease"). On April 27, 2020, Steven Oliver effectuated a conveyance of real property interests by quit claim which provided additional parking spaces to Defendant as Lessor. See Keane Decl., Exhibit D. This was done in conjunction and coordination with Plaintiff. See Keane Decl., Exhibit C. Plaintiff proceeded to file an application with the County in order to obtain a use permit for their restaurant. See Keane Decl., Exhibit E (the "Application" or "Use Permit Application"). Particularly, the Application delineates 69 total parking spaces at the Property. *Ibid*, Keane Decl. pg. 83, 89 and 131. Four spaces are covered parking within a garage which constitutes designated parking for the caretakers residence. *Ibid*. Six spaces were designated for the three residential units on the party. *Ibid*. The balance of 59 spaces were designated for Plaintiff's use in order to exceed the minimum 54 spaces required by the County Code for their restaurant. *Ibid*. While the Application was pending, Steven Oliver, as principle for the Defendants, wrote a letter to the County's agency, Permit Sonoma, asking that the agency continue processing "our" use permit modification. See Keane Decl., Exhibit G. Plaintiff's Application was approved, and Plaintiff therefore received a use permit in accordance with the conditions of their application. See Keane Decl., Exhibit H.

Since then, Plaintiff alleges that Defendants have repeatedly acted in a manner which interferes with the parking designations laid out in the Use Permit. See Keane Decl., Exhibits J-N. Defendants have also now moved the County to amend the Use Permit without Plaintiff's input. See Keane Decl., Exhibits O and P.

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Defendant also argues that 275 is a non-party to the lease and therefore is not properly enjoined. As was addressed in the Court’s June 14, 2023 minutes for Defendant’s motion to quash, 275 has not yet raised any meritorious jurisdictional issue which would preclude it from being a party to this case, and has been used interchangeably with Walden at multiple points after it’s purported dissolution. Therefore, it remains proper to enjoin 275’s conduct here.

Similarly, the Defendants attempt to argue that the Court does not have jurisdiction to enjoin whatever action the County might make in Walden’s application to amend the Use Permit. This is irrelevant to the relief requested here, which is that Defendants be required to act in a manner which does not violate the Lease or the Use Permit. Defendants remain responsible for their own actions in this manner. Walden has undertaken to modify the Use Permit, despite being constrained by the contractual obligations of the Original Lease and Amendment. For Walden to act as though the County has now set the August 2, 2023 hearing sua sponte is disingenuous.
Defendant’s assertion of the Anti-SLAPP statute is unpersuasive, alleging that Plaintiff is attempting to abridge Defendants’ right to participate in an official proceeding in a manner which would conflict with the Anti-SLAPP statute. The reason this makes no sense is that Defendants attempted to modify the Use Permit **after this lawsuit was filed.** The allegations therefore cannot be targeted to an official proceeding of which Plaintiff was not aware when the Complaint was filed. Second, even if this action was capable of a special motion to strike, the Court notes that Anti-SLAPP motions are a two prong analysis, and that Plaintiff may be able to demonstrate that their case has sufficient merit to survive, even if Defendant’s actions are protected activity. As the Court notes here, Plaintiff’s case does have probability of prevailing. Therefore, Defendants’ argument in this regard is ill taken.

VI. Irreparable Injury

There is a threat of irreparable harm where there is an “inadequate legal remedy” or where the injury cannot be readily repaired or undone. CCP § 526(a)(2); see *People ex rel. Gow v. Mitchell Brothers’ Santa Ana Theater* (1981) 118 Cal.App.3d 863, 870-871.

Plaintiff has argued two distinguishable harms here based on two distinct courses of action by Defendants. First, Plaintiff argues that the Use Permit is subject to revocation by the County in the event that the

terms therein are not complied with. They allege that the use of the parking lot in a manner not in compliance with the Use Permit is a violation of its terms, and that revocation would be a devastating loss for the Plaintiff, as it would result in closure of their business until a new Use Permit could be obtained. The Court notes Keane Decl. Exhibit J contains several photos depicting substantially more than the allowable number of parking spaces occupied for a non-restaurant purpose. See also, Keane Decl. Exhibit N. Second, the Plaintiff alleges that Defendants' efforts to modify the Use Permit through the County would damage the restaurant's atmosphere and overall experience.

Defendants argue that the harm elucidated by Plaintiff is entirely in the past, and therefore an injunction is improper, as there has been no showing that this will continue into the future. While it may be true that the actions alleged by Plaintiff are in the past, **that is the nature of all civil actions**. Courts do not make their determinations based on what has yet to come to pass. For injunctions, the Court must determine what is likely to happen based on evidence of past conduct. *Korean Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1084. Here, Defendants have continued to undertake actions which facially violate either the Lease or the Use Permit (or both), even since this lawsuit was filed. The Court particularly looks to the Keane Decl., ¶ 12, and the attached Exhibit J, as evidence that Defendants are likely to continue this course of conduct into the future unless enjoined.

Defendants also argue that the harm elucidated by Plaintiff is insufficiently actualized, and that the harm which Defendants would suffer is greater than that of Plaintiff's harm. Defendant's argument citing *Coral Construction, Inc. v. City and County of San Francisco* (2004) 116 Cal.App.4th 6, 17, borders on specious. This case has nothing to do with preliminary injunctions, or showings of harm thereon. To offer the complete quotation provided in part by Defendants, "The second half of the 'injury in fact' test requires that **the party seeking future relief from the provisions of an allegedly unconstitutional ordinance** show 'actual or imminent' as opposed to 'conjectural or hypothetical' harm from its application." This applies to injunctive relief as a cause of action, and not the balancing test for preliminary injunctions. A more accurate depiction of a similar, but not identical principle, is that an application for preliminary injunction "must be supported by actual evidence that there is a realistic prospect that the party enjoined intends to engage in the prohibited activity." *Korean Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1084. However, it

is also true that “plaintiffs are not required to wait until they have suffered actual harm before they apply for an injunction, but may seek injunctive relief against the threatened infringement of their rights.” *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1292. Here, Plaintiff has provided voluminous evidence of Defendant’s flouting of the designations established in the Use Permit. The harm here is actual and demonstrated.

With that said the Court finds the two types of harm demonstrated should likely be addressed separately. Where Defendants, through violation of the terms of the Use Permit, might cause its revocation, the Court sees irreparable harm, in the form of the potential loss of the Use Permit. It is clear that defendants will continue to act in a manner inconsistent with the Use Permit unless enjoined, blocking several spaces and potentially reducing the available parking below that required by the Use Permit. Revocation of the Use Permit would be obviously devastating, causing damage not easily calculable. The Court finds this is adequate to constitute irreparable harm. In contrast, Defendants’ attempts to amend the Use Permit by way of application to the County allegedly will cause some traffic flow problems on the property. However, Plaintiffs have not particularly offered admissible evidence to this effect. Plaintiff makes arguments regarding the fact that the terms of the Use Permit were particularly bargained for as part of the Lease, however this just provides Plaintiff with additional avenues for causes of action and damages. It does not provide a form of harm that cannot be adequately compensated through financial means. Therefore, the Court does not find the harm posed by the Defendants application to the County irreparable.

Defendant’s only attempts to show harm are vague, conclusory, and ill-supported. Defendants allege that they are exposed to “hundreds of thousands of dollars” of damages, but only support this with a conclusory statement by declaration from Steven Oliver. The Court cannot see how the Defendants can be exposed to such damages by merely complying with the Use Permit, which allocates sufficient parking to all the Property’s current uses. While Defendants claim that the use permits that preceded the Use Permit obtained by Plaintiff would be irreparably injured by Plaintiff’s behavior, Defendants have not provided these purported use permits. The Court also notes that the Use Permit obtained by the Plaintiff accounts for all the County Code requirements implicated by the current property uses. The caretaker’s unit needs to be allocated one covered space per the County Code. It is allocated four covered spaces per the Use Permit Application. Each of the three residential units must be allocated two

spaces, which accounted for by the Application and granted by the Use Permit. Defendants' argument essentially amounts to that they are not entitled to additional discretionary parking, but this argument is entirely defeated by Defendants' willing acceptance of the Amendment. Defendant has shown no concrete harm not imposed by their own willingly bargained for contractual duties.

VII. Likelihood of Success on the Merits

Plaintiffs provide detailed evidence supporting their allegations and claims. *See, generally,* Keane Decl. In brief, these declarations and the exhibits essentially set forth exactly what the Complaint alleges. They detail how, among other things, Defendants have repeatedly used spaces that Plaintiff alleges are designated restaurant parking under the Use Permit. Plaintiffs have also shown that the Amendment modifies the Original Lease terms to grant to Plaintiffs "all parking spaces available on the real property in order to accommodate (Plaintiff's) business operations". See Amendment.

Defendants attempt to argue that the Plaintiff is only entitled to 54 spaces under the equation required by the County Code. This argument is nonsensical, as the County Code merely sets the **minimum** number of spaces necessary to display under the Use Permit. Once the Use Permit is approved, it established the conduct to be undertaken.

Second, Defendants attempt to prevaricate by alleging that Defendants had no access to the parking section of the Use Permit prior to its approval. This contention is not credible based on multiple exhibits provided by Plaintiff. Particularly, the letter from Steve Oliver to Permit Sonoma requesting that Permit Sonoma continue processing the building permit application concurrent with "our" use permit modification, and the efforts made by Steve Oliver in clarifying the employee parking prior to the permit application. *See* Keane Decl. Ex. G; *see also*, *Id*. at Ex. E1. Defendants do not dispute its authenticity of either of these statements by Steve Oliver, and they are admissible as admissions of a party. *See* Evid. Code § 1220. As such, this argument by Defendants is unconvincing.

Defendants' argument that the Original Lease gives Defendants the right to amend parking arrangements at their sole discretion under §§ 2.6 and 2.9. The Court finds this unavailing under basic principles of contract law. Specific terms will always override general terms of contracts. *See* CCP § 1859. Furthermore, the Amendment being later in time means whatever original terms are incongruous with it are assumed to be overridden, as the parties intentionally amended the contract to accommodate the language of the Amendment.

Based on the evidence presented, the Court finds a strong probability that Plaintiff will prevail in this action.

VIII. Balancing Test

Both factors support the injunction here. The likelihood of injury to Defendants from the injunction seems insignificant by comparison to Plaintiffs' injuries without it, and much less irreparable. Plaintiff has shown substantial contractual rights, and Defendants have shown little defense to the Plaintiff's allegations. The strong language contained in the Amendment represents strong evidence that Defendants are ignoring Plaintiff's contractual rights under the Lease.

The Court finds that the balancing test weighs strongly in favor of restricting Defendant from violating the terms of the Use Permit. In contrast, the Court finds that restricting Defendants' ability to modify the Use Permit is not adequately supported at this time, as it does not represent the same irreparable injury as would be caused by revocation of the Use Permit.

IX. Status Quo

Finally, the injunction would preserve the status quo, as discussed above, which Defendants fail to rebut. Absent the injunction, the status quo would potentially be altered fundamentally, and quite possibly permanently.

X. Undertaking

As noted above, if the court grants a preliminary injunction, it must require an undertaking or a cash deposit. CCP § 529. The amount must cover any damages to defendant if the court finally determines that plaintiff was not entitled to the injunction. CCP § 529; see *Top Cat Productions, Inc. v. Michael's Los Feliz* (2002) 102 Cal.App.4th 474, 478. The court should thus determine the potential likely harmful effect of the injunction as the basis for the amount. *Abba Rubber Co. v. Seaquist* (1991) 235 Cal.App.3d 1, 14. The court should consider lost profits or other damages as well as costs of defense where trial is necessary to defeat the preliminary injunction, but should not consider the strength of plaintiff's case on this point. *Abba Rubber*, supra, 15-16. The court also has the authority to waive the bond requirement if it finds that the plaintiff is indigent or unable to obtain sufficient sureties, but the court must weigh all relevant factors. CCP § 995.240

Defendants ask the Court deny the motion because the Plaintiff has neither provided nor proposed an amount for the undertaking. Plaintiff

argues that Defendants have shown no merit to their position, and therefore have not provided any basis for damages in the event Plaintiff does not prevail.

First, the motion shall not be denied because Plaintiff has yet to provide an undertaking, and Defendants' argument in this regard is frivolous. CCP § 529 requires the Court to set the undertaking amount. Plaintiff cannot provide an undertaking that has yet to be set by the Court.

Second, Plaintiffs' position here is again persuasive. Defendants have not displayed any concrete risks or damages stemming from their own failure to follow what is clearly within the Use Permit. Defendants' damages will be minimal in the event that Defendants prevail. However, the Court finds that Defendants basic property rights should they prevail have value, and an undertaking, nominal or not, is appropriate. Plaintiff does not demonstrate that requiring an undertaking would be an undue hardship or impossible. The court therefore conditions the issuance of this preliminary injunction on Plaintiffs posting an undertaking of $10,000.

XI. **Conclusion**

Preliminary Injunction GRANTED in part, conditioned on Plaintiffs posting an undertaking of $10,000. Upon Plaintiffs' positing of the undertaking the preliminary injunction will issue, prohibiting Defendants from undertaking actions which impedes or interferes Plaintiff's use of the 59 parking spaces allocated by the Use Permit, including unauthorized use of those spaces by Defendants, their agents or their employees, and blocking, discouraging or otherwise attempting to control those spaces designated by the Use Permit.

The Plaintiffs shall post an undertaking of $10,000.

Plaintiffs' counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

From: gabe@patteecm.com
To: Jen Chard
Subject: Design Modifications to PLP20-0017
Date: Wednesday, July 26, 2023 12:12:40 PM

Can you send me a plan of the proposed changes to parking at the Cyrus restaurant in Geyserville?

Thanks,

Gabe

From:	PGE Plan Review
To:	Jen Chard
Subject:	FW: Sonoma mail
Date:	Friday, July 28, 2023 5:24:54 AM
Attachments:	image001.png Sonoma mail.pdf

Classification: Public

Good morning, Jen,

Can you please send over the project plans related to **ADR23-0008**?

Thank you for your help,

Pacific Gas and Electric Company
Plan Review Team
Email: pgeplanreview@pge.com

From: Larrabee, Craig <CJLc@pge.com>
Sent: Thursday, July 27, 2023 5:51 PM
To: PGE Plan Review <PGEPlanReview@pge.com>
Subject: Sonoma mail

Classification: Internal

TO THE PG&E PLAN REVIEW TEAM

How are you today? Almost Friday.

Here is some Sonoma mail.

Thanks,

Craig Larrabee
Land Rights Library

STIMMEL, STIMMEL & ROESER, PC

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HARRY CORVIN
1913-1970
NORMAN S. STIMMEL
1939-1991

OFFICE LOCATIONS:

SAN FRANCISCO
MENLO PARK
SAUSALITO

July 28, 2023

Via Federal Express and E-mail

Ms. Jen Chard
2550 Ventura Avenue
Santa Rosa, CA 95403
Email: Jen.Chard@sonoma-county.org
(cc: Scott.Orr@sonoma-county.org)

Re: Final Design Review of Design Modification to Existing Parking Lot
Sonoma Permit File No. ADR23-0008

Dear Ms. Chard,

Our office represents Walden Geyersville, LLC ("Walden"), owner of the property located at 275 Highway 128, Geyersville, California 95441 (the "Property") and the applicant for a design modification to an existing parking lot at the Property. This correspondence is intended to address the letter sent to Permit Sonoma, dated June 8, 2023, from a law firm representing Cyrus 2.0, LLC ("Cyrus"), one of several tenants at the Property, and in support of approving the minor design modifications requested by Walden. A copy of Cyrus' June 8, 2023 letter is attached as Exhibit A.

Walden, as the Property owner, has the right to apply for County approval on all matters relating to the Property. The County has authority to grant or deny same in its discretion. The requested minor design modifications at issue specifically provide Cyrus with exclusive use of 59 designated spaces, which is what its Use Permit PLP20-0017 requires and is an improvement for Cyrus since it provides exclusive use along with resolution of vineyard parking space issues Cyrus has complained of. The requested modification adds nine (9) spaces, which the Property tenants (including Cyrus) collectively need, with the revisions providing a safety upgrade as well. The Sonoma County Fire Department has provided approval. Permit Sonoma's staff recommends that the Design Review Committee approve the minor design modifications to the parking lot previously approved under file PLP20-0017. (See Courtesy Notice, dated July 21, 2023, attached as Exhibit B). The application should be approved without further inquiry.

With the foregoing stated, the application should also be approved over any third-party objections, including that of Cyrus. Cyrus lacks standing to unilaterally make decisions or request

changes with respect to the Property. Cyrus is a party to a contract with Walden, and the rights of the parties, and enforcement of same, is in the exclusive jurisdiction of the Court, where Cyrus has already filed an action and sought relief. Walden is entitled to apply to the County on all matters relating to its Property, and to have such applications determined by the County. There is no court order that states Walden cannot apply to the County for determinations as to its Property, or regarding a minor design modification to parking for the Property. Walden intends to comply with any and all orders of the Court, and approval of any permit application, or in this case minor modification, can co-exist with the parties adhering to all orders of the Court with respect to their rights under the lease.

Cyrus also argues that the Sonoma County Fire Department will have issues with the proposed changes to the parking, but since the Fire Department already approved the proposed changes, this argument is without merit. It is also up to the County to decide whether proper approvals have been obtained in approving any application.

It is worth noting that prior to the application for Use Permit PLP20-0017, Cyrus wrote via email to Walden and specifically stated that it would not "ever need" the spaces near the caretaker unit. Cyrus was given the opportunity to rent the caretaker building and its parking spaces, but declined. Cyrus also failed to provide Walden with the parking lot attachment submitted to the County, which Walden would not have agreed if given an opportunity to review. The caretaker residence and the parking spaces adjacent to it are of paramount importance to the privacy rights of that tenant. And, while contract terms, interpretation, and disputes are determined exclusively by the Court, (and the facts in this letter justify approval of the application, or at least good-faith determination completely independent of and without regard to the Court action), it is noteworthy that the lease contract specifically grants to Walden the exclusive right to control and manage the parking, including making changes to parking spaces, parking areas, loading an unloading areas, ingress, egress and direction of traffic under Section 2 of the lease. We will put those issues aside for now, since Walden is now requested design modifications to confirm 59 spaces for exclusive use by Cyrus, in full conformity with its Use Permit, while providing other benefits to Cyrus and the other Property tenants, which must remain the focus of the application review and hearings.

Cyrus' letter of June 8, 2023, to Permit Sonoma incorrectly conflates two processes of law, which are mutually exclusive proceedings. As noted, Cyrus filed a civil action against Walden and the parties are engaged in civil litigation in the Sonoma County Superior Court. However, the case has no bearing on Walden's design review application before Permit Sonoma, which is an entirely separate and lawful proceeding where Permit Sonoma has exclusive jurisdiction to make final decisions regarding parking lot design modifications. Here, the County's staff have already recommended approval of the minor changes and the Court has done nothing to, and in any event could not, enjoin Permit Sonoma from lawfully considering a proper application and making a determination based on same, including Staff's recommended approval. Separately, Walden and Cyrus will have their rights determined and enforced in Court. Walden intends to comply with all such orders, which are separate from the permit application, and in any event which permit application can co-exist with any Court orders, now or in the future, via the respective actions of Walden and Cyrus.

Additionally, the minor requested changes have no bearing on the Court action because the new plan actually *increases* the number of parking spots available to Cyrus, while confirming 59 exclusive use spaces for Cyrus, and resolving Cyrus' complaints over vineyard spaces. Walden's

application to modify the parking lot is rather simple and does not interfere or impede with the current Use Permit, according to the County, as there are "no proposed changes to the previously approved uses, employees, guests or hours of operation on the 6.07 acre" Property. (*See* Courtesy Notice ¶ 2.)

A decision by Permit Sonoma to approve the changes sought by Walden would be consistent with Cyrus' position, and indeed provide a benefit to Cyrus, which has been reiterated in the Court proceedings and in Cyrus' initial permit application to Permit Sonoma: "those three parking spaces along the vineyard road would have been disastrous to the ambiance of the restaurant's dining theme." (See Cyrus' June 8, 2023, letter p. 4 ¶ 2.) The design modification before the Committee solves this problem because it re-locates those three vineyard parking spots in accordance with Cyrus' desire and stated inclination.

It appears that the application's approval would benefit Cyrus by enhancing its current rights under the existing permitted parking arrangement, but in any event, Cyrus is not in a position to interfere with the County's decision.

In summary, a property owner has the unfettered right to apply to the County relating to property rights. Any disputes between the parties are purely contractual in nature, and will be determined exclusively by the Court, with Walden complying with any orders of the Court. The changes are necessary for the Property owner's operations and obligations to other tenants' parking requirements. The modifications are in-line with and support Cyrus' Use Permit and solve problems raised by Cyrus related to the vineyard spaces, while confirming 59 spaces for Cyrus's exclusive use. Walden can simultaneously apply for and receive approval of a modification to parking impacting its multi-tenant Property and comply with any orders of the Court. If a party believes there is non-compliance with a Court order, the forum is Court, not at a Permit Sonoma hearing.

We therefore respectfully request that Walden's reasonable request to make minor changes to the parking spaces be approved.

Sincerely,

Steven R. Roeser, Esq.

cc: Client, Legal Team

EXHIBIT A

manatt

Christian Baker
Manatt, Phelps & Phillips, LLP
Direct Dial: (415) 291-7463
CBaker@manatt.com

June 8, 2023

Jen Chard
PERMIT SONOMA
2550 Ventura Avenue
Santa Rosa, CA 95403

Re: Revisions to Proposed Parking Changes, 275 Highway 128 Geyserville, California 9544: Application ADR23-0008

Dear Ms. Chard:

My firm represents Cyrus 2.0, LLC ("Cyrus"), the tenant of a commercial building located at 275 Highway 128, Geyserville, California 95441 ("Property"). On March 22, 2023, Summit Engineering, Inc. ("Summit") submitted Design Review Application ADR23-0008 ("Application") on behalf of the property's owner, Walden Geyserville, LLC ("Walden"), to add 9 parking spots without my client's knowledge. On March 28, 2023, we submitted a letter expressing our client's opposition to the application and detailing how the proposed changes are unnecessary and would be extremely disruptive to the current flow of the parking lot. The letter also highlighted that Walden likely submitted the application in bad faith to avoid on-going litigation. On April 20, 2023, Walden submitted revisions to the Application. Not only were these revisions submitted for second time without my client's knowledge, but they continue to advocate for alterations to the parking plan that are both unnecessary and extremely harmful to Cyrus' business operations.

As stated in my previous letter, my client operates Cyrus Restaurant on the Property pursuant to Use Permit PLP20- 0017, issued by your office on December 30, 2020. As you are aware, the issuance of such a permit to operate a restaurant is conditioned on the existence of one parking space per 60 square feet of dining space, as required by Sonoma County Zoning Regulations, Article 86, Section 26- 86-010. Cyrus and Walden are currently engaged in litigation in the Superior Court of the County of Napa (Case Number: SCV-272053) over Walden's failure to provide Cyrus the number of parking spaces required by the Lease Agreement and the Use Permit. The legal determination sought in this litigation will have a direct impact on the parking plan that the Application seeks to alter. The changes included in the Application are not feasible, nor are they necessary. Through the submission of its second proposal to this office, Walden seeks only to evade its contractual obligations to provide parking to Cyrus and to sidestep the litigation. (Exh 1.)

I. All Problems With the Initial Application Remain.

As detailed in my March 28 letter, the CUP plan currently in place functions appropriately to serve both owner and tenant. Both parties agreed to the current plan, and there are no logistical problems with the current parking layout. Walden claims that the Application is needed to improve flow, however, the proposed changes will only create confusion for drivers in the restaurant parking lot, along Highway 128 and, in the event of an emergency, first responders.

A. The Current CUP Plan Functions Without Flaw and Does not Require a Redesign.

The current CUP was designed by both parties to meet their needs. It has now been almost nine months since Cyrus Restaurant opened, and parking flow has functioned as planned. Summit Engineering and Walden have not submitted any evidence with their most recent Application supporting a need to alter the current flow of traffic. (Exh. 2.) All of following concerns and issues with Walden's parking plan raised in my March 28 Letter remain unaddressed by the revised plan.

- Converting the parking lot from primarily standard sized spaces to primarily compact sized spaces is illogical given the reality of parking needs. Cyrus fully analyzed the possibility of having more compact-space focused parking when initially applying for the Use Permit. All analyses revealed a compact-centric parking plan would be impracticable, if not impossible, to effectively carry out.

- Maintaining the current configuration of standard sizes spots only in the parking lot and compact sized spots only on the outside makes it easy for patrons and staff to find the appropriately sized space. Creating two sections, with two differently sized spacing will increase traffic, confusion, and the risk of accidents.

- Walden's Application fails to explain how the changes to the parking lot will improve parking flow.

- The proposal contains inaccurate measurements regarding the six proposed spots on the North end of the parking lot.

- Walden continues to use "No Parking" signs along with threats and intimidation to prevent Cyrus staff members from using their assigned parking spaces.

- Walden's Application was submitted in bad faith to avoid on-going litigation caused by their breach of the lease agreement.

B. Fire Trucks Will Face Extreme Difficulty Navigating the Parking Lot Under Walden's Proposed Plan.

Walden's revised application contains newly added fire truck maneuver plans. These plans reveal additional problems that will occur if the Application is granted. As noted in my March 28 letter, the proposed modification to the North end of the parking lot creates a substantial risk in parking disruption and accidents. Adding these six spaces will narrow the entry into the parking lot. Should a patron with a larger car park in the outermost spot, the entry could be effectively eliminated altogether. (Exh. 3.) Beyond causing havoc on a patron's ability to arrive and depart the restaurant, this unnecessary narrowing could prevent fire trucks from reaching the restaurant.

Whereas the current CUP Plan leaves ample room for fire trucks to maneuver through the Northern parking lot entrance, under the Application's proposed plan, fire trucks will have to navigate through and around whatever car has parked in the outermost spot. By keeping the Northern side of the lot vacant, the current CUP plan creates substantial space for fire trucks to maneuver. In contrast, the Revised Application continues to propose adding six additional spots in that formerly vacant space. As seen in Walden's map, this creates a noticeably tighter curve for any fire truck entering the lot. (Exh. 4.)

Other types of truck will similarly suffer increased difficulty navigating the parking lot as a result of these additional six spaces. Cyrus Restaurant requires numerous deliveries to function on a daily basis, and any special events could require additional trucks. Under the Application, large trucks would have to navigate past cars parked in these six spots and then swing carefully left to clear more parked cars that would be parked north/south. Because these six spots are some of the few remaining standard size spots included in the Revised Application, the chances of those spots containing larger than average vehicles is quite high. As a result, any truck's ability to safely pass through this opening would vary on a day-to-day basis.

Not only are these six spots unnecessary, but they have the potential to prevent emergency services from effectively reaching the restaurant and will substantially disrupt a large truck's ability to safely navigate the parking lot. This disruption subjects patrons, staff, and their vehicles to a myriad of unnecessary risks, all so that Walden may avoid litigating these issues raised by Cyrus' pending lawsuit.

C. Walden Revised the Application Without Consulting Cyrus, Which Further Demonstrates that the Application Was Submitted in Bad Faith.

The series of events that contributed to the deterioration of Cyrus' and Walden's business relationship is detailed in the March 28 letter. Walden's failure to once again consult Cyrus is yet another instance of Walden's campaign of retaliation.

Walden's unilaterally revised submission without input from Cyrus, the tenant who utilizes the current parking system on a daily basis, demonstrates that Walden's goal is not to increase parking flow but rather to circumnavigate the current litigation in Sonoma County Superior Court related to these issues. Cyrus has painstakingly curated an upscale dining experience for guests from the moment they first view the main building from the highway until their departure after a flawless evening. If there were any true issues with parking flow that could disrupt the guests' experiences, Cyrus would be advocating for any needed changes. Indeed, if Walden were truly concerned about parking flow, they would have leaned on Cyrus' first-hand experiences to assess future needs. Instead, Walden has failed to consult Cyrus on these proposed changes, not once, but twice.

II. The Revised Application Contains Additional Problems.

A. Proposed Parking Spots Along the Entry Drive Will Create Confusion.

One of the main changes contained in the Revised Application includes Walden's request to re-locate three proposed parking spots from the vineyard road in front of the restaurant to the entry driveway. As discussed in my March 28 letter, those three parking spaces along the vineyard road would have been disastrous to the ambiance of the restaurant's dining theme. However, relocating them to the entrance drive near the gate is not a viable solution.

Patrons parked in those spaces will be forced to drive up to the restaurant and loop around, creating unnecessary traffic. Additionally, permitting three spots near this entrance gate will create confusion among patrons and other visitors regarding whether parking near the gate is or is not permitted. A reasonable person could assume that the entire area by the entrance is a parking lot, not just those spots. Common sense would suggest that if there are three cars parked there, than more are allowed. The end result will be extra cars parked along the entrance, which is neither scenic, nor practical.

B. Current Signage Is Clear, Easy To Understand, and Creates Efficient Flow.

Signage needed under the current CUP is clear, easy to understand, and creates efficient flow. This is because the current plan is intuitive and makes sense. In contrast, the Revised Application would require the addition of numerous other signs pointing out where and what type (compact or standard) of parking is permitted. Any new proposed signage would confuse drivers and cause unnecessary efforts. There is no proposed grading or striping according to the newly revised submittal, which would make it impossible to know whether spots are truly compact spaces. Full size car widths without striping make it possible to judge how many spaces exist between the demarcation of the landscaping trees that surround the lot. Guests and employees naturally park accordingly, whether they drive a full-size SUV or a smaller car. They do not have to search for their section of the lot.

Another source of confusion that will require signage are the proposed six spaces on the north end. Guests will not know the north end of the parking lot is available, or that certain areas contain dead spaces where parking is not permitted so as to accommodate the newly added north/south parking. This is nonsensical, especially since there are no current issues with parking flow or parking needs. Walden failed to address all of these issues in its Revised Application. The proposed changes will cause the restaurant enormous stress, yet provide no tangible benefit.

C. Walden Continues to Improperly Use the Caretaker's Garage in Violation of the Current CUP.

The approved CUP submitted mutually by landlord and Cyrus Restaurant states that the four-car garage at the caretaker's unit is reserved parking for residents of the caretaker's unit. Walden refuses to allow caretaker residents to park in the garage and instead uses it for storage for a construction company's materials, which include flooring, unused paint, propane, and small equipment. (Exhs. 2 and 5.) Caretaker residents have been instructed to park in Cyrus' dedicated staff parking spaces, thus causing less usable spaces for Cyrus guests. Walden's co-opting of the caretaker's garage has the dual detriment of leaving potentially hazardous construction materials near a dining establishment and disrupting the mutually agreed upon parking plan.

III. Conclusion

Cyrus has begun to establish its reputation as a dining destination, bringing more visitors to the surrounding area. Drastic changes to the parking layout, especially those as ill-conceived as those contained in the Revised Application, could be devastating to its early growth.

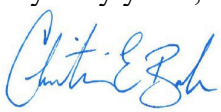
As stated in our March 28 letter, we believe it is necessary for the County to consider Walden's true intentions and motivations for its Application. Walden's revisions to its parking proposal claims does nothing to alleviate or reduce the myriad of problems contained in the Initial Application. In fact, the revisions continue to cavalierly move Cyrus' designated parking spaces without any regard for guest experience or the logistics of large vehicle access.

Walden has failed to identify any legitimate reason for a change to the existing parking plan, and the County, therefore, has no reason to approve it. The Revised Application is Walden's latest attempt to evade its contractual obligations with Cyrus. Walden's Application is a waste of the County's valuable time and resources, particularly since this very parking issue is already the subject of pending litigation, the outcome of which would render this Application irrelevant.

We respectfully request that this Application be denied or deferred until the completion of the attendant litigation. Alternatively, Cyrus requests that the County conduct a full review so that it may properly consider Cyrus' objections to Walden's new and unapproved plan.

We are available to discuss at your convenience.

Very truly yours,



Christian Baker

Enclosures

EXHIBIT 1

EXHIBIT 1

From: Jeremy L. Little
To: Steve Oliver
Cc: Douglas Keane
Subject: RE: Easement
Date: Thursday, April 23, 2020 12:47:33 PM
Attachments: image002.png
Quitclaim - Easement (00617972x9C71C).docx
Amendment to Commercial Lease (00617805-2x9C71C).docx

Hi Steve and Doug –

I am attaching slightly revised versions of the lease amendment and quitclaim deed.

Let me know if you have any questions about these.

If not – please sign both. Doug – you need only sign the lease amendment.

NOTE – The quitclaim deed will need to be notarized.

Steve – do you have access to a notary?

Thanks again for your help.

Best,
Jeremy

Jeremy Little – *Attorney*
Carle, Mackie, Power & Ross LLP
100 B Street, Suite 400, Santa Rosa, CA 95401
Tel: 707-526-4200 • Fax: 707-526-4707
jlittle@cmprlaw.com • *www.cmprlaw.com*

From: Steve Oliver <steve@oliverandco.net>
Sent: Thursday, April 23, 2020 9:06 AM
To: Jeremy L. Little <jlittle@cmprlaw.com>
Cc: 'Douglas Keane' <douglaskeane@cyrusrestaurant.com>
Subject: RE: Easement

Sounds like a plan, Steve

From: Jeremy L. Little [mailto:jlittle@cmprlaw.com]
Sent: Wednesday, April 22, 2020 12:25 PM
To: Steve Oliver
Cc: 'Douglas Keane'
Subject: RE: Easement

Thanks. Agreed – that lays out the parking arrangement well.

My fear with this agreement is that a County staffer will see the circled area in the main parking lot labeled "10 Spaces Designated for 21101 Geyserville Ave."

Because of that, I think it's best to quitclaim this easement – have the document recorded and then this easement should not show up in any title report or County staff review.

Best,
Jeremy

Jeremy Little – *Attorney*
Carle, Mackie, Power & Ross LLP
100 B Street, Suite 400, Santa Rosa, CA 95401
Tel: 707-526-4200 • Fax: 707-526-4707
jlittle@cmprlaw.com • *www.cmprlaw.com*

From: Steve Oliver <sho.oliverandco@gmail.com> **On Behalf Of** Steve Oliver
Sent: Wednesday, April 22, 2020 8:34 AM
To: Jeremy L. Little <jlittle@cmprlaw.com>
Cc: 'Douglas Keane' <douglaskeane@cyrusrestaurant.com>
Subject: RE: Easement

When you open the agreement , rotate the plan image and blow up the mgr's house you can see how the added 10 spaces are layed out. That may help Doug define the employee spaces to park, Steve

---

From: Jeremy L. Little [mailto:jlittle@cmprlaw.com]
Sent: Tuesday, April 21, 2020 5:24 PM
To: steve@oliverandco.net
Subject: Easement

Hi Steve – Great to talk with you just now. Thanks for your time.

Here is the easement agreement that I was looking at – page 6 contains the map.

I will work on a quitclaim deed that will remove this easement from title and will complete an amendment to the lease. Once both are done I will email those to you as well.

Thanks again.

Best,
Jeremy

Jeremy Little
Attorney

100 B Street, Suite 400, Santa Rosa, CA 95401
Tel: 707-526-4200 • Fax: 707-526-4707
jlittle@cmprlaw.com • *www.cmprlaw.com*

EXHIBIT 2

EXHIBIT 2

From: Demae Rubins
To: Douglas Keane
Cc: Tania Schram; 2020034@newforma.summit-sr.com
Subject: FW: Cyrus Exhibit A Parking
Date: Friday, November 18, 2022 4:49:03 PM
Attachments: image001.png
Pages from Project Description-Proposal Statement Keane-Cyrus 05-08-2020 (00621013x9C71C).pdf

---

Good afternoon,
Please find attached for your records and reference.

DEMAE RUBINS
PRINCIPAL
Division Manager | Planning/Permitting

SUMMIT ENGINEERING, INC.
575 W COLLEGE AVE. STE 201
SANTA ROSA, CA 95401
707.527.0775 EXT.166
707.636.9166 DIRECT
707.478.5008 MOBILE
www.summit-sr.com

From: Demae Rubins
Sent: Friday, November 18, 2022 4:45 PM
To: Steve Oliver <steve@oliverandco.net>; Josh Oliver <josh@oliverandco.net>
Cc: Jean DeFries <JDeFries@oliverandco.net>
Subject: RE: Cyrus Exhibit A Parking

Good afternoon,
I believe that my previous email addressed this but the use permit itself doesn't assign locations for parking. Only the number of stalls by use. I have attached an excerpt from the use permit project description that defines the parking requirements by use according to County code.

DEMAE RUBINS
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From: Steve Oliver <steve@oliverandco.net>
Sent: Thursday, November 17, 2022 10:16 AM
To: Josh Oliver <josh@oliverandco.net>; Demae Rubins <demae@summit-sr.com>
Cc: Jean DeFries <JDeFries@oliverandco.net>
Subject: RE: Cyrus Exhibit A Parking

Another question is , does all the space outside the house have to be dedicated to Cyrus as that is not part of our lease. How about like the last ten years by who lived there for a vege. garden and personal and guest parking as the garage was leased to Oliver and Co for equipment storage from the ranch, and also recreation/open space for his family as the property is adjacent to the SMART train easement and there is no other open property except the open space in front of the house and up to the vineyard. Steve

Steven H. Oliver
Oliver & Company, Inc.
1300 South 51st Street
Richmond, CA 94804
P: 510-412-9090 F: 510-412-9095

From: Josh Oliver <josh@oliverandco.net>
Sent: Thursday, November 17, 2022 8:57 AM
To: 'Demae Rubins' <demae@summit-sr.com>
Cc: Steve Oliver <steve@oliverandco.net>; Jean DeFries <JDeFries@oliverandco.net>
Subject: RE: Cyrus Exhibit A Parking

Thanks, we are looking for general thoughts about reallocating the 9 spots by the caretaker house to other equivalent parking locations down the dirt road
or in the main parking lot onsite by adding diagonal or more compact.

Happy to talk further. Josh

From: Demae Rubins <demae@summit-sr.com>
Sent: Wednesday, November 16, 2022 12:32 PM
To: Josh Oliver <josh@oliverandco.net>
Cc: Steve Oliver <steve@oliverandco.net>; Jean DeFries <JDeFries@oliverandco.net>
Subject: RE: Cyrus Exhibit A Parking

Good afternoon Josh,
My apologies for the delay. I was out for a family emergency Monday and am now in jury duty. I'll review our records and your request by end of day Friday and get back to you.

DEMAE RUBINS
PRINCIPAL
Division Manager | Planning/Permitting

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707.527.0775 EXT.166
707.636.9166 DIRECT
707.478.5008 MOBILE

www.summit-sr.com

From: Josh Oliver <josh@oliverandco.net>
Sent: Monday, November 14, 2022 11:50 AM
To: Demae Rubins <demae@summit-sr.com>
Cc: Steve Oliver <steve@oliverandco.net>; Jean DeFries <JDeFries@oliverandco.net>
Subject: FW: Cyrus Exhibit A Parking

Hello Demae,

Please see the attached parking diagram exhibit A showing parking previously shown on one of your use permit drawing, UP1

We did not approve of the parking around the caretakers house and have proposed a different layout per the attached.

In addition to the attached we would like explore additional compact spaces and or diagonal parking on the entry road
to eliminate the new added spaces in the vineyard.

Thanks for review.

Josh

From: Jean DeFries <JDeFries@oliverandco.net>
Sent: Monday, November 14, 2022 11:37 AM
To: Josh Oliver <josh@oliverandco.net>
Subject: Cyrus Exhibit A Parking

Josh,

Attached is an Exhibit A Parking for the Rules and Regs assuming we add 9 spaces along the vineyard road. The question remains is it possible to get more parking spaces out of the main parking lot (not near the rental house) and not need as many along the road.
thank you,

Jean DeFries -- Director of Real Estate
Oliver & Company, Inc.
1300 South 51st Street
Richmond, CA 94804
P: 510-412-9090
Corporate DRE 01290124

Personal DRE 02051664

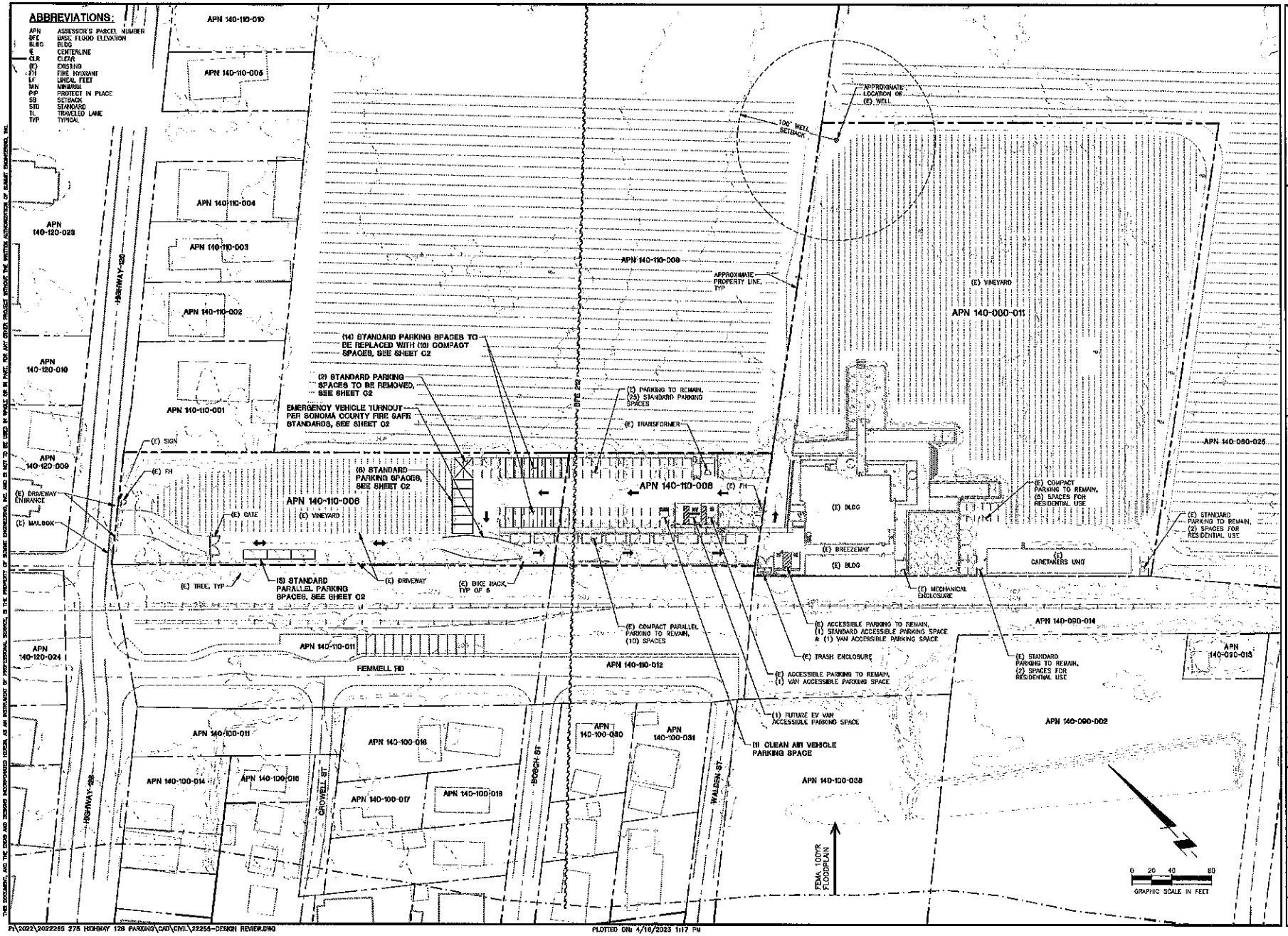
EXHIBIT 3

IMAGE 1:

IMAGE 2:

IMAGE 3:

EXHIBIT 4



P:\2022\2022265 275 HIGHWAY 128 PARKING\CAD\CIVIL\22265-DESIGN REVIEW.DWG

PLOTTED ON: 4/18/2023 1:17 PM

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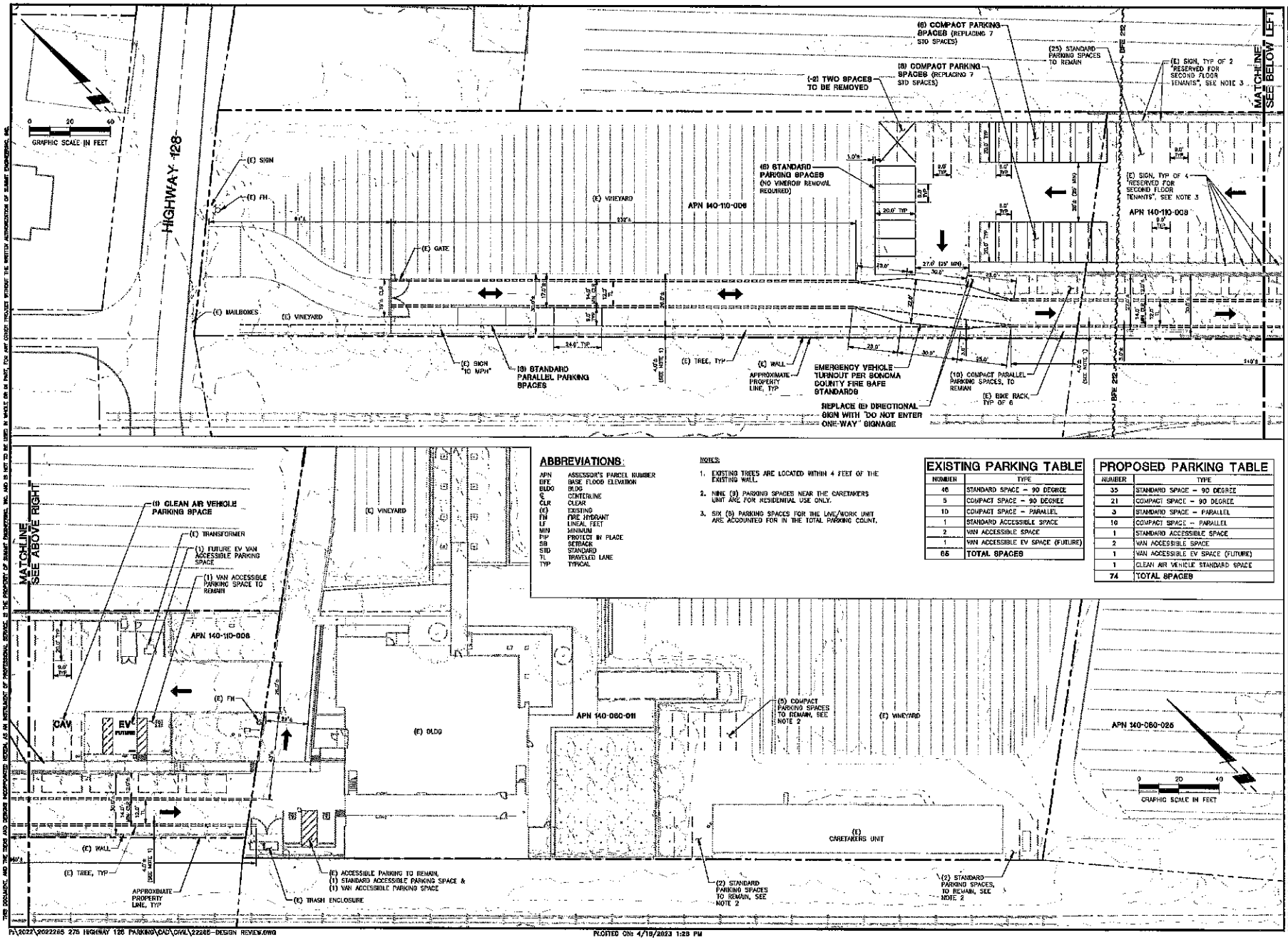
CYRUS RESTAURANT
275 HIGHWAY 128
GEYSERVILLE, CA
APN 140-080-011, 140-110-006 & 008

DESIGN REVIEW

PARKING CONCEPT

2023-02-13	PERMIT SUBMITTAL

DATE: 2023-02-13
JOB NO: 2022265
SCALE: AS SHOWN
DRAWN: TF
CHECKED: DR
SHEET: C1
SHEET 1 OF 2



ABBREVIATIONS:

APN	ASSESSOR'S PARCEL NUMBER
BFE	BASE FLOOD ELEVATION
BLDG	BLDG
℄	CENTERLINE
CLR	CLEAR
(E)	EXISTING
FH	FIRE HYDRANT
LF	LINEAL FEET
MIN	MINIMUM
PIP	PROTECT IN PLACE
SB	SETBACK
STD	STANDARD
TL	TRAVELED LANE
TYP	TYPICAL

NOTES:

1. EXISTING TREES ARE LOCATED WITHIN 4 FEET OF THE EXISTING WALL.
2. NINE (9) PARKING SPACES NEAR THE CARETAKERS UNIT ARE FOR RESIDENTIAL USE ONLY.
3. SIX (6) PARKING SPACES FOR THE LIVE/WORK UNIT ARE ACCOUNTED FOR IN THE TOTAL PARKING COUNT.

EXISTING PARKING TABLE

NUMBER	TYPE
46	STANDARD SPACE – 90 DEGREE
5	COMPACT SPACE – 90 DEGREE
10	COMPACT SPACE – PARALLEL
1	STANDARD ACCESSIBLE SPACE
2	VAN ACCESSIBLE SPACE
1	VAN ACCESSIBLE EV SPACE (FUTURE)
66	TOTAL SPACES

PROPOSED PARKING TABLE

NUMBER	TYPE
35	STANDARD SPACE – 90 DEGREE
21	COMPACT SPACE – 90 DEGREE
3	STANDARD SPACE – PARALLEL
10	COMPACT SPACE – PARALLEL
1	STANDARD ACCESSIBLE SPACE
2	VAN ACCESSIBLE SPACE
1	VAN ACCESSIBLE EV SPACE (FUTURE)
1	CLEAN AIR VEHICLE STANDARD SPACE
74	TOTAL SPACES

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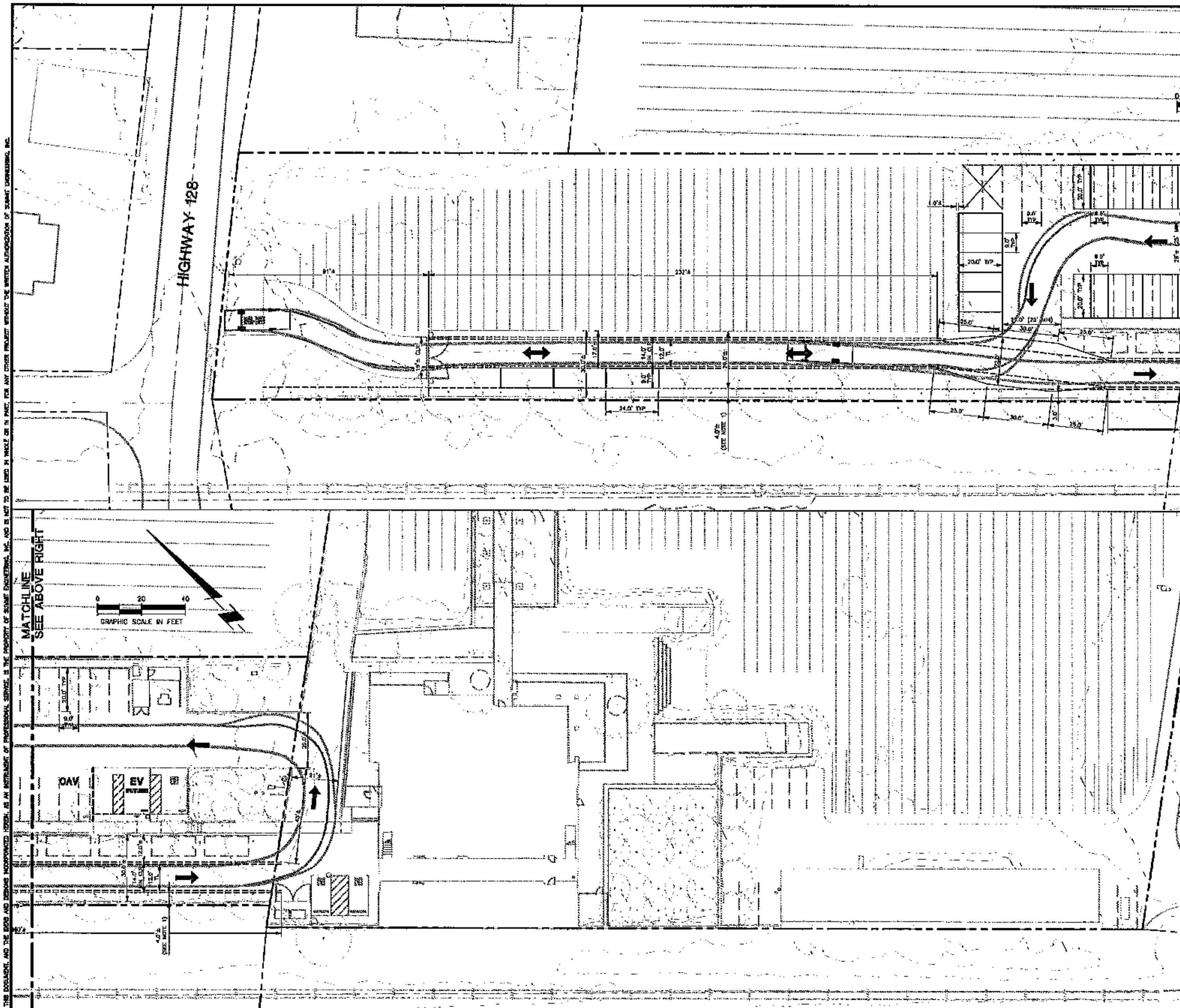
CYRUS RESTAURANT
275 HIGHWAY 128
GEYSERVILLE, CA
APN 140-080-011, 140-110-008 & 008

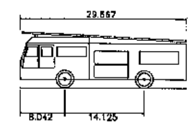
DESIGN REVIEW

PARKING LAYOUT

2023-02-13	PERMIT SUBMITTAL

DATE:	2023-02-13
JOB NO:	2022265
SCALE:	AS SHOWN
DRAWN:	TF
CHECKED:	BR
SHEET	C2
	SHEET 2 OF 2





FIRE-TYPE1

OVERALL LENGTH	29.667ft
OVERALL WIDTH	9.015ft
OVERALL BODY HEIGHT	10.000ft
MIN BODY GROUND CLEARANCE	1.608ft
TRACK WIDTH	9.560ft
LOCK-TO-LOCK TIME	5.00s
CURB TO CURB TURNING RADIUS	26.417ft

LIMITS OF VEHICLE CHASSIS

LIMITS OF VEHICLE CHASSIS (IN REVERSE)

LIMITS OF VEHICLE BODY

NOTES:

1. EXISTING TREES ARE LOCATED WITHIN 4 FEET OF THE EXISTING WALL.

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CYRUS RESTAURANT
275 HIGHWAY 128
GEYSERVILLE, CA
APN 140-080-011, 140-110-006 & 008

CYRUS RESTAURANT 2.0

FIRE TRUCK MANEUVER

2023-04-18 FOR REVIEW

DATE:	2023-02-13
JOB NO:	2022285
SCALE:	AS SHOWN
DRAWN:	TF
CHECKED:	DR
SHEET	1

SHEET 1 OF 1

\\SE1.SUMMITA.LOCAL\P\2022\2022285 275 HIGHWAY 128 PARKING\CAD\CIVIL\22265-DESIGN REVIEW.DWG

PLOTTED ON: 4/20/2023 10:55 AM

EXHIBIT 2

EXHIBIT 2

From: Demae Rubins
To: Douglas Keane
Cc: Tania Schram; 2020034@newforma.summit-sr.com
Subject: FW: Cyrus Exhibit A Parking
Date: Friday, November 18, 2022 4:49:03 PM
Attachments: image001.png
Pages from Project Description-Proposal Statement Keane-Cyrus 05-08-2020 (00621013x9C71C).pdf

---

Good afternoon,
Please find attached for your records and reference.

DEMAE RUBINS
PRINCIPAL
Division Manager | Planning/Permitting

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From: Demae Rubins
Sent: Friday, November 18, 2022 4:45 PM
To: Steve Oliver <steve@oliverandco.net>; Josh Oliver <josh@oliverandco.net>
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Cc: Jean DeFries <JDeFries@oliverandco.net>
Subject: RE: Cyrus Exhibit A Parking

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Subject: RE: Cyrus Exhibit A Parking

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Cc: Steve Oliver <steve@oliverandco.net>; Jean DeFries <JDeFries@oliverandco.net>
Subject: RE: Cyrus Exhibit A Parking

Good afternoon Josh,
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DEMAE RUBINS
PRINCIPAL
Division Manager | Planning/Permitting

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We did not approve of the parking around the caretakers house and have proposed a different layout per the attached.

In addition to the attached we would like explore additional compact spaces and or diagonal parking on the entry road
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thank you,

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Oliver & Company, Inc.
1300 South 51st Street
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P: 510-412-9090
Corporate DRE 01290124

Personal DRE 02051664

EXHIBIT 5

EXHIBIT B

COURTESY NOTICE OF A SONOMA COUNTY DESIGN REVIEW COMMITTEE PUBLIC MEETING TO CONSIDER FINAL DESIGN REVIEW OF A DESIGN MODIFICATON TO AN EXISTING PARKING LOT

WHO: Project Applicant, Summit Engineering, Demae Rubbins **Permit Sonoma File No. ADR23-0008**

WHAT: The proposed project is a request for a Final Design Review for the addition of 9 parking spaces to serve an existing 6,500 square foot restaurant with upstairs work/live units and a separate caretaker residence previously approved by Use Permit File No. PLP20-0017 (Cyrus Restaurant Use Permit). There are no proposed changes to the previously approved uses, employees, guests, or hours of operation on the 6.07-acre property located at 275 Hwy 128 and 20900 Remmel Rd, Geyserville, **APNs 140-110-006, -008 and 140-080-011. Supervisorial District 4.**

Parcel Zoning: M1 (Limited Urban Industrial), F2 (Floodplain), SR (Scenic Resources Combining District – Scenic Corridor), VOH (Valley Oak Habitat)

The Sonoma County Design Review Committee will hold a Final Design Review meeting. All interested persons are invited to attend and provide comments. **Members of the Public May Attend this Meeting in Person or Virtually on Zoom. The Design Review Committee considers design only**.

Permit Sonoma has determined that the project is categorically exempt from the California Environmental Quality Act under Section 15301: Existing Facilities of the CEQA Guidelines which provides that minor alterations of existing public or private structures.

Action Requested: Staff recommends that the Design Review Committee approve the minor design modifications to the parking lot previously approved under file PLP20-0017.

WHERE & WHEN: The Design Review Committee will hold a public meeting to consider this item on **August 2, 2023, at or after 1:50 PM.** In the **Judge Gayle Gyunup / U.S. Rep. Douglas Bosco Conference Room** at the **Sonoma County Law Library**, at 2604 Ventura Ave, Santa Rosa, CA 95403.

ADDITIONAL MATERIALS: Project materials and associated documents are available at Permit Sonoma, 2550 Ventura Avenue, Santa Rosa, CA 95403 and digitally through the project planner. For more information about this proposal, to submit comments, or to request an accommodation for review of the file, please contact the project planner, Jen Chard at Jen.Chard@sonoma-county.org or (707) 565-2336.

GETTING INVOLVED: If you have questions or concerns regarding the proposed project please contact the Project Planner noted above.

Written comments may be submitted via email to the Project Planner through August 1, 2023, at 5:00 PM. Comments received at least 10 days prior to the hearing will be included in the staff report; all other comments will be made available to decision-makers prior to or at the hearing until the start of the meeting.

Public attendees will have an opportunity, during the hearing, to submit live comments in person or virtually through Zoom. Please refer to the meeting agenda for instructions on how to attend and participate during the meeting. The view the meeting agenda, please visit https://permitsonoma.org/boardscommissionsandcommittees/designreviewcommittee

If you challenge the decision on the project in court you may be limited to raising only those issues you or someone else raised at the public meeting described in this notice, or in written correspondence delivered to Permit Sonoma at or prior to the public meeting.

DATE: July 21, 2023