Conditions of Approval Matrix

Resolution No.

LEGEND:

Incomplete
Complete or N/A
Pending

Project: Farrow Ready Mix
Address: 3660 Copperhill Ln, SRO
Permit Sonoma File No: UPE07-0112
APN: 059-250-004

No.	Condition	Condition Status	Comments
Conditions Applicable to Improvement/Site Development Plan Approval:			
Building:			
1	The applicant shall apply for and obtain building related permits from PRMD for construction of new structures and remodels/additions to existing structures. The necessary applications appear to be, but may not be limited to, accessibility property report, site review and building permit(s).	Pending	Building permits have been applied for the batch plant, ADA improvements and commercial coach. BLD23-7519. Plans are in
2	Prior to initiation of the approved use, the project shall comply with the accessibility requirements set forth in the most recent California Building Code (CBC), as determined by the PRMD Building Division. Such accessibility requirements shall apply to all new construction and remodeling and, where required by the CBC, to retrofitting of the existing structure.	Pending	Building plans include ADA improvements.
3	All buildings, structures, sidewalks, curbs, and related facilities intended for use by the public shall be accessible to and usable by persons with disabilities. All buildings, structures, sidewalks,curbs, and related facilities constructed by the use of state, county, or municipal funds, or the funds of any political subdivision of the state, shall be accessible to and usable by persons wtih disabilities.	Pending	Building plans include ADA improvements.
4	All required paths of travel (public parking lots and sidewalks) shall comply with State and Federal accessibility guidelines. Grading plans submitted to PRMD shall include sufficient details of features to validate compliance.	Pending	Building plans include ADA improvements.
5	All projects seeking application on or after January 1, 2008 shall conform to the requirements ofthe 2007 California code series.	Complete or N/A	
Health - Prior to Building Permit:			
6	Connection shall be made to public sewer and water. Prior to Building Permit issuance the applicant shall submit a "Will Serve" letter for water and sewer to Project Review Health to verify compliance, except for a connection to a County operated sewer system where clearance for the sewer will come from the Sanitation Section of PRMD. Note that will serve letters in contradiction of a moratorium by the appropriate regulating agency are not acceptable.	Pending	Please see as-builts for the sewermain extended to the site and sewer services stubbed to the site. New sewer and water services to serve the site are proposed with the sewer and building permits submitted. SEW23-0141, OSA Permit No.: 2024-01, BLD23-7519
7	Toilet facilities shall be provided for patrons and employees. A copy of the floor plan showing the location of the restrooms shall be submitted to Project Review Health prior to issuance of building permits. For planned tenant improvements, installed central water and wastewater lines the length of the building with appropriate breakout floor design is acceptable.	Pending	Plans for the commercial coach trailer are being obtained and will show restrooms. This will be submitted with the building permit for the commercial coach once plans are obatined.
Health - Operational Requirements:			
8	A safe, potable water supply shall be provided and maintained.	Pending	Please see as-built water plans and Town of Windsor water permit. New service will be installed to serve the commercial coach and batch plant once permits are issued.
9	Comply with applicable hazardous waste generator, underground storage tank, above ground storage tank and AB2185 (hazardous materials handling) requirements and maintain any applicable permits for these programs from the Hazardous Materials Division of Sonoma County Department of Emergency Services.	Complete or N/A	

10	Noise shall be controlled in accordance with Table NE-2 (or an adjusted Table NE-2 with respect to ambient noise as described in General Plan 2020, Policy NE-1c,) as measured at the exterior property line of any affected residential or sensitive land use: **Hourly Noise** **Metric1, dBA** **Daytime (7am to 10pm)** **Nighttime (10pm to 7am)** L50 (30 minutes in any hour) 50 45 L25 (15 minutes in any hour) 55 50 L08 (5 minutes in any hour) 60 55 L02 (1 minute in any hour) 65 60 1 The sound level exceeded n% of the time in any hour. For example, the L50 is the value exceeded 50% of the time or 30 minutes in any hour; this is the median noise level. The L02 is the sound level exceeded 1 minute in any hour. If noise complaints are received from nearby residents, and they appear to be valid complaints in PRMD's opinion, then the applicant shall conduct a Noise Study to determine if the current operations meet noise standards and identify any additional noise Mitigation Measures if necessary. A copy of the Noise Study shall be submitted to the Project Review Health Specialist within sixty days of notification from PRMD that a noise complaint has been received. The owner/operator shall implement any additional Mitigation Measures needed to meet noise standards.	Complete or N/A	
11	All garbage and refuse on this site shall accumulate or be stored in non-absorbent, water-tight, vector resistant, durable, easily cleanable, galvanized metal or heavy plastic containers with tight fitting lids. No refuse container shall be filled beyond the capacity to completely close the lid. Garbage and refuse on this site shall accumulate or be stored for no more than seven calendar days, and shall be properly disposed of at a County Transfer Station or County Landfill before the end of the seventh day.	Complete or N/A	
Sanitation:			
12	The Applicant shall construct sanitary sewer mains and appurtenances in accordance withSonoma County Water Agency (SCWA) Design and Construction Standards for SanitationFacilities, where applicable, and/or specific details, as shown on approved improvement plans.	Complete or N/A	See as-built sewer plans for the main constructed SEW16-0050
13	The Applicant shall have Improvement Plans for sanitary sewer design prepared by a licensed civil engineer, registered in the State of California, and designed in accordance with SCWA Design and Construction Standards for Sanitation Facilities. Prior to the start of improvement plan review, the Applicant shall submit four (4) sets of improvement plans for sanitary sewer design, (blueline or blackline, 24 inch by 36 inch in size), one (1) copy of the Conditions of Approval for UPE07-0112 and Plan Checking fees, to the Sanitation Section of the Sonoma County Permit and Resource Management Department(PRMD). The sanitary sewer design shall include "plan and profile" diagrams of the proposed sewer, in addition to all other requirements of the sewer design standards. Sanitary sewer Improvement plans shall be signed by the General Manager/Chief Engineer of SCWA prior to the issuance of any sanitary sewer inspection or sewer connection permits. All sanitary sewer inspection permits shall be obtained from the Sanitation Section of PRMD prior tothe start of construction. NOTE: Review of the sanitary sewer design is a separate review from that of the buildings, drainage and frontage improvements, and shall be performed by the Sanitation Section of the Permit and Resource Management Department under a separate permit.	Complete or N/A	See as-built sewer plans for the main constructed SEW16-0050
14	All easements necessary for installation of the proposed sewer facilities shall be granted to the SCWA Airport/Larkfield/Wikiup Sanitation Zone by separate document, and shall be shown on the required Improvement Plans prior to signing by SCWA. A copy of each easement for sewe rconstruction shall be submitted with the Improvement Plans for sewer design review.	Complete or N/A	Sewer easement for the constructed sewer main was recorded DN2016-118579. See as-built plans SEW16-0050. Plans for on-site sewer have been submitted and are under review (SEW23-0141).
15	No building shall be connected to the mainline sewer until the mainline sewer has been inspectedand accepted by the Engineering Division of PRMD, and a Sewer Connection Permit has beenissued for the building. A Sewer Completion Final is required PRIOR to Occupancy.	Complete or N/A	Sewermain constructed and accepted. See as-built plans. Sewer permit for on-site sewer pending review by the county.
16	In accordance with SCWA Design and Construction Standards for Sanitation Facilities, theApplicant shall construct a Sampling Manhole per Standard Drawing Nos. 100-A and 120-C, anddual waste lines for the discharge of both domestic and "process" waste from the proposedbuilding. The Sampling manhole and dual waste lines serving the proposed building shall beshown on the required improvement plans, and shall be constructed under a separate permitissued with the building permit or foundation permit, if applicable.	Complete or N/A	There will be no processed waste for the site
17	In accordance with Sanitation Zone Ordinances, the Applicant shall obtain a permit to constructsanitary sewer facilities PRIOR to obtaining a building permit. All sewer work shall be inspectedand accepted by the Engineering Division of PRMD PRIOR to occupancy or temporary occupancy. A Sewer Completion Final is required prior to Occupancy.	Pending	Plans have been submitted and are in process. SEW23-0141
18	Prior to submitting Improvement Plans for review, the Applicant shall obtain a Survey forCommercial/Industrial Wastewater Discharge Requirements from the Sonoma County Permitand Resource Management Department (PRMD), and shall return the completed Survey, and two(2) each of the project site plan, floor plan and plumbing plan to the Sanitation Section of PRMD.	Pending	WWDS has be completed. Waiting on floor and pulmbing plans for the office building/commercial coach.

19	All Sewer Fees per Airport/Larkfield/Wikiup Sanitation Zone Ordinances (latest revision) shall be paid to the Sanitation Section of PRMD prior to obtaining building permits. Sewer Use Fees for sewer service shall be calculated at the prevailing Sewer Connection and Annual Sewer Service Charge rates in effect at the time of obtaining building permits. The estimated Sewer Connection fee and Annual Service Charges for this project will be based upon 1.00 ESD (Equivalent Single-family Dwelling billing units). The current rate per "ESD" for connection in this sanitation zone is $8,587.96, The current Annual Sewer Service Charge is $471.00. Both fees are subject to increase as of July 01 each year.	Pending	This will be generated and paid prior to occupancy.
20	The Applicant shall construct water mains and appurtenances in accordance with Town of Windsor Water System Standards where applicable, and/or specific details, as shown on approved improvement plans.	Complete or N/A	See as-built watermain plans.
21	Prior to approval and signing of the Improvement Plans, the Applicant shall submit a letter from the Town of Windsor to the Sanitation Section of PRMD, stating its ability and willingness to provide water service to the proposed project, and stating that the Applicant and the Town of Windsor have entered into an agreement for water service.	Complete or N/A	See water permit from Town. OSA Permit No: 2024-01. See water as-built plans.
22	Prior to construction of any sanitary sewer facilities that will be located within a County Right-of-Way , the Applicant shall have a licensed general contractor in possession of a valid Public Road bond obtain an Encroachment Permit and any necessary sewer permit(s) from the Engineering Division of PRMD.	Complete or N/A	Sewermain and watermain within right of way have been completed and accepted.
23	The Applicant shall be responsible for the restoration of existing conditions including, but not limited to surfacing, landscaping, utilities and other public improvements that have been disturbed due to the construction of sanitary sewer facilities. Restoration shall be completed prior to the issuance of a completion notice, unless otherwise specifically approved in advance by the PRMD.	Complete or N/A	Sewermain and watermain within right of way have been completed and accepted.
24	The Applicant shall have "record drawings" prepared by the project engineer, in accordance withSection 6-05, of the SCWA Design and Construction Standards for Sanitation Facilities. Therecord drawings shall be submitted to the Sanitation Section of PRMD for review and approvalprior to acceptance of the construction of the sanitary sewer facilities.	Complete or N/A	See sewer as-builts SEW16-0050
Transportation and Public Works			
25	Copperhill Lane is a private road that has an unimproved intersection with Brickway Boulevard west of the site and an improved entrance with Copperhill Parkway south of the site. Due to limited sight distance at the Brickway Boulevard intersection, right-turns from Copperhill Lane onto Brickway Boulevard are prohibited for this use. **Mitigation Monitoring:** Prior to initiation of operations, PRMD staff shall perform a site inspection to confirm that the signage is posted.	Pending	Sign order and delivered. This will be installed on the private road and pictures will be provided demonstrating compliance.
52	Prior to issuance of any building permit that results from approval of this application, a development fee (Traffic Mitigation Fee) shall be paid to the County of Sonoma, as required by Section 26, Article 98 of the Sonoma County Code. **Mitigation Monitoring:** The owner/developer shall pay the traffic mitigation fees prior to issuance ofbuilding permits for any structures on the property.	Pending	Building permits pending and fees will be paid prior to issuance.
Flood and Drainage:			
27	Drainage improvements shall be designed by a civil engineer, in accordance with the SonomaCounty Water Agency Flood Control Design Criteria, be shown on the improvement plans, and besubmitted to the Storm Water Section of the Permit and Resource Management Department forreview and approval. **Mitigation Monitoring:** The issuance of grading or building permit for the project will not be approved by the Project Review Division until the required drainage improvement, grading, anderosion control plans have been reviewed and approved by the Storm Water Section of the Permitand Resource Management Department.	Complete or N/A	N/A grading permit not triggered for the work proposed
28	The design engineer shall include a site grading plan and an erosion control plan, as part of the required improvement plans, which shall also include all pertinent details, notes, and specifications. **Mitigation Monitoring:** Building/grading permits for ground disturbing activities shall not be approved for issuance by PRMD staff until the above items are submitted to Storm Water staff for review.	Complete or N/A	N/A grading permit not triggered for the work proposed
29	The project is subject to Standard Urban Storm-Water Mitigation Plan (SUSMP) guidelines. Measures to mitigate project impacts to the quantity and quality of storm water discharge from the site are to be incorporated in the drainage and erosion control design of the project. (This condition may be removed based on project design.) **Mitigation Monitoring:** This project shall not be approved by the Sonoma County Project Review and Advisory Committee until a Preliminary SUSMP is submitted to Storm Water staff for review and approval. The issuance of grading or building permits for the project will not be approved by the Project Review Division until the Final SUSMP plans have been reviewed and approved by theStorm Water Section of the Permit and Resource Management Department.	Complete or N/A	N/A grading permit not triggered for the work proposed
30	If the cumulative land disturbance of the project is equal to or greater than one acre, then the project is subject to the National Pollutant Discharge Elimination System (NPDES) requirements and coverage under the State Water Resources Control Board's General Construction Permit(General Permit) must be obtained. Documentation of coverage under the General Permit must be submitted to the Storm Water Section of the Permit and Resource Management Department prior to permit construction issuance. **Mitigation Monitoring:** The issuance of grading or building permit for the project will not be approved by the Project Review Division unless a copy of the Notice of Intent (NOI) filed with the RWQCB, as well as the Waste Discharge Identification Number (WDID) issued by that agency have been reviewed and approved by the Storm Water Section of the Permit and Resource Management Department.	Complete or N/A	WDID 1 491029104

Planning			
31	This Use Permit allows the establishment of a concrete mixing facility on a 1.2 acre portion of a 6.78 acre site which includes a batch plant, on-site aggregate and materials storage, a 250 square foot mobile office and on-site parking for 8 vehicles and 8 trucks. Hours of operation are from 5:00 a.m. to 5:00 p.m. with up to five employees and 45 estimated truck trips per day. The use shall be operated in accordance with the proposal statement and site plan located in File No.UPE07-0112 as modified by these conditions.	Pending	Working towards compliance
32	This use shall be constructed, maintained, and operated in conformance with all applicable county, state, and federal statutes, ordinances, rules, and regulations. A violation of any applicable statute, ordinance, rule or regulation shall be a violation of the Use Permit, subject to revocation.	Pending	Working towards compliance
33	The project is located in the Traffic Pattern Zone (TPZ) for the Sonoma County Airport according to the Sonoma County Airport Land Use Plan (ALUP) and occupancy of any structures shall belimited to a maximum of 150 persons/acre. A minimum of 15% of the site shall remain open space as required by the ALUP and the generation of smoke and water vapor which could affect aircraft operations shall be prohibited. An avigation easement shall be required prior to final occupancy of the building.	Pending	Final occupancy - in process - Can we get the stock grant document for the easement?
34	The applicant shall pay all applicable development fees prior to issuance of building permits.	Pending	Building permits pending and fees will be paid prior to issuance.
35	Development on this parcel is subject to the Sonoma County Fire Safe Standards and shall be reviewed and approved by the County Fire Marshal/Local Fire Protection District. Said plan shall include, but not be limited to: emergency vehicle access and turn-around at the building site(s), addressing, water storage for fire fighting and fire break maintenance around all structures. Prior to occupancy, written approval that the required improvements have been installed shall be provided to PRMD from the County Fire Marshal/Local Fire Protection District.	Pending	Plans have been submitted for building permit and will be routed to fire for review and approval.
36	Within five working days after project approval, the applicant shall pay a mandatory Notice of Determination filing fee of $50 (or latest fee in effect at time of payment) for County Clerk processing, and $1,876.75 (or latest fee in effect at the time of payment) because a NegativeDeclaration was prepared, for a total of $1,926.75 made payable to Sonoma County Clerk and submitted to PRMD. If the required filing fee is not paid for a project, the project will not be operative, vested, or final and any local permits issued for the project will be invalid (Section711.4(c)(3) of the Fish and Game Code.) NOTE: If the fee is not paid within five days after approval of the project, it will extend time frames for CEQA legal challenges.	Complete or N/A	
37	At the time of submitting a building permit application, the applicant shall submit to PRMD a Condition Compliance Review fee deposit (amount to be determined consistent with the ordinance in effect at the time). In addition, the applicant shall be responsible for payment of any additional compliance review fees that exceed the initial deposit (based upon hours of staff time worked) prior to final inspection being granted.	Pending	Project has an at cost. Fees will be paid. Building permits were submitted.
38	This “At Cost” entitlement is not vested until all permit processing costs are paid in full. Additionally, no grading or building permits shall be issued until all permit processing costs arepaid in full.	Pending	Project has an at cost. Fees will be paid. Building permits were submitted.
39	The applicant shall include these Conditions of Approval on a separate sheet(s) of blueprint plansets to be submitted for building and grading permit applications.	Complete or N/A	This is our building permit set now and will be included with the resubmittal of building permits
40	All building and/or grading permits shall have the following note printed on plan sheets: ‘‘In the event that archaeological features such as pottery, arrowheads, midden or culturallymodified soil deposits are discovered at any time during grading, scraping or excavation within theproperty, all work shall be halted in the vicinity of the find and County PRMD - Project Review staff shall be notified and a qualified archaeologist shall be contacted immediately to make an evaluation of the find and report to PRMD. PRMD staff may consult and/or notify the appropriate tribal representative from tribes known to PRMD to have interests in the area. Artifacts associated with prehistoric sites include humanly modified stone, shell, bone or other cultural materials such as charcoal, ash and burned rock indicative of food procurement or processing activities. Prehistoric domestic features include hearths, firepits, or house floor depressions whereas typical mortuary features are represented by human skeletal remains. Historic artifacts potentially include all by-products of human land use greater than fifty (50) years of age including trash pits older than fifty (50) years of age. When contacted, a member of PRMD Project Review staff and the archaeologist shall visit the site to determine the extent of the resources and to develop and coordinate proper protection/mitigation measures required for the discovery. PRMD may refer the mitigation/protection plan to designated tribal representatives for review and comment. No work shall commence until a protection/mitigation plan is reviewed and approved by PRMD - Project Review staff. Mitigations may include avoidance, removal, preservation and/or recordation in accordance with California law. Archeological evaluation and mitigation shall be at the applicant’s sole expense. If human remains are encountered, all work must stop in the immediate vicinity of the discovered remains and PRMD staff, County Coroner and a qualified archaeologist must be notified immediately so that an evaluation can be performed. If the remains are deemed to be NativeAmerican, the Native American Heritage Commission must be contacted by the Coroner so that a‘‘Most Likely Descendant’’ can be designated and the appropriate provisions of the California Government Code and California Public Resources Code will be followed.’’ **Mitigation Monitoring:** Building/grading permits shall not be approved for issuance by Project Review staff until the above notes are printed on the building, grading and improvement plans.	Complete or N/A	

41	Low-flow showerheads and faucet aerators shall be installed in all project dwelling units (Lowwater use toilets are currently required by State Law).	Complete or N/A	Inlcuded in the office building.
42	All grading and development on site shall be done in compliance with the County Tree Protection Ordinance, including protection of trees during construction with a chain link fence at the dripline, and replacement of damaged or removed trees. The projects grading and landscape plans shall detail all tree protection implementation measures.	Complete or N/A	N/A
43	The project shall comply with all provisions of the County Low Water Use Landscaping Ordinance.	Complete or N/A	No landscaping
44	The applicant shall maintain a minimum of eight vehicle and eight truck parking spaces on-site toserve the concrete batch plant. Parking lot surfaces, lighting and exterior landscaping shall be maintained in good condition in compliance with the approved plans and conditions herein.	Complete or N/A	Minimum parking standard maintained.
45	Construction of new or expanded non-residential development on each lot shall be subject to Workforce Housing Requirements pursuant to 26-89-045 of the Sonoma County Code.	Pending	Fees will be paid with building permits
46	All new structures, lighting and signs shall require final design review by PRMD Project Review staff prior to issuance of building permits. All exterior finishes shall be of non-reflective materials and colors.	Pending	Light plan underway and will be submitted. No signs are proposed.
47	Prior to issuance of building permits, an exterior lighting plan shall be submitted for design review by PRMD Project Review staff. Exterior lighting shall be low mounted, downward casting and fully shielded to prevent glare. Lighting shall not wash out structures or any portions of the site. Light fixtures shall not be located at the periphery of the property and shall not spill over onto adjacent properties or into the night sky. Flood lights are not permitted. All parking lot and street lights shallbe full cut-off fixtures. Lighting shall shut of automatically after closing and security lighting shall be motion-sensor activated. **Mitigation Monitoring:** No building permits shall be finaled until the project planner verifies the installation of the lighting fixtures per approved plans. If light and glare complaints are received, the Permit and Resource Management Department shall conduct a site inspection and require the property be brought into compliance. If compliance is not achieved, staff will initiate procedures to restrict operations or revoke the permit and terminate the use.	Pending	Light plan underway and will be submitted
48	All exterior fixtures shall be limited to lamps (light bulbs) not exceeding 100 watts.	Pending	Light plan underway and will be submitted
49	The operation shall utilize the Stephen's Mfg. Co. dust suppress and collection system as specified in the applicant's submittal documents. In addition, the truck circulation areas and materials piles shall be watered down, as necessary, during business operations to suppress dust. Obtain permits from BAAQMD as necessary. **Mitigation Monitoring:** The dust suppression equipment shall be included on the batch plant and shall be inspected by staff prior to commencement of operations.	Complete or N/A	BAAQMD Permit #24518
50	Install an impervious asphalt or concrete curb/berm along the north, south and easterly sides of the batch plant project site area and all drainage shall be collected and drained to the west, away from the undeveloped portion of the larger property. **Mitigation Monitoring:** Proposed curb/berming shall be installed prior to commencement of operations and inspected by PRMD staff.	Complete or N/A	This has been installed.
51	Ensure that best Management Practices (BMP's) are employed in order to minimize the amount of sediment and other pollutants leaving the site during construction and after construction. Include landscape swales along parking areas to capture and treat stormwater run-off and cover all dumpsters. **Mitigation Monitoring:** Include all BMP's and landscape swales on the grading and building plansets.	Pending	Construction related.
52	The applicant/developer shall mitigate for impacts to potential CTS habitat at a minimum ratio of 0.2:1 for all area disturbed by construction activities including but not limited to grading for all roads, building pad sites and parking areas. Mitigation can be achieved by providing funding for restoration and long term management at a mitigation bank or mitigation site or through payment into a Species Fund managed by the California Wildlife Foundation in an amount equal to the cost of mitigation plus a 2.5% administrative cost. **Mitigation Monitoring:** The developer shall provide proof of mitigation credits or payment of fees prior to issuance of any grading or building permits.	Pending	Biologist is on board to assist with this.
53	The applicant shall provide PRMD staff with a spill containment plan and a location on-site where the plan will be available to employees along with necessary spill containment materials andequipment. **Mitigation Monitoring:** The plan and equipment shall be located on-site and be inspected by PRMD staff prior to commencement of operations.	Complete or N/A	Plan complete and included with documentation for compliance
54	Any proposed modification, alteration, and/or expansion of the use authorized by this Use Permit shall require the prior review and approval of PRMD or the Board of Zoning Adjustments, as appropriate. Such changes may require a new or modified Use Permit and additional environmental review.	Complete or N/A	N/A

55	The Director of PRMD is hereby authorized to modify these conditions for minor adjustments to respond to unforeseen field constraints provided that the goals of these conditions can be safely achieved in some other manner. The applicant must submit a written request to PRMD demonstrating that the condition(s) is infeasible due to specific constraints (e.g. lack of property rights) and shall include a proposed alternative measure or option to meet the goal or purpose ofthe condition. PRMD shall consult with affected departments and agencies and may require an application for modification of the approved permit. Changes to conditions that may be authorizedby PRMD are limited to those items that are not adopted standards or were not adopted as mitigation measures or that were not at issue during the public hearing process. Any modification of the permit conditions shall be documented with an approval letter from PRMD, and shall not affect the original permit approval date or the term for expiration of the permit.The owner/operator and all successors in interest, shall comply with all applicable provisions ofthe Sonoma County Code and all other applicable local, state and federal regulations.	Incomplete	Can we get a copy of the original project description and site plan? PRMD can provide if needed. Project decsription and site plan.
56	This permit shall be subject to revocation or modification by the Board of Zoning Adjustments if:(a) the Board finds that there has been noncompliance with any of the conditions or (b) the Board finds that the use for which this permit is hereby granted constitutes a nuisance. Any such revocation shall be preceded by a public hearing noticed and heard pursuant to Section 26-92-120and 26-92-140 of the Sonoma County Code. In any case where a Use Permit has not been used within two (2) year after the date of the granting thereof, or for such additional period as may be specified in the permit, such permit shall become automatically void and of no further effect, provided however, that upon written request by the applicant prior to the expiration of the two year period the permit approval may be extended for not more than one (1) year by the authority which granted the original permit pursuant to Section26-92-130 of the Sonoma County Code.	Pending	

ANDERSON ZEIGLER

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February 6, 2024

[via email only: blake.hillegas@sonoma-county.org]
Blake Hillegas
Supervising Planner
Permit Sonoma
2550 Ventura Avenue
Santa Rosa CA 95403

Re: File Nos.: UPE07-0112; BLD23-7519; SEW23-0141; DEM24-0034
Site Address: 3660 Copperhill Lane, Santa Rosa, APN: 059-250-004

Dear Mr. Hillegas:

Thank you for forwarding the status update from Farrow Ready-Mix, Inc. ("Farrow") dated January 22, 2024, and your summary of the status of Condition Compliance, copy attached hereto as Exhibit A.

It is clear Farrow has exerted only minimal efforts to bring its operations into compliance with the conditions of approval ("COA") of Conditional Use Permit UPE07-011 ("CUP"). Your summary starkly illustrates this fact. Out of the 53 conditions precedent to the use, 30 are specifically tagged as "implementation" still pending. Most other conditions, although not specifically tagged as "implementation" needed, remain incomplete in one way or another. The only conditions that have been met (# 7, 12-14, 22, 23, 36, 42-43) were completed by either the prior tenant Carl's Ready Mix or CMS Properties LLC. ("CMS") or the owner of the subject property (the "Property") many years ago.

One of the most obvious incomplete items relates to the improper submission of the application for building permit BLD23-7519 submitted more than two (2) month ago on November 28, 2023. Each structure requires its own separate application, i.e., the batch plant requires a separate application for a building permit. (COA #1) In fact, Farrow was informed of this easily corrected deficiency on or about December 8, 2023[1], but two (2) months later, the applications have not yet been corrected and the file is awaiting applicant response.

The use continues despite dangerous conditions. As the October 26, 2023, Staff Report concludes, "Building violations leading to potentially dangerous conditions and noncompliance

[1] On December 8, 2023, CMS Properties LLC. ("CMS"), the owner of the subject property (the "Property") received an update from Adobe Associates stating that Permit Sonoma advised the applications must be separate.

with the Use Permit have been well documented and the failure to comply constitutes a nuisance." (P. 4) The concrete batch plant lacks foundations. The batch plant is approximately 25 feet tall supported by four (4) legs. Trucks back in between the unsupported legs and the concrete mix pours into the truck from above. Should a truck knock the batch plant over, it could easily land on the office located within a couple of feet away or otherwise on a person or vehicle. In fact, CMS has information that two (2) of Farrow's concrete trucks have rolled off-site, luckily without injury, based on operating from an illegal operation.

Farrow has operated in violation of the CUP during the more than five (5) years since it took possession of the Property in November 2018 when it purchased Carl Ready Mix's assets and commenced operations of a concrete batch plant. All the while, Farrow has pledged over and over to legalize its use but never has followed through on its promises. (*See* copy of October 25, 2023, letter attached hereto as Exhibit B for further factual background.)

On August 16 and 28, 2023, Permit Sonoma sent Notices of Intent to Revoke Permit to Farrow notifying it of the scheduling of a Board of Zoning Adjustments ("BZA") hearing to revoke the CUP or, alternatively, advising that it may bring the CUP into compliance and contact staff for inspection no later than 5:00 p.m. on September 15, 2023. At the eleventh hour, on September 12, 2023, and nearly a month after the first Notice and three days prior to the September 15th deadline, Farrow submitted applications for permits, which were incomplete and rejected. (*See* Exhibit B, p. 4)

At the October 26, 2023, BZA hearing, BZA members allowed Farrow yet more time to come into compliance. Member Eric Koenigshofer stated he supported a three (3) month continuance if it "results in compliance." Chair Kevin Deas stated he was "not thrilled" with the option to continue the hearing and conceded to "no more" than a three (3) month continuance. It is now nearly three and one half (3 ½) months later, the property has not been brought into compliance and the continued hearing has not been held or scheduled (as far as the property owner knows).

As explained in prior correspondence, Farrow's repeated lack of diligence and failed efforts for five (5) years belie any promises or apparent attempts to comply with the CUP. It has exhibited blatant disregard for the BZA's position. Farrow has made virtually no progress towards legalizing its use of the Property. CMS has little, if any, faith in Farrow's intentions to bring its use into compliance and Permit Sonoma should be just as dubious.

In the meantime, CMS desires to sell the Property and has received interest by potential purchasers, only to be rejected due to the continued violations marring title to and general marketability of the property.

CMS of course would prefer Farrow bring the Property into compliance with the CUP. However, there have been no indications history will not continue to repeat itself, especially if Farrow is not presented with fixed deadlines to come into compliance. CMS respectfully requests Permit Sonoma set hard and fast deadlines for compliance in lieu of revocation of the CUP.

Thank you for your continued attention to this matter.

Very truly yours,

Rose M. Zoia

Rose M. Zoia

Encl.
cc via email only:
Stacey Ciddio, Managing Member, CMS Properties LLC
Chair Kevin Deas (kevin.deas@sonoma-county.org)
Commissioner Lawrence Reed (larry.reed@sonoma-county.org)
Commissioner Evan Wiig (evan.wiig@sonoma-county.org)
Commissioner Eric Koenigshofer (eric.koenigshofer@sonoma-county.org)
Tennis Wick, Director, Planning (tennis.wick@sonoma-county.org)
Scott Orr, Deputy Director, Planning (scott.orr@sonoma-county.org)
Cecily Condon, Planning Manager, Project Review (Cecily.condon@sonoma-county.org)
Michael Shklovsky, Esq. (mshklovsky@andersonzeigler.com)

EXHIBIT A

UPE07-0112 Farrow Ready Mix Condition Compliance.

This is a summary of Use Permit requirements and current status by number of Conditions of Approval. You will see there has been progress, but full implementation on most of the conditions is needed.

1. **Building/Demo/Electrical Permits/Grading and Drainage** for site improvements, office, batch plant, sanitation, plumbing, electrical and lighting. **Implementation needed.**

   Status Demo **DEM24-0034 submitted 1/23/2024** - to remove fuel tank over 5k gallons. **Accepted, need verification (Final Permit) that it's removed to address violation.**

   Status: BLD23-7519 submitted 11/28/23 for office/ADA ramp and parking, batch plant, and accessibility to address violation. – Deposited check with State HCD for inspection of premanufactured office coach. Building permit required for plumbing, sewer, and electrical connections, ramp and accessible parking. N**eed verification on this and full compliance with CBC, including accessibility, restrooms, structural on batch plant, electrical etc.**

   Batch Plant applied for under same BLD - **Structural under way**.
   Permit Sonoma technician Nicole Kinahan indicates Batch plant will need its own separate building permit (See Accela communications tab). Demo permit required for each tank or structure removed.

   Status: Electrical/lighting – Applicant's consultant scheduled to review site on Dec. 27, 2024 to produce as builts.

   Grading/drainage, and site improvements:

   Status: Implementation needed to show site improvements for grading drainage and parking areas.

2. Conditions 2. 3. and 4. Accessibility of building, restrooms, and parking required per CBC.

3. See 2. above
4. See 2. above

5. Current codes apply.
6. Connection to public sewer and water required. **Implementation Needed.** Will serve letters required. **Need will serve letters or clearances from City of Windsor water and Sonoma water (Sanitation).**
7. Sanitation facilities required. **Implementation Needed.**
   Status SEW23-0141 for onsite lateral submitted 11/27/24 with owner's authorization. Notes indicate separate permit required for connection to coach and assessment of sewer fees.

   1/30. **SEW16-0197 and ENC 16-0289 Finaled for off-site lateral/main.**

8. Safe potable water. **Implementation needed to connect water storage and office coach to water supply.**
9. Hazardous waste and tank compliance. **Implementation needed. Obtain clearance from County Fire and Emergency Services.**
10. Comply with General Plan noise requirements (operational).
11. Need compliant garbage and refuse containers. **Documentation needed.**
12. Construct sewer mains. **Done by property owner.**
13. Sanitary sewer main plans required. **Done by property owner.**
14. Sewer easements to be granted to Sonoma Water. **Done**
15. Sewer connection permit to building required. **See 7. Above SEW23-0141 pending. Implementation Needed.**
16. Sewer sampling manhole and dual waste lines for domestic and process waste required if applicable. No man hole shown on plans if required.
17. Need SEW prior to BLD **Implementation Needed.**
18. Industrial waste discharge submitted 1/30/24 with SEW
19. Sewer fees to be paid with connection to coach prior to building permit issuance. **Implementation Needed.**

20. Water system to be constructed under County Permit in accordance with City of Windsor standards requirements. Need plan submittal or verification that existing system was built to standards and/or Windsor has signed off. **Implementation Needed.**
21. Need will-serve or clearance from Windsor **Implementation Needed.**
22. Obtain encroachment permits as necessary. **Done**
23. Restoration of public improvements as necessary as a result of off-site sewer. **Done**
24. Record drawing required for sewer mains**. SEW16-0197 Finaled.**
25. No right turn sign required from Copperhill to Brickway. **Implementation Needed**
26. Payment of traffic mitigation fees with building permit. **Implementation Needed.**
27. Drainage and erosion control improvement plans are required with a grading/drainage permit or building permit. **Implementation needed.**
28. Site grading and erosion control plans required. **Implementation needed.**
29. Urban stormwater LID measures are required to address water quantity and quality, unless it is otherwise demonstrated that the project design addresses the requirement. **Implementation needed.**
30. Address NPDES NOI and WDID requirements as needed. Disturbed area is well over an acre. **Implementation needed.**
31. Address Permit requirement limiting truck storage to 8 trucks. Current aerial photos show greater than eight trucks (operational)
32. Comply with all permit conditions. A violation is subject to revocation. **Implementation needed.**
33. Comply with Avigation requirements and record an avigation easement prior to occupancy. **Implementation needed.**
34. Payment of development fees required at issuance of permits. **Implementation needed.**
35. Fire Safe Standards. **Implementation needed.**
36. NOD fee file. **Done**
37. Condition Compliance Review fee. **Fee assessed 1/30/24**. **Payment of CC fee and all at cost fees to date are needed.**
38. No vesting until payment of all at cost fees.
39. COA to be included on plans. **Implementation needed.**

40. Archaeological discovery note (see 39. Above).
41. Utilize water efficient fixtures per plumbing code.
42. Tree protection required. No tree removal. **Done**
43. Water efficient landscape ordinance. No landscaping. **Done**
44. Operational for providing parking and maintaining landscaping.
45. Workforce housing fees at building permit. **Implementation required.**
46. Final design review required prior to building permit issuance. **Implementation with planning sign off on building permits.**
47. Submit lighting plan. **Implementation needed.**
48. 100 watt limitation. See above.
49. Dust suppression requirement/mitigation. **Implementation needed.**
50. Drainage requirement to direct all drainage away from undeveloped portion of property. **Implementation needed.**
51. Manage stormwater runoff in drainage swales to minimize sediment and pollutants leaving the site. **Implementation needed.**
52. Mitigation for CTS Habitat. **Implementation needed.**
53. Spill containment plan. **Implementation needed.**
54. Modifications if proposed require approval.
55. Director Authority to modify.
56. Revocation for noncompliance.

ANDERSON ZEIGLER

Robert S. Rutherfurd
Christopher M. Mazzia
Daniel E. Post
Catherine J. Banti
Lisa L. Yoshida
Michael Shklovsky
Kenneth R. Cyphers
Rose M. Zoia
Zachary A. Carroll
Michael J. Fish
Ryan F. Thomas
Richard C. O'Hare
Tal Segev

October 25, 2023

[Via email only: blake.hillegas@sonoma-county.org]
Blake Hillegas
Supervising Planner
Permit Sonoma
2550 Ventura Avenue
Santa Rosa CA 95403

Re: Board of Zoning Adjustments Hearing: October 26, 2023, 1:20 p.m.
Revocation of Use Permit
File No.: UPE07-0112
Site Address: 3660 Copperhill Lane, Santa Rosa, APN: 059-250-004

Dear Mr. Hillegas:

Please accept this letter regarding the referenced matter. My prior related letters dated September 8, 2023, and September 14, 2023 (Staff Report Attachments 9 & 10) are incorporated herein.

CMS Properties LLC. ("CMS"), the owner of the subject property located at 3660 Copperhill Lane, Santa Rosa, California (the "Property"), supports staff's request that the Board of Zoning Adjustments ("BZA") revoke the subject Conditional Use Permit ("CUP") for noncompliance with the Conditions of Approval and violations of the Sonoma County Code. CMS appreciates staff's attention to this issue and thoughtful report, and thanks code enforcement for its work on this matter.

As stated in my prior letters, Farrow Commercial, Inc. (along with Farrow Ready Mix and other Farrow related entities, "Farrow") has been in violation of the CUP since November 2018 when it purchased the assets of Carl's Ready Mix, the prior tenant on the Property, and immediately occupied a portion of the Property and commenced operations of a concrete batch plant. When Farrow took possession, there were outstanding CUP and Sonoma County Code violations, of which he was aware. As stated in the Staff Report, Permit Sonoma authorized Farrow to operate pursuant to the CUP subject to the conditions of approval in order "to improve local construction efforts resulting from the 2017 Sonoma Complex Fire." (P. 2)

EXHIBIT B

For the past five (5) years, Farrow has failed to satisfy may pre-operational and operational conditions of approval, including, but not limited to, fundamental health and safety necessities such as:

- Obtaining building permits (Condition of Approval ("COA") # 1)
- Connection to public sewer and water (COA # 6)
- Provision of toilet facilities (COA # 7)
- Provision of a safe, potable water supply meaning, as read with COA # 6, through connection with public water. (COA # 8)
- Construction of sanitary sewer mains (COA # 12; *see* fn 1)
- Obtaining a Sewer Completion Final prior to occupancy (COA # 15)
- Obtaining a permit for construction of sewer facilities prior to obtaining a building permit (COA # 17)
- Construction of water mains and appurtenances in accordance with Town of Windsor Water System Standards or as shown on plans (COA # 20)

Recently, Permit Sonoma Fire Prevention Division reported Farrow has failed to enroll in the California Environmental Reporting System (CERS) and is "storing reportable quantities of hazardous material as well as generating hazardous waste" and, after five (5) years of operation, has yet to complete a Hazardous Materials Business Plan, a Chemical Inventory, a Site Plan, and a Contingency Plan and Training Plan. (Exhibit A hereto)

Since his occupation of the Property, Farrow has continuously operated in noncompliance with the law and regulations in one way or another, all the while pledging to legalize its use. Farrow's broken promises and feigned efforts to bring the property into compliance include, but are not limited to:

- In 2018, Farrow assured Permit Sonoma that Farrow would legalize the use and work to correct non-compliance with the CUP. (Exhibit A to Staff Report Attachment 9) It has not done so.

- Farrow promised CMS that Farrow would legalize the use many times since he took possession of the Property.[1] (*E.g.*, Exhibits B & F to Staff Report Attachment 9) From about August 2020 to September 2021 Glen Smith, Farrow's attorney, made assurances that Farrow was working diligently with Adobe Associates, Inc. ("Adobe") and Permit Sonoma to legalize its operations. Farrow has failed to do so.

- In 2020, Farrow applied to Permit Sonoma to legalize the use and failed to follow through but, instead, withdrew the application. (Exhibit C to Staff Report Attachment 9)

- In 2021, Farrow again retained Adobe to assist with bringing his use into compliance and again failed to follow through. (Exhibits D & E to Staff Report Attachment 9)

- Most recently, and only when faced with the threat of revocation of its permit, Farrow submitted applications for a sewer permit and a building permit three (3) days prior to the deadline imposed by Permit Sonoma, with expired building plans and without obtaining the required owner authorization.

After enduring three (3) years of Farrow operating outside of the law and in violation of the lease between the parties, CMS sent Farrow a notice of eviction in October 2021. Farrow responded by filing a lawsuit against CMS which resulted in 12 days of trial ending in March 2023. After Farrow filed its lawsuit, CMS filed an unlawful detainer (eviction) action against Farrow. Unlawful detainer actions are a summary process that would have resolved the lease dispute issues between the parties expeditiously. The court, however, stayed the unlawful detainer action so the first-filed lawsuit, initiated by Farrow, proceeded.

In an email to the County dated September 1, 2023, Mr. Farrow claims that:

(1) It has worked to get the property into compliance "over the last three years since [it] took possession" of the property.

In fact, Farrow has been in possession for five years.

(2) It was a week away from submitting the complete package to satisfy all 56-conditions, [sic] "when the landlord filed legal action to get us off the property so they could sell it."

[1] In reliance, CMS, at its expense, caused water and sewer lines to be brought to the property line and installed a water meter and sewer lateral lines onto the property so Farrow could hook up to them for that aspect of compliance.

> In fact, Farrow filed the first lawsuit which led to a longer judicial process. Further, CMS did not serve Farrow with a notice of eviction so it could sell the property, it did so because Farrow had occupied and used the property in violation of the lease and the CUP for three years at that point. In any event, a sale of property does not, in and of itself, terminate a lease.[2]

Contrary to Farrow's complaints, neither the notice of eviction nor the fact that it filed a lawsuit against CMS prevented Farrow from coming into compliance with the CUP. (*Please see* Staff Report Attachment 10, pp. 3-4) In fact, during the trial, Farrow admitted that it is operating in violation of the CUP and that it has been promising to correct the violations since at least October 2018.

On August 16 and 28, 2023, Permit Sonoma sent Notices of Intent to Revoke Permit to Farrow notifying it of the scheduling of this hearing to revoke the CUP or, alternatively, advising that it may bring the CUP into compliance and contact staff for inspection no later than 5:00 p.m. on September 15, 2023. Farrow waited until the eleventh hour, September 12, 2023, nearly a month after the first Notice and three days prior to the September 15th deadline, to submit applications for the required permits, which were incomplete and rejected. On September 13, 2023, Permit Sonoma advised Farrow that the applications were not accepted for failure to obtain owner authorization. (Exhibits A and B to Staff Report Attachment 10.) In addition, they included outdated plans. Contrary to Farrow's claim that CMS "refused" to provide authorization (Staff Report Attachment 8), Farrow has never asked CMS to do so.[3]

Without any evidence to support its hyperbolic statement, Farrow claims CMS made "a special trip to the Permit Sonoma office to clearly state that they will not sign the necessary authorization forms." (Staff Report Attachment 12, p. 2) In fact, on September 13, 2023, Stacey Ciddio, Managing Member of CMS, visited Permit Sonoma simply to obtain copies of the applications submitted by Farrow on September 12, 2023, since CMS had no notice of their submission. When asked by staff if she authorized the applications, she responded no. Farrow had not presented them to CMS prior to submission.

---

[2] Also contrary to Mr. Farrow's statements in that email, CMS did not "appeal" the court's tentative statement of decision three (3) times but only followed the statutory procedure of objecting to certain points in the statement of decision.

[3] This was not the first time Farrow failed to obtain owner authorization. In 2021 (4th bullet point on page 3), Adobe informed Permit Sonoma that it completed sewer plans which were awaiting owner authorization. Farrow never requested CMS provide authorization. (Exhibit B hereto)

As explained in prior correspondence and herein, Farrow's repeated lack of diligence and failed efforts for five (5) years belie any promises or apparent attempts to comply with the CUP.[4] Its words and actions have resulted in virtually no progress towards legalizing its use of the Property. CMS is at its wits end, has no faith in Farrow's intentions to bring its use into compliance. It does not authorize the applications.

CMS requests this hearing go forward on October 26, 2023, and the CUP be revoked as non-compliant with the CUP as well as for being a public nuisance. As the Staff Report concludes, "Building violations leading to potentially dangerous conditions and non compliance with the Use Permit have been well documented and the failure to comply constitutes a nuisance." (P. 4) Short of revocation of the permit, there is nothing to stop the continuance of Farrow's pattern of operating illegally, empty promises, and incomplete applications in last minute efforts at purported compliance.

Thank you for your consideration of this matter.

Very truly yours,

Rose M. Zoia

Rose M. Zoia

Encl.
cc via email only:
Chair Kevin Deas
Commissioner Lawrence Reed
Commissioner Evan Wiig
Commissioner Eric Koenigshofer
Stacey Ciddio, Managing Member, CMS Properties LLC
Tennis Wick, Director, Planning
Scott Orr, Deputy Director, Planning
Cecily Condon, Planning Manager, Project Review
Michael Shklovsky, Esq.
Christopher M. Mazzia, Esq.

[4] In an email from Mr. Farrow to Permit Sonoma staff dated August 30, 2023, Mr. Farrow characterizes his occupancy of the site as "the short time we have leased the property from the landlords." (Document received in response to CMS's public records act request to the County.) Five years is not a "short time" by the measure of time required to comply with conditions of approval and cure the violations.

EXHIBIT A

From: Dan Patalano
To: Karen Brown
Subject: Fw: Inspection
Date: Tuesday, September 26, 2023 2:10:35 PM

Here are the other ones

From: Troy Saldana <troy@farrowreadymix.com>
Sent: Friday, August 18, 2023 4:23 PM
To: Dan Patalano <Dan.Patalano@sonoma-county.org>
Subject: Re: Inspection

EXTERNAL
Good afternoon Dan,

I have already set up our account and will reach out to Diana Shinn early next week for help completing the technical questions so that our account gets set up correctly the first time.
The account is set up under Farrow Ready Mix, Inc. 3660 Copperhill Lane, Santa Rosa, CA 95403. I've got a CERS ID number if that will be of help.

Thank you again and we will get this done as promptly as we can.

Respectfully,

Troy Saldana

Senior Operations Manager

Farrow Ready Mix Inc.

3660 Copperhill Lane
Santa Rosa, CA 95403

707-919-0272 Main
707-919-0261 Direct
707-890-0210 Mobile

www.farrowreadymix.com

On Fri, Aug 18, 2023 at 3:08 PM Dan Patalano <Dan.Patalano@sonoma-county.org> wrote:

> Troy
> Thanks to you and Justin for your time during the inspection of your facility. Per our discussion you are required by the state to be enrolled with the California Environmental Reporting System or CERS. I have included the links below. Once your are in the county records system I will send you a copy of the inspections we completed today. Please let me know when your CERS account has been opened so I can input the data. You are storing reportable quantities of hazardous material as well as generating hazardous waste. You will need to complete a Hazardous Materials Business Plan, Chemical Inventory, Site Plan, Contingency Plan and Training Plan. I noted no safety violations during the inspection. All violations are administrative.
> I have included a list of consultants if you need help getting your account up and running. I recommend Diana Shinn
> https://permitsonoma.org/divisions/firepreventionandhazmat/servicesandfees/hazardousmaterialsunitandcupaprogram/hazardousmaterialsbusinessplan
>
> Dan Patalano
> Fire Hazardous Materials Inspector II
> Hazardous Materials Specialist
> Permit Sonoma Fire Prevention Division
> 2300 County Center Dr. Ste. 220 Bldg B
> Santa Rosa, CA. 95403
> Phone: 707-565-2024
> Fax: 707-565-1172
> Cell: 707-696-2913

EXHIBIT B

permit SONOMA

From: Casey McDonald <CMcDonald@adobeinc.com>
Sent: Friday, August 13, 2021 11:15 AM
To: Brian Keefer <Brian.Keefer@sonoma-county.org>; 'shawn@farrowcommercial.com' <shawn@farrowcommercial.com>
Cc: 'Troy Saldana' <troy@farrowcommercial.com>
Subject: 21161 RE: Farrow Ready Mix, UPE07-0112

EXTERNAL

Hi Brian,

I wanted to touch base again on this project and provide you a quick update on where things are at and pick your brain on how we clear up these violations.

1. We just completed the sewer plans and should be submitting those once they are reviewed and approved by the landlord.
2. We have submitted a water permit to the Town of Windsor for water to serve the site. Meters were already installed and water brough to the site a few years ago, so we just need the water permit from the Town.
3. We are working on the ADA upgrades as required by the Use Permit and plan to submit a plan to the building department.

My understanding is that we have 3 violations: Water Tank, Batch Plant and Commercial Coach.

1. The water tank requiring a building permit is not longer there and there are several 5,000 gallon tanks on-site, which do not require a permit. Do we need to do anything to clear up the tank violation?

2. We are working on getting the registration for the commercial coach form the state. We will include this number once we have it and show the trailer on the plans for the ADA improvements. Is anything else needed to clear up is violation?

3. I have the concrete batch plant plans. Do we just submit the plans with a site plan to clear the violation?

Thanks for your help!

Casey McDonald, P.E.
Project Manager
adobe associates, inc.
civil engineering | land surveying | wastewater
"A Service You Can Count On!"
1220 N. Dutton Avenue
Santa Rosa, CA 95401
707-541-2300: Phone
707-541-2301: Fax
https://www.adobeinc.com/
Please consider the environment before printing this email

From:	Rose M. Zoia
To:	Blake Hillegas
Cc:	Kevin Deas; Lawrence.reed@sonoma-county.org; Evan Wiig; Eric Koenigshofer (ejklaw@yahoo.com); Stacey Ciddio; Tennis Wick; Scott Orr; Cecily Condon; Michael Shklovsky
Subject:	Farrow Ready-Mix, 3660 Copperhill Lane, Santa Rosa
Date:	Tuesday, February 6, 2024 5:51:39 PM
Attachments:	image001.png 2024 02 06 Letter to BHillegas Farrow progress.pdf

EXTERNAL

Dear Blake,

Please see attached letter. Thank you.

Regards,

~Rose Zoia

Rose M. Zoia
signature_544096126

50 Old Courthouse Square, 5th Floor
Santa Rosa, CA 95404
(707)545-4910 Tel
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michelle@zklegal.com

Via E-mail Only

March 18, 2024

Cecily Condon, Project Review Manager
Permit Sonoma, Code Enforcement Division
2550 Ventura Avenue
Santa Rosa, CA 95403

Re: Notice of BZA Public Hearing
File No.: UPE-07-0112
APN: 059-250-004

Dear Ms. Condon:

As you are aware, this office represents Farrow Commercial, Inc. and Farrow Ready Mix, Inc. (collectively "Farrow") regarding the above-referenced matter. I am in receipt of the "Notice of a Sonoma County Board of Zoning Adjustments Public Hearing to Consider a Revocation of Use Permit (UPE07-0112). Please include this letter and its accompanying documents in the staff report to the BZA.

As we previously provided, enclosed please find a copy of the October 17, 2023 Judgment Following Statement of Decision After Court Trial in Sonoma County Superior Court Case No. SCV-269684, with which we were served electronically on October 18, 2023. Please recall that the Court heard testimony for ten days in this case, and note that the Court made specific findings in the June 15, 2023 Statement of Decision After Court Trial ("Statement of Decision") regarding the Court's interpretation of the subject lease agreement and the Farrow tenants' efforts with respect to addressing the conditions of the 2007 use permit.

In that regard, your attention is directed to the following portions of the Statement of Decision:

Page 5:12-20 – "Casey McDonald, of Adobe and Associates, was credible and informative of the efforts made by the parties to achieve progress to meet the terms and conditions of the use permit. Both parties at one time or another had hired Adobe to conduct analysis and land planning regarding the Property. Ms. McDonald also provide evidence of timelines and communications with Sonoma County personnel regarding the use permit and other matters involving the property. Her testimony was helpful in resolving conflicting assertions by the parties as to when efforts were made to comply with

County requirements including confusion caused by defendants as they submitted an application for permits to install water and sewer on the Property as Plaintiff was attempting to do the same."

Page 14:23-24 – "Also, ... Farrow invested significant sums into the Property in reliance on the extended lease term". Enclosed herewith is a copy of Trial Exhibit 67a, which details the amounts my clients spent on satisfying the conditions of the use permit.

Page 23:23 – Page 24:3 – "The evidence shows that Farrow is currently, and has been at all times during the tenancy, operating under a valid use permit as evidenced by a letter from the County of Sonoma dated December 27, 2018, that clarifies operation at the site is allowed pending satisfaction of the conditions of the existing use permit. **Farrow has exercised reasonable and diligent efforts to satisfy the conditions of the use permit under the circumstances and has expended substantial sums of money attempting to satisfy the final conditions of the use permit**. The express language of the Lease clearly does not include any temporal deadlines as CMS claims." [Emphasis added].

Page 25:10-19 – "**Testimony showed that from the beginning of its tenancy at the property, Farrow undertook efforts to satisfy the conditions of the use permit**. Farrow's expert, the former PRMD Code Enforcement Manager from 2002-2011 and PRMD Building and Safety Division Manager from 2011-2015, testified at trial that the use permit is a valid use permit for Farrow's operations of the property and that the use permit has vested. During Farrow's tenancy, in December 2019, CMS received a letter from the County stating that violations of the use permit existed at the property. CMS forwarded a copy of this letter to Farrow, and **Farrow continued its efforts to communicate with the County and to satisfy the conditions of the use permit**. However, there were months during 2020 when the PRMD office was closed, and Farrow experienced delays beyond their control."

It is undisputed that the Court has made explicit findings of fact vis-à-vis Farrow's diligence in attempting to satisfy the conditions of the use permit.

As stated in my prior correspondence to you, the evidence at trial also demonstrated that Casey McDonald from Adobe Associates, Inc. had met onsite with Michael Carey in this endeavor, as well as worked on all of the various aspects of what it would take to satisfy the myriad conditions of this particular use permit. On October 15, 2021, she communicated with Farrow via e-mail that almost all of the items were lined up and ready to submit to the County. (This communication was received as a trial exhibit by the Court).

However, three days later, on October 18, 2021, attorneys for CMS notified Farrow that CMS claimed that the lease would expire on November 18, 2021; and this litigation ensued in November 2021. Due to the pendency of the litigation, in which its landlord

was seeking to oust it from the property, Farrow legally was excused, prevented, and frustrated from further efforts to satisfy the conditions of the use permit.

Moreover, when Farrow resumed its efforts in light of the June 15, 2023 Statement of Decision – which was not yet a final Judgment – Farrow was thwarted by the owners of the property. Specifically, on Wednesday, September 13, 2023, Lisa Cirimele, a Permit Technician at Permit Sonoma, e-mailed Shelley Woods at Adobe Associates to advise that the building permit submitted and paid for by Farrow (BLD23-5978) was denied because the applicants need to have owner permission to apply for permits. That same day, Debby Turner, an Engineering Technician II at Permit Sonoma, e-mailed Shelley Woods and John Farrow to report regarding the sewer permit SEW23-0141, "The owners of this property came into our office today stating that they do not give permission for the work that is being requested. Since we assessed the sewer fees and they were paid today, we were able to refund the payment that was made today. So the permit is back to having a balance due. There is a lock on the permit and until the permission is allowed by the owner of the property, CMS Properties, LLC. The permit will remain locked until we hear from the owners of CMS Properties LLC that the project can resume."

The owners of CMS Properties LLC did not provide their authorization for these permits until late November 2023.

As is evident from the detailed matrix submitted herewith, prepared by Casey McDonald Talbot of Adobe Associates, the conditions of the use permit either have been completed or are pending. Ms. Talbot is prepared to attend the hearing and further elaborate on the status and expended timeline. A representative from Farrow will also attend and speak about his efforts and about the significant amount of money that the company is expending to accomplish this work.

As you are aware from your conference call on February 27, 2024 with Troy Saldana from Farrow and Ms. Talbot from Adobe, Farrow is committed to seeing this work through to completion. We trust that you understand that Farrow can only do so much, and then things such as the timing of a response from a particular department or other professional is out of its hands. For example, Farrow had been informed by its structural engineer that the engineer would provide plans back to Farrow by the end of January 2024. Those plans have not been delivered by the engineer; yet this is something entirely out of Farrow's control. As another example, it is my understanding that in connection with the February 27th call, Ms. Talbot provided you with the status matrix, and you had indicated that you would circulate it to the various departments and provide feedback from these departments to Farrow and Ms. Talbot as to each condition. We have not heard back from anyone in that regard as of this morning.

On behalf of Farrow, and in light of the language of the Judgment in the court case, we again respectfully request that Permit Sonoma find, as Judge DeMeo did, that the efforts by Farrow to satisfy the conditions of the subject use permit were reasonable and diligent under the circumstances. It would result in a clear injustice to outright revoke the permit of a business that provides such a benefit to the community. The undisputed facts demonstrate that since 2007, Farrow is the entity that has done the lion's share of work associated with satisfying the conditions of the use permit. Farrow has been impeded by COVID, by a lawsuit, by the owner's lack of cooperation, and by timelines that are entirely out of its control; yet it has persevered and is intent on completing the work necessary.

Please provide me with a copy of the Staff Report referenced in today's Notice by e-mail at michelle@zklegal.com once the report is available.

Very truly yours,

Michelle V. Zyromski

Michelle V. Zyromski

Enclosures
cc: Clients

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Rachel M. Dollar (SBN 199977)
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Attorneys for Plaintiff FARROW COMMERCIAL, INC. and for Cross-Defendants FARROW COMMERCIAL, INC. and FARROW READY MIX, INC.

ZYROMSKI KONICEK ATTORNEYS AT LAW

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

FARROW COMMERCIAL, INC., a California corporation,

Plaintiff,

v.

CMS PROPERTIES LLC, a Montana limited liability company doing business in California as CMS AIRPORT PROPERTIES, LLC, aka CMS PROPERTIES, LLC; and DOES 1 through 30, inclusive,

Defendants.

CMS PROPERTIES LLC, a Montana limited liability company doing business in California as CMS AIRPORT PROPERTIES, LLC, aka CMS PROPERTIES, LLC; and DOES 1 through 30, inclusive,

Cross-Complainant,

v.

FARROW COMMERCIAL, INC., a California corporation; FARROW READY MIX, INC. and ROES 1 through 25, inclusive,

Cross-Defendants.

CASE NO.: SCV-269684
(Unlimited Civil Case)

~~[PROPOSED]~~ **JUDGMENT FOLLOWING STATEMENT OF DECISION AFTER COURT TRIAL**

Dept.: 17
Judge: Honorable Bradford DeMeo
Complaint Filed: November 15, 2021
Trial Date: October 7, 2022
Resumed March 2, 2023

This action came on regularly for a court trial on October 7, 2022 in Department 17 of the Sonoma County Superior Court, the Honorable Bradford DeMeo presiding. Plaintiff Farrow Commercial, Inc., a California corporation and Cross-Defendants Farrow Commercial, Inc., a California corporation and Farrow Ready Mix, Inc., a California corporation ("Farrow") appeared by attorneys Michelle V. Zyromski and Glenn M. Smith. Defendant and Cross-Complainant CMS Properties LLC, a Montana limited liability company doing business in California as CMS Airport Properties LLC aka CMS Properties, LLC ("CMS") appeared by attorneys Daniel E. Post and Michael Shklovsky. Evidence via testimony of sworn witness John Farrow was presented to the Court for two days on October 12 and 13, 2022. The trial then was continued pursuant to California Rule of Court 3.1332(c)(3) & (4) and (d)(2), (3), (5) & (10).

The action resumed on March 2, 2023 in Department 17 of the Sonoma County Superior Court, the Honorable Bradford DeMeo presiding. Farrow appeared by attorneys Michelle V. Zyromski and Glenn M. Smith. CMS appeared by attorneys Christopher M. Mazzia and Michael Shklovsky. Evidence via testimony of sworn witnesses was presented to the Court for seven days on March 2, 3, 7, 8, 9, 10, and 14.

After hearing the evidence of the witnesses and arguments of counsel, the case was submitted to the Court for decision and judgment. On May 16, 2023, the Honorable Bradford DeMeo issued a Tentative Statement of Decision; the Tentative Statement of Decision was filed and served that same day. On May 31, 2023, CMS filed and served a document captioned, "CMS' Request for Specific Findings and Amendments Regarding the Court's May 16, 2023 Tentative Statement of Decision After Court Trial". On June 12, 2023, Farrow filed and served a document captioned, "Farrow Commercial, Inc. and Farrow Ready Mix, Inc.'s Responses to CMS' Request for Specific Findings and Amendments Regarding the Court's May 16, 2023 Tentative Statement of Decision After Court Trial; and Proposals Regarding Same." On June 15, 2023, the Honorable Bradford DeMeo issued a Statement of Decision After Court Trial; the Statement of Decision was filed on June 15, 2023 and served on June 16, 2023. In the "Decision" portion of the June 15, 2023 Statement of Decision After Court Trial, at pages 27:15-28:2, the Court ruled as follows:

Verdict shall be entered in favor of Plaintiff Farrow on plaintiff's first and second causes of

action for breach of contract and declaratory relief. Verdict shall be entered in favor of Defendant CMS on plaintiff's third and fourth causes of action. The Court further finds that any monetary damages caused by the breach of contract are nominal as much of the expenditures incurred by Farrow, according to the evidence presented, would most likely have been incurred without a breach in pursuit of satisfying terms and conditions of the use permit. Farrow will not be awarded monetary damages on its successful claims. However, the Court finds the exercise of the Option was valid.

Based on the foregoing, Verdict shall be entered against CMS and in favor of Farrow on all of CMS's causes of action alleged in their First Amended Cross-Complaint. CMS will not be awarded damages on its claims. Plaintiff shall prepare a Judgment for filing and entry according to the findings and decision contained in this Statement of Decision.

The Court reserves jurisdiction on attorney fees and costs.

A filed copy of the June 15, 2023 Statement of Decision After Court Trial is attached as Exhibit "A" and is incorporated by reference.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

Judgment shall be entered in favor of Plaintiff Farrow Commercial, Inc., a California corporation and against Defendant CMS Properties LLC, a Montana limited liability company doing business in California as CMS Airport Properties LLC aka CMS Properties, LLC on Plaintiff's first and second causes of action for breach of contract and declaratory relief. No monetary damages are awarded. The exercise of the Option was valid. The Option is in full force and effect and the tenants are entitled to lawful possession of the leasehold interest at 3660 Copperhill Lane, Santa Rosa, California 95403 pursuant to the terms of the November 19, 2018 Commercial Lease Agreement and the Lease Agreement's three attached addenda, including the Option to Renew/Extend Lease, until at least November 18, 2025. The Option is self-executing and entitles the tenants to lawful possession of the leasehold interest until November 18, 2029, unless the tenants notify CMS 180 days prior to the first option period expiring of their intent not to exercise their option to renew.

Judgment shall be entered in favor of Defendant CMS Properties LLC, a Montana limited

liability company doing business in California as CMS Airport Properties LLC aka CMS Properties, LLC and against Plaintiff Farrow Commercial, Inc., a California corporation on Plaintiff's third and fourth causes of action for fraud (concealment) and unfair business practices.

Judgment shall be entered against Cross-Complainant CMS Properties LLC, a Montana limited liability company doing business in California as CMS Airport Properties LLC aka CMS Properties, LLC and in favor of Cross-Defendants Farrow Commercial, Inc., a California corporation and Farrow Ready Mix, Inc., a California corporation on all of CMS's causes of action alleged in its First Amended Cross-Complaint. CMS will not be awarded damages on its claims. CMS will take nothing by way of its First Amended Cross-Complaint.

The Court reserves jurisdiction on attorney fees and costs.

ZYROMSKI | KONICEK ATTORNEYS AT LAW

DATED: 10/17/2023

By _____
HONORABLE BRADFORD DEMEO
Judge of the Superior Court

APPROVED AS TO FORM:

_____

Christopher M. Mazzia, Esq.

Michael Shklovsky, Esq.

EXHIBIT A

THE HONORABLE BRADFORD DEMEO
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA
3035 Cleveland Avenue
Santa Rosa, CA 95403
Telephone: (707) 521-6725

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

FARROW COMMERCIAL, INC., a California corporation,

Plaintiff,

vs.

CMS PROPERTIES, LLC, a Montana limited liability company doing business in California as CMS AIRPORT PROPERTIES, LLC; and DOES 1 through 30, inclusive,

Defendants.

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Case No. SCV-269684

STATEMENT OF DECISION AFTER COURT TRIAL

CMS PROPERTIES, LLC, a Montana limited liability company doing business in California as CMS AIRPORT PROPERTIES, LLC,

Cross-Complainant,

vs.

FARROW COMMERCIAL, INC., a California corporation; FARROW READY MIX, INC. and ROES 1 through 25, inclusive,

Cross-Defendants.

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In this document the Court announces its Tentative Decision on the issues presented to the Court. The Tentative Decision will be the Statement of Decision unless within ten (10) days either party files and serves a document on the Court that specifies objections to the findings and

rulings contained herein, or makes proposals not covered in this document. Pending further order(s) or entry of Judgment, this Tentative Decision constitutes the temporary orders of the Court.

BACKGROUND

Farrow is a residential and commercial developer that was heavily involved in rebuilding many homes in Sonoma County following the Tubbs Fire of October 2017. In late 2018, to address difficulties in sourcing and supplying concrete to its fire rebuilds, John Farrow, President and CEO of Farrow Commercial, Inc. (hereinafter collectively referred to as "Farrow"), started negotiating with Carl Davis, owner of Carl's Ready Mix, to purchase the assets of Carl's Ready Mix, a concrete processing plant operating since 2007 at the Property.

The current owner of the property located at 3660 Copperhill Lane, Santa Rosa, California (hereinafter "Property") is the defendant CMS Properties, LLC. (hereinafter "CMS"). The Property was purchased by CMS in 2015.

Carl Davis (hereinafter "Carl") leased the Property in 2007 from the then owners. His goal was to operate a concrete business there. He applied for and obtained from the County of Sonoma (hereinafter "County") a Use Permit allowing him to operate his concrete business at the Property. He did business as "Carl's Ready Mix." Final Conditions of Approval were issued by the County in April of 2008. There is no dispute between the parties that Carl never complied with all of the County's Use Permit terms.

On May 11, 2011, the County issued to the prior Property owners a Notice of Violation of Use Conditions and a Notice and Order of Construction Without a Permit (noting construction of an unpermitted batch plant, commercial coach, and a tank exceeding 5,000 gallons without permits were all a public nuisance). In December 2011, the County recorded a Notice of Abatement Proceedings demanding the owners comply with the conditions of the existing use permit, including obtaining all required permits and inspections for the unpermitted batch plant or remove it. Pursuant to the County's Notices, penalties began accruing against the Property owners.

In 2015, Defendant CMS (through its principals Mark Ciddio and Stacey Ciddio)

purchased the Property and continued the lease with Carl's Ready Mix. According to testimony at trial, CMS was aware that Carl's Ready Mix was operating the concrete processing business under a use permit issued by Sonoma County in April 2008 that came as a document called "Final Conditions of Approval," listing 56 pre-operational and operational conditions for operation of the business. Mr. Davis made attempts, but never satisfied, all 56 conditions of the use permit during the more than a decade that he operated Carl's Ready Mix at the Property. CMS never insisted that Mr. Davis satisfy all 56 conditions of the use permit to continue his tenancy at the property.

In late 2018, Farrow purchased Carl's Ready Mix assets and negotiated a new lease with CMS. The CMS attorneys drafted a standard form Commercial Lease Agreement ("Lease") with the proposed terms. The Lease was thereafter circulated/reviewed by all parties, discussed, and agreed upon, signed by Farrow on December 7, 2018, and signed by CMS on February 27, 2019. The Lease has three attached addenda, each of which is expressly incorporated into the Lease by reference.

Plaintiff claims that the Option to Renew/Extend Lease ("Option") allows Plaintiff to occupy the Property for two additional four-year time periods, and by its terms, was self-executing – meaning that the tenant was not required to take any action to formally exercise it.

The Option states, "6. Other Tenant shall notify Landlord at least one hundred eighty days (180) of its intent NOT to exercise the Tenant's option to renew." Farrow claims it exercised the Option to extend the Lease by remaining in possession of the Property and, despite no obligation, by timely giving written notice to CMS on or about November 9, 2021.

During Farrow's tenancy on the Property, the world fell into a pandemic in proportions not experienced since 1918. Governments continued to run, but it is self-evident that they moved at a much slower pace due to staffing issues as a result of shelter in place emergency orders and return to work safety measures. Local zoning and permit approvals, among other governmental actions, were continuing but universally delayed to some extent during the pandemic.

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CLAIMS OF THE PARTIES

Farrow claims it is entitled to occupy the Property for an extended term according to the Option to Renew/Extend Lease. Farrow further argues that the option was self-executing, and that Farrow was in substantial compliance with the Lease terms and conditions, including the use permit terms and conditions, when the option self-executed in late Spring of 2021. The legal theories upon which Plaintiff's claims rest are alleged as breach of contract, declaratory relief, fraud and concealment, and unfair business practices.

In its cross-complaint CMS claims it is entitled to possession of the Property, ejectment, and damages for trespass. The legal theories upon which the claims rest are breach of contract, ejectment, trespass, nuisance, and injunctive relief.

CMS argues that the Option is and was never valid because no one on behalf of CMS signed it. To this claim the court disagrees and finds that a signature on the option page addendum was not required to make the option valid as it was incorporated by reference in express language on page 1, section 1.3 of the lease document. See Defendant's Exhibit 26 in evidence. CMS further argues that the Option was not effectively exercised by Farrow. To this claim the court disagrees and finds that the option was self-executing unless the tenant notified landlord 180 days prior to the term expiring, which the tenant did not send such notice. Finally, CMS argues the Option to extend the lease term cannot be exercised because Farrow breached the lease by not satisfying all 56 conditions of the use permit and/or by other environmental violations pertaining to the Property. The Court will address this issue in further detail hereinafter as in the view of the Court this is the key issue in this case.

LAW AND ANALYSIS

A. Credibility of Witnesses

The credibility of witnesses is one of the important and crucial parts of this trial. The Court listened to all testimony presented. Pursuant to California Evidence Code section 780, the Court will make findings based on the credibility of witnesses and how much weight to be given to their testimony and opinions.

Notwithstanding conflicting versions of certain details, the parties themselves appeared to

be genuine in their recount of the facts as they believe occurred. Much of the conflict in this case appears to be perception and perspective.

Haven Holm, called to testify for the defense, was not a credible witness. With very little reliable independent memory of events, other than his clear disdain for plaintiff for being fired in December of 2018, Mr. Holm had very little reliable information unless he was prompted with a leading question. This occurred several times during his testimony under oath. As his testimony progressed this Court allowed several leading questions and it became clear that unless a leading question was asked, or he was prompted with visual cues and documents, he had very weak independent recall of events, dates, names, and other details important to the case. His testimony was general, conclusory, and was inconsistent with documentary evidence, dated emails, and testimony of other witnesses.

Casey McDonald, of Adobe and Associates, was credible and informative of the efforts made by the parties to achieve progress to meet the terms and conditions of the use permit. Both parties at one time or another had hired Adobe to conduct analysis and land planning regarding the Property. Ms. McDonald also provided evidence of timelines and communications with Sonoma County personnel regarding the use permit and other matters involving the property. Her testimony was helpful in resolving conflicting assertions by the parties as to when efforts were made to comply with County requirements including confusion caused by defendants as they submitted an application for permits to install water and sewer on the Property as Plaintiff was attempting to do the same.

Brian Keefer, a Permit Sonoma planner in 2018, was also credible and helpful in describing the requirements for Farrow to operate under the use permit. He testified that code enforcement in Sonoma County is passive – it is a complaint bases system of enforcement. Therefore, the conditions of the use permit are not monitored by the County enforcement agency unless prompted by a complaint. He testified that the County continued to review planning applications, but indicated things were somewhat slow during the pandemic.

Troy Saldana, a Farrow employee, was also credible. He performed a very thorough gathering of documents, with little to no information directly from CMS, and was a percipient

witness to a walk-through of the Property in early December of 2018 involving John Farrow, Mark Ciddio, and others. Saldana was the only witness to that event called to testify at trial. He prepared a punch list of things needing attention, among other information, from that site visit.

Plaintiff's expert, **Benjamin Neuman**, presented with impressive background and experience as an inspector, plan reviewer and code enforcement officer for the County of Sonoma Permit and Resource Management Department (now Permit Sonoma), and at one point in his career was the head of that agency. His years of experience, education, and breadth of knowledge is impressive and helpful to this Court. He testified that there is no time deadline in which use permit conditions must be satisfied unless expressly stated in the use permit, which there was no such deadline for any of the conditions. His testimony corroborated the testimony of Brian Keefer regarding enforcement. He testified that numerical limits such as trips per day of heavy trucks is a fluid condition and may be considered as an average over a period of time. He testified that the use permit in question is valid today even though some of the conditions are still not met. This is critical to Plaintiff's case. There was no counter expert testimony offered by the defendants.

B. The Option Is Valid Without Separate Signature

1. <u>The Lease Includes the Commercial Lease Agreement (Form 552-3) and Its Three Addenda, Including the Option Addendum (Form 565) as Expressly Incorporated by Reference.</u>

There is no dispute here that a valid written contract exists. The Lease was negotiated between the parties, and the formal memorandum of its terms was thereafter circulated/reviewed by all parties, and signed by Farrow on December 7, 2018, and by CMS on February 27, 2019. The Lease has three attached addenda, each of which is expressly incorporated into the Lease by paragraph 1.3 that provides: "The following checked addenda are part of this agreement:" followed by check marks in front of "Addendum Lease/Rental [See RPI Fonn 550-1]," "Option to Renew/Extend Lease [See RPI Form 565]," and "Addendum 3: Aerial Photo with leased area designated." Thus, the operative terms of the Lease include those set forth in the standard form Commercial Lease Agreement (Form 552-3) as well as those included in the attached addenda:

Form 550-1, Form 565, and the aerial photograph. CMS admits the Lease is valid but claims the Option (Form 565) is not valid simply because CMS did not execute this Form separately from the standard Form Commercial Lease Agreement (Form 552-3). This assertion is unsupported by the law and by the facts.

California law establishes the validity of the entire Lease (the standard form 552-3 with all three of its attached addenda) regardless of the lack of Defendant's execution of the Option. Addenda incorporated into a contract need not be separately executed. "A contract may validly include the provisions of a document not physically a part of the basic contract .... 'It is, of course, the law that the parties may incorporate by reference into their contract the terms of some other document. [Citations.] But each case must turn on its facts. [Citation.] For the terms of another document to be incorporated into the document executed by the parties the reference must be clear and unequivocal, the reference must be called to the attention of the other party, and he must consent thereto, and the terms of the incorporated document must be known or easily available to the contracting parties.'" (*Williams Constr. Co. v. Standard-Pacific Cmp.* (1967) 254 Cal.App.2d 442, 454.) "The contract need not recite that it 'incorporates' another document, so long as it 'guide[s] the reader to the incorporated document.' [Citations.] (*Shaw v. Regents of University of California* (1997) 58 Cal.App.4th 44, 54, 67 Cal.Rptr.2d 850.)" [*Troyky. Farmers Group, Inc.* (2009) 171Cal.App.4th1305, 1331; *Dipito LLC v. Manheim Investments, Inc.* (S.D. Cal., Dec. 14, 2021, No. 3:21-CV-01205-HJLB) 2021WL5908994, at *11; 14A Cal. Jur. 3d Contracts§ 238.]

Here, Lease paragraph 1.3 is clear and unequivocal in its reference to Form 565. Defendant knew of the Option as it was initially provided by its own counsel, was reviewed by Defendant, and was discussed at negotiation sessions. The Option was attached to each of the three drafts of the Lease during negotiations. Defendant expressly consented to inclusion of the Option and all its terms, and never withdrew such consent at the time of signing or during the tenancy until, at or near the time they attempted eviction, when they claimed that the Option is not valid. The Option was available to all parties as it was physically attached to the Lease as the second addendum.

An option is a unilateral irrevocable offer; on the exercise of an option, there is a bilateral contract between the parties that obligates both the optionor and the optionee to perform according to the terms of the option. Here, CMS, by their execution of the Lease made the Option irrevocable. Upon exercise of the Option by Farrow, both parties became obligated to perform per the terms of the Option as agreed.

2. The Lease is an Integrated Contract with no Ambiguity as to Its Terms Including the Option.

The Lease is expressly integrated as set forth in paragraph 23.5 which states, "This lease agreement reflects the entire agreement between the parties". This clause indicates the parties' intent that the Lease reflects the final, complete, and exclusive statement of their agreement. The parol/extrinsic evidence rule prohibits the introduction of extrinsic evidence to vary or contradict the express terms of an integrated written instrument. The terms of a writing that the parties intend as a final expression of their agreement cannot be contradicted by evidence of a prior agreement or a contemporaneous oral agreement. A court is to rely strictly on the plain language of a contract and should not revise a contract in the guise of construing it. When the language of an instrument is clear and explicit and does not lead to an absurd result, the language of the contract is controlling. Also, when several writings are taken as one transaction, they must be so construed as to give effect, as far as practicable, to every part of each. "A contract and a document incorporated by reference into the contract are read together as a single document. ..." [*Id.* citing *Poublon v. C.H Robinson Company* (9th Cir. 2017) 846 F.3d 1251.] Civil Code § 1642, providing that multiple contracts are to be taken together, also applies to instruments or writings that are not, on their own, contracts. [Cal. Civ. Code§ 1642. *City of Brentwood v. Department of Finance* (2020) 54 Cal. App. 5th 418, 434; 14A Cal. Jur. 3d Contracts§ 236.]

"The decision whether to admit parol [or extrinsic] evidence involves a two-step process. First, the court provisionally receives (without actually admitting) all credible evidence concerning the parties' intentions to determine 'ambiguity,' i.e., whether the language is 'reasonably susceptible' to the interpretation urged by a party. If in light of the extrinsic evidence the court decides the language is 'reasonably susceptible' to the interpretation urged,

the extrinsic evidence is then admitted to aid in the second step-interpreting the contract." [*ASP Properties Group LP v. Fard Inc.* (2005) 133 Cal.App.4th 1257, 1267.] The threshold determination of whether there is "ambiguity" is a question of law. [(CCP § 1856(d).] Here, the plain meaning of the integrated Lease, when construed to give effect to all portions of the contract (including the Option Addendum), is unambiguous as it demonstrates that the parties mutually agreed that Plaintiff had the option to extend the lease per the terns expressly set forth in the Option. Mark and Stacey Ciddio both admitted that they "agreed" to the Option and understood that Farrow would sign the Option at a later time. "The purpose of the law of contracts is to protect the reasonable expectations of the parties" and "the mutual intention of the parties at the time the contract is formed governs interpretation." [*ASP Properties, supra* at 1268-1269.] Here, the language of the Lease is not reasonably susceptible to Defendant's allegation that the parties did not so mutually agree; extrinsic evidence is not necessary on this point. Perhaps more importantly, merger clauses (such as Paragraph 23.5 here) have been held conclusive on the issue of integration, so that parol evidence to show that the parties did not intend the writing to constitute the sole agreement will be excluded." [2 Witkin, Cal. Evid. 5th (2002) Documentary Evidence § 71(2).]

3. Extrinsic Evidence, if Considered, Supports Mutual Intent to be Bound by the Option.

Even if a document is a complete integration of the parties' agreement, extrinsic evidence may be held admissible to prove an interpretation for which it is reasonably susceptible. If the terms of a contract are ambiguous, reference may be made to extrinsic evidence and surrounding circumstances to resolve the ambiguity. Such interpretation based on consideration of the extrinsic evidence is an issue of fact. [CACI 318 Interpretation- Construction by Conduct.]

Whether a document is incorporated into the contract is a question of fact and depends on the parties' intent as it existed at the time of contracting. [*Versaci v. Superior Court* (2005) 127 Cal. App. 4th 805; *Shaw v. Regents of University of California* (1997) 58 Cal. App. 4th 44.] If, in taking the several writings together, an ambiguity arises, extrinsic evidence may be resorted to for the purpose of explaining their meaning.

Here, the extrinsic evidence and surrounding circumstances demonstrate both Farrow and CMS intended to be bound by all the terms of the Lease, including all three of its explicitly incorporated addenda, thus including the Option at issue. In November 2018, the CMS attorneys Borba Frizzell Kerns, P.C. drafted the standard form Commercial Lease Agreement and circulated it to the parties for review. The initial version, as well as all subsequent versions, included the second addendum, the Option (Form 565). This Option was included because Farrow (through principal John Farrow) previously told CMS (through principal Mark Ciddio) that Farrow intended to occupy the property on a long-term basis to allow establishment and eventual expansion of the business. Ciddio stated he could give Farrow a three-year term plus two four-year extensions. CMS' attorneys then filled out Form 565 with specific lease extension terms offering the option to extend the lease, initially by four years at a 2% rent increase, and then for another four years at a 4% rent increase; the Option was presented to Farrow along with the other contract documents. The parties orally agreed upon all the terms and conditions set forth in the Lease and each form was dated November 19, 2018, with the mutual intention that formal execution by the parties would follow.

Shortly after these oral discussions, plus a December 3, 2018, meeting at the property (the site visit referred to hereinabove), in reliance on the parties' mutual agreement on the lease terms, Farrow moved onto the property, began tenant improvements, and began operations. CMS did not object to Farrow moving forward. Farrow signed the Lease on December 7, 2018; he signed the fifth page of the standard form contract (Form 552-3) and signed Addendum Lease/Rental Agreement (Form 550-1). He did not sign the Option to Renew/Extend Lease (Form 565) only because he understood it to be an option to be exercised and executed closer to the end of the initial three-year rental term.

CMS (through its principal Stacey Ciddio) signed the Lease on February 27, 2019. CMS signed the fifth page of the standard form contract (Form 552-3) and signed Addendum Lease/Rental Agreement (Form 550-1) and the aerial photo but neglected to sign the Option to Renew/Extend Lease (Form 565). Stacey Ciddio testified that CMS agreed to the Option terms and did not intend to withdraw the Option at the time of signing. She testified she did not

communicate to Farrow any withdrawal of the Option and that she was aware that Farrow had not signed it only because he intended to sign it later if and when he chose to exercise the option. Mark Ciddio also testified that "we agreed [to two four-year options], but never signed the page." Based on this evidence CMS cannot argue revocation of their Option offer. [See CACI 308 Contract Formation - Revocation of Offer: CMS did not withdraw the offer; Farrow accepted the offer of an option before CMS attempted to withdraw it; no withdrawal was communicated to Farrow.] Stacey Ciddio, on behalf of CMS, signed the Commercial Lease Agreement with the attached Option and with the express language of Paragraph 1.3 incorporating the Option, and a signed copy was provided to Farrow. The first time CMS indicated any objection to the Option was at or near the time of their attempted eviction of Farrow after attorneys had become involved. The Option cannot be viewed in isolation or a vacuum; it must be taken together with the other documents in the transaction, including the express incorporation by paragraph 1.3, and considering the actions of the parties. CMS' act of signing the Lease was the functional equivalent of signing the Option both because the Option was expressly incorporated in the Lease and because CMS' signature demonstrated their confirmation of the terms fully negotiated and orally agreed upon on November 19, 2018. This evidence is persuasive of a mutual understanding notwithstanding the missing signature on the Option.

Further extrinsic evidence of CMS' intent to include the Option in the Lease may be found in the subsequent conduct of their attorneys Borba Frizzell Kerns, P.C. who represented CMS throughout the lease negotiations; such conduct is imputed to CMS under the laws of agency. On December 28, 2018, CMS' attorney Kristen Frizzell Kerns e-mailed John Farrow regarding certain items:

> *John,*
> *I understand there are still some outstanding items.*
> *With the lease, the Option page is not signed. Is that because you do not want the Option, or were you expecting to sign it only if you exercise the Option?*
> *Could you initial the map attachment and send it back?*
> *CMS has not received the Deposit, documentation from the court, and certificate of insurance. Time is of the essence on these items since Farrow has been operating on the site.*

In response to that e-mail, Farrow communicated to Ms. Kerns not "we do not want the Option," but rather, that Farrow planned to sign the Option around the time of the expiration of the initial lease term:

> *Hello Kristen,*
> *My name is Lydia and I am John Farrow's assistant. Please see attached the use permit from the County of Sonoma for 3 660 Copperhill Lane.*
> *John expected to execute the extension at the time the original lease expires.*

Thereafter, Kerns apparently received Farrow's initials on the aerial photo that is dated January 14, 2019, as she had requested, and made no further mention of the Option. Kern's acquiescence to Farrow's signature near expiration of the initial term is evidence that the term was intended to be binding and such conduct is imputed to CMS as Kern was clearly acting in her agency capacity.

On the agency issues, *Columbia Pictures Corp. v. De Toth* (1948) 87 Cal.App.2d 620 is instructive. Plaintiff (motion picture producing company) and defendant (director) entered into an oral agreement of employment at a specific salary and options according to plaintiff's standard form of contract for directors, under which each intended to be bound with agreement to sign the standard form contract at a future time. Defendant claimed he did not know the detailed and elaborate provisions of the standard form contract; nevertheless, he was held to the acts and expressions of his attorney as his agent. The court recognized defendant was represented in the making of the contract by attorney Allenberg; after attending a meeting with Columbia, defendant left the details to Allenberg. The court cited Civil Code sections 2330 and 2332, which provide: "'An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal.' ... [and] ... 'as against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.'" [*Columbia Pictures, supra.* at 630.] Further, "a principal is chargeable with and is bound by the knowledge of, or notice to, his agent received

while the agent is acting within the scope of his authority, and which is with reference to a matter over which his authority extends." [*Id.*]

Thus, the court imputed Allenberg's acts and words to the principal contracting party (defendant director) and held the oral contract evidenced by the terms set forth in the written contract, was valid. Likewise, here Kerns' indication that the Option remained viable to be executed and exercised at a later date is imputed to CMS.

C. **The Option Addendum was Timely and Validly Exercised**

The Option Addendum states, "6. Other Tenant shall notify Landlord at least one hundred eighty days (180) of its intent NOT to exercise the Tenant's option to renew." Thus, the language creates an automatic renewal that requires Farrow to do nothing to exercise the option; the terms require Farrow to notify defendant only if Farrow's intent was NOT to exercise the Option. The standard form Option to Renew/Extend Lease (Form 565) has a provision for written notice: "4. A written notice of Exercise of Option to Renew/Extend Lease needs to be delivered prior to expiration of the option exercised and no sooner than _ months before expiration of the option exercised," which paragraph was stricken by CMS prior to execution. Nevertheless, Farrow did take the affirmative step, on November 9, 2021, prior to expiration of the original lease term, of executing the Option and notifying CMS of its intention to exercise the option and extend the lease term. Farrow then attempted to pay full rent for November 2021, but Defendant returned the rent and this litigation ensued. Payments in the amount of the agreed rent were later timely resumed under the terms of the Preliminary Injunction ordering payments to continue pending the action.

Here, *ADV Cmp. v. Wilanan* (1986) 178 Cal.App.3d 61 is instructive. In that case, tenant ADV Corp. leased premises in Santa Ana from Wilanan to operate a used car business. The written lease agreement provided for a term of five years and included an option to renew for an additional five years. (*Id.* at 63.) Similar to the instant case, the ADV lease did not require the tenant to take any affirmative act to notify the landlord of its intent to exercise the option: "The [trial] court's minute order provides: 'There was no prescribed manner by which [ADV] was required to exercise its option to extend the lease.'" (*Id.* fn. 3).

Wikman initiated eviction proceedings and ADV filed a complaint seeking "a judicial determination that it exercised its option to renew the lease and was entitled to possession for an additional term of five years." (*Id.* at 64). The trial court found in favor of tenant ADV Corp. for three reasons: (1) the prior relationship between the parties, (2) ADV's conduct in expanding the tenant improvements (purchase of a new office trailer and storage shed, resurfacing the parking lot three times during its tenancy, and spending tens of thousands of dollars annually on advertising), and (3) the specific language in the lease. The court of appeal affirmed the judgment in favor of the tenant based on the language of the lease that did not require the tenant to notify the landlord of its intent to exercise the option, combined with the tenant's remaining in possession and tendering rent:

> [If] the lease ... [provides] merely for an extension, [the tenant's] remaining in possession (no specific form of notice having been required) [is] sufficient notification of [the tenant's] decision. [*ADV, supra,* 178 Cal.App. 3d at 66 (citations omitted; brackets and parentheses in original).]

The *ADV* court further explained:

> In other words, "if the lessor gives the lessee the right to an extension of the term, and does not specifically require him to give notice of his election to avail himself of such right, his mere continuance in possession after the original term is to be regarded as showing his election to that effect." [*Id.* (citation omitted).]

Here, Paragraph 6 of the Option does not require Farrow to do anything to exercise its option. In fact, the opposite is true - the language specifically states that the tenant is only to notify the landlord if the tenant does NOT intend to exercise the option. Moreover, consistent with his representation to CMS in December 2018, Mr. Farrow signed the Option on November 9, 2021, prior to expiration of the initial lease term. Also, like ADV, Farrow invested significant sums into the Property in reliance on the extended lease term. Thus, in compliance with all terms of the Lease, Farrow validly exercised the Option resulting in an extension of the Lease for the first option term of four years.

D. The Breaches Alleged Do Not Invalidate the Option to Extend the Lease

Defendant argues breaches based on (1) failure to satisfy each and every one of the 56

conditions of the use permit within a certain time period, and (2) alleged violations at the leased property pertaining to the Environmental Protection Agency, the North Coast Quality Control Board, or other governmental agencies. The Court finds the alleged breaches are not material breaches that would preclude exercise of the Option to extend the lease. Moreover, any such breaches were waived by CMS.

1. Farrow Was Not Required to Satisfy All 56 Conditions of the Use Permit Within a Specific Time Period.

The Addendum does not state that Farrow had to satisfy all of the conditions of the use permit within a specified time period.

The case *ASP Properties Group, L.P. v. Fard, Inc.* (2005) 133 Cal.App.4111 1257 is instructive. The underlying case was an unlawful detainer action filed by landlord ASP Properties Group, L.P. against its tenant Fard, Inc., who executed a 10-year lease of commercial property in La Mesa, California, with ASP's predecessor-in-interest to use for auto sales, repair, and auto related business. ASP sent Fard a letter in June 2003 demanding that Fard complete eleven specific items of "modifications, maintenance or repairs" within 60 days. (*ASP, supra,* 133 Cal.App.4th at 1264). ASP then served Fard with a three-day notice to perform covenants or quit on or about November 10, demanding that Fard completed the modifications, maintenance, or repairs within three days or quit its possession of the premises. (*Id.*) On November 26, ASP filed an unlawful detainer action, alleging Fard did not cure the three-day notice. (*Id.*) At the unlawful detainer trial, among other findings, the trial court interpreted the lease and its amendment as not requiring the tenant to install new roofs to replace the existing roofs. The landlord appealed, contending (1) the trial court erred in interpreting the lease and amendment not to require tenant to install new roofs and (2) the tenant breached the lease by not replacing the roofs of the premises. (*Id.* at 1268). The court of appeal affirmed the trial court's judgment in favor of the tenant. (*Id.* at 1265, 1274, 1276).

The term of the lease in *ASP Properties* was from April 1, 1997, to March 31, 2007. The lease contained a standard "Repairs and Maintenance" provision, which required the tenant to "maintain at his sole expense and without contribution from Landlord, the [P]remises in good

and safe condition, including, but not limited to[,] plate glass, electrical writing, plumbing and heating installation." (*ASP, supra,* 133 Cal.App.4th at 1262). On July 15, 2000, the parties executed an Amendment, which contained a $500 monthly reduction in rent for the remainder of the lease term, and added the following language to Paragraph 3 of the lease (regarding use of the premises): Tenant agrees to comply with any and all requirements, laws, ordinances, or other mandates of the City of La Mesa and at Tenant's expense to cure any condition, use or perform any necessary modification, maintenance or repairs as may from time to time be required by the City of La Mesa, or Landlord, within sixty (60) days of receipt of written notice that such a defect, violation or other conditions exists which is unacceptable to the City of La Mesa or Landlord. Tenant's failure to make any improvement, correct any condition, or otherwise comply with any written notice shall constitute a breach of this Lase if Tenant permits such conditions, violation or use to continue on or after the sixty-first (61st) day after receipt of such notice. (*Id.* at 1262-1263).

The Amendment also replaced Paragraph 4 of the Lease as follows: Repairs and Maintenance. Tenant shall maintain at his sole expense and without contribution from Landlord, the Premises in good and safe condition, including, but not limited to, the roof, plate glass, electrical wiring, plumbing and heating installation. (a) Tenant shall comply with any and all zoning regulations, laws, ordinances and other requests of the City of Law Mesa concerning the use, repair and maintenance of [Premises] as set forth in the correspondence received from the City of La Mesa and any future correspondence which concern[s] the use and/or maintenance and repair of the [P]remises. In addition to correcting the existing violation as of the date of [the Amendment], Tenant agrees to submit a plan ("Plan") as requested by the City of La Mesa for the remodel of the building to include, but not [be limited to,] the installation of handicap access and other changes as may be required by the City of La Mesa. Such Plan shall be submitted to Landlord for Landlord's consent prior to Tenancy submitting the Plan for approval by the City of La Mesa. After the Plan is approved by the City of La Mesa, Tenant agrees that it shall implement the Plan at Tenant's sole cost and expense, except [that] Landlord agrees that upon approval of the Plan by the City of La Mesa, he shall ... pay Tenant the sum of $1000.00 as

Landlord's contribution [toward] the actual cost of construction required under the approved Plan ... Any additional cost or expense in order to implement the Plan, complete the construction or otherwise comply with the Plan or to cure any existing or future violations as noted by the City of La Mesa or Landlord shall be at the sole cost and expense of the Tenant. (*Id.* at 1263).

In ruling in favor of the tenant, the trial court made several findings, including: From the [A]mendment the court gathers that there were some issues with the City of La Mesa, some code violations that were likely cited and that the [L]andlord was concerned that [T]enant should take care of those issues and that an Amendment was crafted and signed. (*Id.* at 1264).

The court does not find that the language in Paragraph 4 of the Amendment requiring the [T]enant to maintain in a good and safe condition, the roof, among other things, had the same meaning as the [T]enant must replace a roof that had already exceeded its life expectancy at the time [Tenant] took [possession]. (*Id.* at 1264-1265).

> ... The Court does not find that 'maintain' means to replace or to install initially. Thus, the Court finds [Tenant] had no obligation to install a new roof or to install heating and air conditioning ... The Court does not find that the [L]ease and [the Amendment] required [Tenant] to improve or modify anything and everything the Landlord requested. The bargained-for exchange between the parties was that [Tenant] brought the property into compliance with the City of La Mesa's codes and expended $30,000 - $40,000 maintaining the leasehold .... *The language of the Amendment is less than clear and must be construed against the drafter - [Landlord]. The Court will not read into the [A]mendment any more than it states. It does not say that [Tenant] must replace the roof.* When the [A]mendment was drafted, the testimony of the witnesses was that replacing the roof was not discussed. ((*Id.* at 1265) (bold in original; italics added for emphasis).)

The court of appeal began its analysis of the trial court's interpretation of the lease and amendment by summarizing the basic tenants of contract interpretation. These include the principle that, "Interpretation of a contract 'must be fair and reasonable, not leading to absurd conclusions.' [Citations]. 'The court must avoid an interpretation which will make a contract extraordinary, harsh, unjust, or inequitable. [Citation].'" (*Id.* at 1269). Moreover, Section 1643 provides: "A contract must receive such interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intent of the parties." In the event other rules of interpretation do not resolve an apparent ambiguity or

uncertainty, "the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist." (§ 1654.) (*Id.*) (Emphasis added.)

The court proceeded to focus on the primary purpose of the Amendment as it pertained to the parties' expectations vis-a-vis correcting various code violations. (*Id.* at 1271). The court found that the tenant's duty of maintenance could *only* be reasonably construed to require the tenant to *maintain* – not replace – the roofs in their conditions as of the time the lease was signed in 1997 and the amendment in 2000 ("i.e., in their then-dilapidated conditions"). (*Id.*) Had the parties intended Tenant to assume the obligation to replace the roofs, one would reasonably expect the Lease and/or Amendment to expressly so state rather than merely stating Tenant was required to maintain the roofs (and other parts of the Premises). (*Id.* at 1272.) (Emphasis added).

The court expounded: Case law supports a conclusion that, absent an express provision (or undisputed extrinsic evidence) showing a tenant has an obligation to replace a roof, a tenant's obligation to maintain or repair the premises (including a roof) does not include an obligation to replace an old, dilapidated roof with a new roof at tenant's expense. In *Iverson v. Spang Industries, Inc.* (1975) 45 Cal.App.3d 303 [119 Cal. Rptr. 399], a lease required the tenant to leave the premises in good order, condition, and repair except for reasonable use and wear. (*Id.* at p. 310.) *Iverson* stated:

> Such covenants are generally reasonably interpreted to avoid placing any unwarranted burden of improvement on the [tenant]. [Citation.] ... ' ... The tenant is certainly not obligated to restore the premises to his landlord in a better condition than they were at the inception of the tenancy. [Citations.]

In *Haupt v. La Brea Heating etc. Co.* (1955) 133 Cal.App.2d Supp. 784 [284 P.3d 985], a lease required the tenant to "'make whatever repairs are necessary to the floor' and 'to repair the floor to a usable state.'" (*Id.* at p. Supp. 788). *Haupt* concluded neither the lease nor statutory provisions (i.e., §§ 1928, 1929) obligated the tenant to restore the premises to a better condition than existed at the inception of the lease. (*Haupt, supra,* at pp. Supp. 788-789.) *Haupt* stated: "If, at the time of the letting, the roof was old and worn, *certainly [the tenant was] not required to repair the same and should not be held liable for the cost of a new roof* nor for damages

occasioned by rainwater finding its way into the premises. [Citation.]" (*Haupt, supra,* 133 Cal.App.2d at p. Supp. 789, italics added.) (*Id.* at 1272.)

The *ASP* court also surveyed cases from other jurisdictions, and quoted applicable language supporting its rationale:

> "... We cannot believe that the parties ever intended at the time of the execution of the lease here that the [tenant] would be burdened with an immediate $60,000.00 obligation for a roof and related structure by himself, let alone the other items, to substantially restore the [landlord's] building ..." ... [Landlord's] position is obviously unfair because it would give [landlord] a better, fully reconstructed building than he leased, the life of which improvements would extend far beyond the [tenant's] remaining term of less than eight years. It would become far superior to its condition at the date of the lease. By the express terms of the agreement, [the tenant's] obligation was only to keep it in its lease date condition. It had taken over 30 years for the building to reach its dilapidated state .... (*Id.,* citing *Scott v. Prasma,* (Wyo. 1976) 555 P.2d 571, 576-579).

The *ASP* court held that the landlord's attempted insinuation of language into the lease must fail:

> We conclude that although there is evidence supporting a finding both Landlord and Tenant knew, when the Lease and Amendment were executed in 1997 and 2000, the roofs needed to be replaced, that knowledge does not support a reasonable inference they intended, absent express language in the Lease or Amendment, Tenant be required to replace the already dilapidated roofs. (*Id.* at 1274).

Because the tenant was not required to replace the roofs, it was not in breach of the lease for not doing so:

> Accordingly, we conclude, as a matter of law, Tenant was not required to replace the roofs of the Premises pursuant to either the Lese or the Amendment. Therefore, we reject Landlord's assertion Tenant breached the Lease and Amendment by not replacing the roofs. (*Id.* at 1274).

In the instant case, CMS is attempting to do what the *ASP* landlord did – insert language into the lease that the lease did not contain; namely here, a requirement that Farrow satisfy all 56 conditions of the use permit within a particular time period. The lease, drafted as it was by the landlord, does not say that. The *ASP* trial court properly stated that it would "not read into the Amendment any more than it states." (*ASP, supra,* 133 Cal.App.4111 at 1265.) The court of

appeal referred to the absence of "express language in the lease" vis-a-vis the tenant's obligations. CMS had ample opportunity to draft the lease language to expressly state that the conditions of the use permit had to be satisfied within a certain period of time. For example, the lease addendum could have stated, "Tenant has 36 months to apply for, obtain, and/or satisfy all pre-operational conditions of the use permit." It did not; rather, the lease merely states, "Tenant will obtain the appropriate Use Permit for its use from the County of Sonoma within 12 months." The lease is utterly silent as to any time period required for the *satisfaction of the conditions* of that use permit.

2. The Alleged Breaches Were Non-Material and Do Not Affect Farrow's Ability to Remain in Possession of the Leased Premises

Commercial leases with options to renew/extend sometimes make it an express condition that the tenant keep all or certain covenants on his part; in such cases, nonperformance or breach of the covenants will defeat the tenant's right to renew the lease. [*Behrman v. Barto* (1880) 54 Cal.131, 132.] The Option at issue here has no such language.

Moreover, some cases have held a tenant was not entitled to exercise an option to renew/extend when it was in default on rent payments even absent an express written clause requiring such payment as a condition. This is because payment of rent is an implied condition. [*Nork v. Pacific Coast Medical Enterprises, Inc.* (1977) 73 Cal.App.3d 410, 416.] Farrow was current on rental payments when the option automatically executed and later when Farrow signed the option to extend on November 9, 2021. The evidence at trial shows Farrow timely tendered rent thereafter, initially returned by Defendant, but eventually accepted under the terms of the Preliminary Injunction. The alleged breaches argued by CMS here (permit use issues and environmental "violations") are not the kinds of breaches implied by law and are not the kinds of breaches that will nullify an option to renew/extend.

When the notice of exercise has been given in a timely manner, the tenant in default can exercise the option effectively if it has a substantial investment in the property and the defaults by the tenant are minor, or the landlord has waived the defaults, or the landlord's conduct renders

strict compliance with the lease or the renewal provisions futile. In some cases, a court may exercise its equitable jurisdiction and permit a lessee to renew a lease even though he or she is in violation of material terms of the lease. In this case the evidence shows Farrow has a substantial investment in the Property and was allowed to continue to operate on the premises under the use permit by the County of Sonoma by letter if Mr. Keefer long after any notice of abatement was issued (2011) or served.

Kaliterna v. Wright (1949) 94 Cal.App.2d 926, 935-936, disapproved on a different ground by *State Farm Mut. Auto. Ins. Co. v. Superior Court, In and For City and County of San Francisco* (1956) 47 Cal.2d 428, is applicable to this case. The court held where a lease renewal option was not made expressly conditional upon the full performance of the terms of the lease, the lessee was entitled to renew the lease despite certain alleged breaches of the lease which had, in the court's view, been waived by the landlord. The court rejected the landlord's argument that, to be entitled to renewal, a tenant must prove full compliance with all terms of the lease. The court pointed out that under any reasonable standard the tenant had fully complied in that she had paid her rent and made improvements to the property, such that forfeiture of the tenant's right to renew would be inequitable. [*Id.* at 935-936.]

The facts in *Kaliterna* are particularly on point here. Defendant/Lessor contended multiple breaches, *but only after the dispute arose* and defendant denied plaintiff's right to renew. "This was apparently the first intimation to plaintiff that the lessors thought the lease had been breached in any way." [*Id.* at 931.] During the litigation, defendants alleged failure to pay rent during an earlier term of the lease, failure to continually occupy the premises, failure to pay taxes on improvements, failure to keep the premises covered by fire insurance, unauthorized residential use of the premises, and structural changes without lessor approval. The court found:

> In the present case there was no breach by plaintiff which would justify a court in holding that plaintiff had lost the right to renew. Under any reasonable standard, plaintiff here had fully Performed, entitling her to renew by exercising the option. The evidence here shows

> that the lessor agreed to accept, and did accept, the reduced rental over the largest portion of the leased term; also, that the only proved breaches of the lease were waived. Moreover, the lease contained a grant of an option to renew, which was not made conditional upon the full Performance of the terms of the lease. [*Id.* At 936.]

Thus, as in the case at bar, the right to refuse to renew or extend the lease was waived by defendant who had acquiesced in the tenants' breaches of the terms and conditions of the lease.

Also instructive is *Title Ins. & Guaranty Co. v. Hart* (9th Cir. 194 7) 160 F .2d 961, cited by and relied upon by the *Kaltterna* court, which involved a mining operation conducted by tenant on the premises. In *Hart, supra,* the lease was actually conditioned on faithful compliance with the covenants of the lease; but nevertheless, the court held the lessee *not* precluded from exercising the option since "[i]t is not reasonable in human experience to expect that there could have been full, exact, strict, complete and perfect compliance with all of the covenants." [*Id.* at 970.] The breaches alleged in attempt to justify defendant's refusal to renew the lease were: failure to pay royalties, violations of California law (21 violations of Mine Safety and Mechanical Power Transmission orders of the California Industrial Accident Commission) and failure to keep complete records. [*Id.* at 968-970.] Particularly applicable here is the court's discussion of the legal violations of safety orders. The court noted:

> The record shows that the Commission allows a reasonable time for correction of any infraction of its numerous regulations, and it further shows that all matters testified to as violations were settled, and the case closed as far as the Accident Commission was concerned. All of these alleged violations appear to be relatively minor infractions and while it was necessary for the Commission to call the attention of lessees to certain violations more than once, it nevertheless is undisputed that appellee was not proceeded against, the mine was not closed and lessors were not injured by any of the violations of these safety orders. [*Id.* at 969.]

The court reached a similar conclusion in *Kern Sunset Oil Co. v. Good Roads Oil, Co* (1931) 214 Cal. 435 where the lease provided for the drilling and placing upon production of two wells each year until sixteen wells had been drilled and brought into production, during a period of over thirteen years the lessees had only completed thirteen wells. The court held that landlord's acceptance of rent for almost five years with knowledge of all the facts, without any complaints, constituted a waiver of the breach. [*Id.* at 440.]

Here, as in *Kalterna v. Wright, supra, Title Ins. & Guaranty Co. v. Hart, supra,* and *Kern v. Good Roads,* the evidence shows that the breaches claimed are not material terms that would nullify the option to extend the lease. As to the alleged 56 conditions of the use permit, the evidence supports due diligence throughout as well as waiver and acquiescence by CMS. As to the alleged governmental "violations," the issues have been dealt with and cured and have had no adverse effect on CMS. (See argument below in D.2.)

As in *Hart, supra,* and in the case at bar, exact, strict, and perfect compliance with the use permit issues is not practicable and was apparently not a concern of CMS during the tenancy of Carl's Ready Mix or for most of the tenancy of Farrow leading up to this dispute; this supports waiver and acquiescence by CMS. Also, as in *Kalterna, supra,* complaints of breach were only raised after the parties became adversarial. This timing suggests waiver and acquiescence by CMS of the breaches now alleged. As in *Kalterna, supra,* the Option here was not made expressly conditional upon the full performance of the terms of the lease, and we have the ambiguous and seemingly unlimited word "legalize" that defendants rely on in their argument. Thus, equity precludes removal of Farrow from the premises as Farrow has invested substantial sums in the Property in reliance on their option to renew for a total of eight years.

E. Defendant Has Not Proven Breaches

1. Failure to Fully Address all 56 Conditions Noted in the Use Permit Was Not a Breach of the Lease.

CMS claims Farrow is in breach of the Lease because it failed to satisfy all 56 conditions of the use permit within one year of the lease inception date, (November 19, 2018) or alternatively, within three years of its inception when the initial lease term expired (November 18, 2021). The evidence shows that Farrow is currently, and has been at all times during the tenancy, operating under a valid use permit as evidenced by a letter from the County of Sonoma dated December 27, 2018, that clarifies operation at the site is allowed pending satisfaction of the conditions of the existing use permit. Farrow has exercised reasonable and diligent efforts to satisfy the conditions of the use permit under the

circumstances and has expended substantial sums of money attempting to satisfy the final conditions of the use permit. The express language of the Lease clearly does not include any temporal deadlines as CMS claims.

Another addendum to the Lease at issue here is the "Addendum" Form 550-1 which includes the following terms drafted by CMS: "Agreement: 2. The following terms and conditions are made part of the above referenced lease or rental agreement: ... Other: Tenant will obtain the appropriate Use Permit for its use from the County of Sonoma within 12 months. Within thirty days, Tenant will provide a letter or otherwritten evidence that the County of Sonoma Permit and Resource Department (PRMD) will allow Tenant to legalize the existing use, and that the County will not prohibit the issuance of other pemits (for example, to other tenants or to Landlord) while Tenant is in the process of legalizing Tenant's use." Tenant agrees that other permits may be issued for other uses on the property, independent of Tenant's use, and will cooperate with landlord if necessary to obtain such permits.

In 2008, Carl's Ready Mix obtained a conditional use permit from the County of Sonoma to operate a concrete batch plant at the property. On or about April 22, 2008, the County issued a lengthy document entitled "Final Conditions of Approval" for UPE07-0112. On or about June 29, 2010, the County issued a similar document entitled "Final Conditions of Approval" for UPE07-0112. The "Final Conditions of Approval" advised Carl's Ready Mix of the non-operational and the operational conditions that it had to meet.

When Farrow purchased the assets of Carl's Ready Mix and commenced its tenancy at the property, despite Carl's Ready Mix's efforts, it had not met all of the Final Conditions of Approval. From the time CMS purchased the property in 2015 until Carl Davis moved out in late 2018, CMS never told Carl Davis that he had to satisfy all 56 conditions of the use permit or he would be evicted; never served Carl Davis with any warning notices regarding the final conditions of approval; never served him with any three-day notices to perform or quit regarding the final conditions of approval; and never served him with any three-day notices to perform or quit. After John Farrow executed the

lease with CMS on December 7, 2018, Mr. Farrow obtained the requisite letter from Sonoma County PRMD called for by the lease. On December 27, 2018, Brian Keefer, a Project Planner at the County of Sonoma Permit and Resource Management Department, sent a letter to Mr. Farrow which stated: *Hello Mr. Farrow, You may continue to operate the concrete mixing plant at 3660 Copperhill Lane pursuant to the Conditions of Approval of UPE07-0112. If you have any questions, please feel free to contact me at 707-565-1908, or via email at brian.keefer@sonoma-county.org.* Farrow provided a copy of this letter to CMS pursuant to the language in the Addendum. Stacey Ciddio signed the lease in Februa1y 2019 without questions or comment regarding Mr. Keefer's letter.

Testimony showed that from the beginning of its tenancy at the property, Farrow undertook efforts to satisfy the conditions of the use permit. Farrow's expert, the former PRMD Code Enforcement Manager from 2002-2011 and PRMD Building and Safety Division Manager from 2011-2015, testified at trial that the use permit is a valid use permit for Farrow's operations at the property and that the use permit has vested. During Farrow's tenancy, in December 2019, CMS received a letter from the County stating that violations of the use permit existed at the property. CMS forwarded a copy of this letter to Farrow, and Farrow continued its efforts to communicate with the County and to satisfy the conditions of the use permit. However, there were months during 2020 when the PRMD office was closed, and Farrow experienced delays beyond their control. At one point in August 2020, CMS hired an attorney to issue a three-day notice to perform covenants or quit. On August 6, 2020, CMS caused to be served on Farrow a "3-Day Notice toPerfo1m Covenant or Quit" which stated that "Per the ADDENDUM of your lease at #2 'Tenant will obtain the appropriate Use Permit from the County of Sonoma"'; "You have failed to obtain that Use Permit", and "Within three (3) working days from the service of this notice you must obtain that necessary use permit from the County of Sonoma, or you must quit and deliver up possession of the premises." In response, Farrow's attorneys sent a copy of the Brian Keefer December 2018 letter to CMS, who took no further action at that time to try to evict Farrow.

CMS' First Amended Cross-Complaint alleges in the First Cause of Action for Breach of Contract at Paragraph 20: "FARROW breached the lease during its occupation by not obtaining a Use Permit for operation of its business within twelve (12) months of its lease. While FARROW obtained consent from the County to operate under the CUP provided to Carl's, it never applied for a Use Permit in its own name. In addition, FARROW is in breach of the lease and operating in violation of governmental ordinance in not obtaining its own use permit as agreed, and in failing to meet all the conditions of the CUP provided to Carl's. It is still in breach of even the conditions imposed by that use permit."

These claims ignore the fact that the Lease does not set any time limit for satisfaction of the conditions of the use permit and that CMS never claimed with Carl Davis, or with Farrow (until after relations became adversarial), that failure to resolve all 56 conditions constitutes a breach of the Lease.

2. Alleged Environmental Violations Are Not a Breach of the Lease

CMS further alleges "violations" at the leased property pertaining to the Environmental Protection Agency, the North Coast Water Quality Control Board, the Bay Area Air Quality Management District, or other governmental agencies.

The evidence shows that the issues were cured to the extent Farrow was responsible.

Testimony and evidence showed Farrow worked with the NCWQCB for over a year to obtain a WDID ("Waste Discharge Identification) number, including hiring a consultant, George Goobanoff, to submit all necessary information to NCWQCB in order to be assigned a WDID. In the process, the NCWQCB issued several letters to Farrow, including one dated February18, 2021, which stated that NCWQCB was fining Farrow due to the delay in obtaining the WDID number. Farrow paid a penalty of $7,049.85 on February 12, 2021, and the matter was resolved. Farrow has obtained its WDID (1491029104), has uploaded its Storm Water Pollution Prevention Plan ("SWPPP") and site map as requested by the NCWQCB to its database, and resolved the issues noted in an April 2021 site visit. There are no issues with Farrow's business operations at the Property currently pending involving the

NCQWCB.

Farrow is currently working under a valid Annual Permit obtained from the Bay Area Air Quality Management District. There was a lapse at one point during the pandemic, but Farrow was not fined, and no adverse action was taken against Farrow. The permit was renewed.

With respect to the Environmental Protection Agency ("EPA"), an inspection of the property occurred on November 17, 2020, and testimony regarding this incident demonstrates that it has been resolved. There are no issues with Farrow's business operations at the Property currently pending involving the EPA.

E. Claims for Fraud/Concealment and Unfair Business Practices

There is no substantial testimony that CMS purposefully withheld information with the intent to conceal it from Farrow. Therefore, the Court finds in favor of Defendants on Farrow's third cause of action for Fraud/Concealment, and its fourth cause of action for unfair business practices pursuant to California Business and Professions Code section 17200 et seq.

DECISION

Based on the foregoing, Verdict shall be entered in favor of Plaintiff Farrow on plaintiff's first and second causes of action for breach of contract and declaratory relief. Verdict shall be entered in favor of Defendant CMS on plaintiff's third and fourth causes of action. The Court further finds that any monetary damages caused by the breach of contract are nominal as much of the expenditures incurred by Farrow, according to the evidence presented, would most likely have been incurred without a breach in pursuit of satisfying terms and conditions of the use permit. Farrow will not be awarded monetary damages on it's successful claims. However, the Court finds the exercise of the Option was valid.

Based on the foregoing, Verdict shall be entered against CMS and in favor of Farrow on all of CMS's causes of action alleged in their First Amended Cross-Complaint. CMS will not be awarded damages on its claims. Plaintiff shall prepare a Judgment for filing and entry according to the findings and decision contained in this Statement of Decision.

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The Court reserves jurisdiction on attorney fees and costs.

IT IS SO ORDERED.

Dated: June 15, 2023

BRADFORD DEMEO
Superior Court Judge

SCV-269684

PROOF OF SERVICE BY MAIL

I certify that I am an employee of the Superior Court of California, County of Sonoma, and that my business address is 600 Administration Dr., Room 107-J, Santa Rosa, California, 95403; that I am not a party to this case; that I am over the age of 18; that I am readily familiar with this office's practice for collection and processing of correspondence for mailing with the United States Postal Service; and that on the date shown below I placed a true copy of *STATEMENT OF DECISION AFTER COURT TRIAL* in an envelope, sealed and addressed as shown below, for collection and mailing at Santa Rosa, California, first class, postage fully prepaid, following ordinary business practices.

Date: June 16, 2023

Robert Oliver
Clerk of the Court

By: Sarah Helstrom
Sarah Helstrom, Deputy Clerk

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EXHIBIT 67A

Farrow Ready Mix

FRM - Improvement Costs Since October 2018 - November 12, 2021			Year Work Performed	Materials & Labor	Vendor/Sub
0					
1	**Public Road Improvements**				
	Entrance Road Improvement Goldengate			Materials Cost & Labor	
	Road Improvements between Creams and Farrow Ready Mix			Materials Cost & Labor	
2	**Yard Operational Improvements**				
	Entrance Signage			Materials Cost & Labor	
	8 Employee Parking Signage			Materials Cost & Labor	My Parking Sign
	2 Visitor Signage			Materials Cost & Labor	My Parking Sign
	STOP - Do Not Enter			Materials Cost & Labor	My Parking Sign
				Materials Cost & Labor	
	National Storage Tank - This is a Duplicate	2 - New 4050 Gallon Water Tanks		Materials Cost & Labor	
	Improvements to all Surfaces within the Yard	Gravel and Recycled 1- Road Base		Materials Cost & Labor	
	Office Steps and Handicap Ramp Poured			Materials Cost & Labor	
				Materials Cost & Labor	
				Materials Cost & Labor	
				Materials Cost & Labor	
				Materials Cost & Labor	
				Materials Cost & Labor	
				Materials Cost & Labor	
	Filtration Wash Pond			Materials Cost & Labor	
				Materials Cost & Labor	
3	**Office Improvements**				
	Floors Demo and LVP Redone			Materials Cost & Labor	Jody Johnson

55 a)

	4					
	5					
	6	**Employee OSHA Station - Compliance**				
			Goldenstate Lumber		Materials Cost & Labor	Golden State Lumber
			Goldenstate Lumber		Materials Cost & Labor	Golden State Lumber
			Goldenstate Lumber		Materials Cost & Labor	Golden State Lumber
			Goldenstate Lumber		Materials Cost & Labor	Golden State Lumber
	7	**SWPPP's Implementation and Maintenance**				
		Side of the Lease			**Labor ONLY**	
		requirements			Materials Cost & Labor	
		Plastic Coverings and PIG Material			Labor ONLY	
			PIG Material		Materials Cost & Labor	PIG Materials
			Plastic 5 Mill Covering 7 Staples		Materials Cost & Labor	
			Mesh Staples		Materials Cost & Labor	White Cap
			Gravel Bags		Materials Cost & Labor	White Cap
			Waddles		Materials Cost & Labor	Harmony Ag Supply
			Silt Fencing		Materials Cost & Labor	
			Spill Kits		Materials Cost & Labor	
			Ph Testing Gun		Materials Cost & Labor	
			Manual Ph Strips		Materials	Johnson Pools
			Pig Emergency Chemical Containment		Materials	
		SWPPP's program			Contract Cost	Scott Environmental
		Chemicals Containment Walls			Materials Cost & Labor	
					Materials Cost & Labor	Golden State Lumber
					Materials Cost & Labor	Golden State Lumber
			Tony Doiron's	6/4/2021	Pump & Labor	Tony Doiron's
	8					
	9					
	10					

11	**DOT Compliance & Driver Compliance**				
	JJ Keller Consultant Costs			Contract Cost	
12	**Control**				
		3 - New 2600 Gallon Water Tanks	2018-2019	2/2/2019	
	National Storage Tank	2 - New 4050 Gallon Water Tanks	9/7/2021	Materials Cost & Labor	
	Pacific Pump Service	Hook up 3 New Water Storage Tanks	2/4/19	Materials Cost & Labor	Pacific Pump Service
	Pacific Pump Service	Pump	2/4/19	Materials Cost & Labor	Pacific Pump Service
	Pacific Pump Service	Hook up Truck Wash Station	6/19/19	Materials Cost & Labor	Pacific Pump Service
	Friedman's	20 Amp Breaker Box - Sub Pump 1 & 2	2019	Materials	Friedman's
	Water Pumps on Property	Sump Pump 1 x 3	2019	Materials	Grainger
	Pace Supply	including PVC, Fittings and Pumps	2019	Materials	Pace Supply
	to Water Holding Pit				

15					
16	**Final Conditions of Use (started in 2018)**				
	Engineering Work		2021		Adobe Associates, Inc
	Engineering Work		2021		Adobe Associates, Inc
	Engineering Work		2021		Adobe Associates, Inc
	Engineering Work		2021		Adobe Associates, Inc
	Engineering Work		2021		Adobe Associates, Inc
17	**Compliance - Permits (started in 2018)**				
	Department of Housing and Community Developement	Coach Trailer Permit	2021		
	Department of Housing and Community Developement	Coach Trailer Permit	2021		
	District SWPPP's	Pemitting	2021		
18					

Invoice Number	Estimated Misc	Cost of Material	Total for Misc.	Estimated Materials	Qty	Cost Per	Expense	Management	[illegible]	[illegible]	[illegible]	Loader Operator Labor Rate	3. Loader Operator Cost Total
				12	Tons	$6.46	$77.52		24	$100.00	$2,400.00	$47.00	$1,128.00
				30	Tons	$6.46	$193.80		8	$100.00	$800.00	$47.00	$376.00
				1	ea	$600.00	$600.00						
MPS-615987				8	ea	$31.25	$273.13						
MPS-615987				2	ea	$36.95	$80.73						
MPS-617042				1	ea	$152.13	$152.13						
				1			$6,910.60						
				300	Tons	$6.46	$1,938.00		100	$100.00	$10,000.00	$47.00	$4,700.00
	1	$150.00	$150.00	8	Yards	$61.00	$638.00					$47.00	$0.00
				4	Yards	$61.00	$244.00		2	$100.00	$200.00	$47.00	$94.00
1812011-1				480	Sq. Ft.	$3.00	$1,440.00						

b)

5

							$39.52						
							$30.76						
							$37.42						
							$323.26						
				375	Ea	$25.00	$9,375.00		40	$100.00	$4,000.00	$40.00	$1,600.00
									16	$100.00	$1,600.00	$40.00	$640.00
							$1,864.07						
							$400.00						
10014153721				1	box	$65.31	$65.31						
50015631234				50	bags	$9.54	$476.86						
2877				84	waddles	$20.84	$1,750.66						
							$500.00						
							$500.00						
				2	ea	$30.00	$60.00						
				1	ea	$34.53	$34.53						
				1	ea		$2,788.80						
							$2,245.00						
				8	Yards	$61.58	$492.64						
	1	$130.58	$130.58				$130.58						
	1	$46.38	$46.38				$46.38						
.25193							$679.00						

(6)

						$35,782.65	
				3	$1,900.00	$5,700.00	
				2	$3,120.00	$6,987.40	
No Inv #						$571.88	
No Inv #						$3,579.90	
604116						$125.00	
19183259						$64.27	
						$727.66	
15626486						$692.44	
						$1,000.00	

51115						$1,668.75
51455						$537.50
51658						$4,301.00
52159						$4,095.00
52491						$4,123.75
	$196.00					$196.00
	$51.00					$51.00
	$7,049.85					$7,049.85

Telehandler Time	Telehandler $ per Hour	Telehandler Operating Fee Total	Telehandler Operator Labor Rate	Telehandler Operator Cost Total	Framer/ Finisher Work Hours	Framer/ Finisher Hourly Rate	6. Framer/ Finisher Total	SubTotals	TOTAL EXPENSE
									$4,975.32
								$3,605.52	
								$1,369.80	
					4	$31.00	$124.00	$724.00	
4	$50.00	$200.00						$473.13	
1	$50.00	$50.00						$130.73	
1	$50.00	$50.00			0.5	$50.00	$25.00	$227.13	
								$6,910.60	
								$16,638.00	
0	$50.00	$0.00	$50.00	$0.00	27	$31.00	$837.00	$1,625.00	
								$1,682.00	
									$16,502.47
							$340.00	$1,780.00	

									$430.96
								$39.52	
								$30.76	
								$37.42	
								$323.26	
									$34,678.79
								$14,975.00	
								$2,240.00	
4	$50.00	$200.00			160	$31.00	$4,960.00	$5,160.00	
								$1,864.07	
					3	$31.00	$93.00	$493.00	
								$65.31	
								$476.86	
								$1,750.66	
								$500.00	
								$500.00	
								$60.00	
								$34.53	
								$2,788.80	
								$2,245.00	
								$492.64	
								$261.16	
								$92.76	
								$679.00	

									$35,782.65
								$35,782.65	
								$5,700.00	
3	$50.00	$150.00	$50.00	$150.00				$7,287.40	
								$571.88	
								$3,579.90	
								$125.00	
								$64.27	
								$727.66	
								$692.44	
								$1,000.00	

$1,668.75	
$537.50	
$4,301.00	
$4,095.00	
$4,123.75	
	$7,296.85
$196.00	
$51.00	
$7,049.85	

From: Suzanne Berncich
To: Cecily Condon
Subject: Re: Bza meeting
Date: Tuesday, March 5, 2024 12:00:57 PM

EXTERNAL

The date works for us we need this dealt with as there are many safety concerns

On Mon, Mar 4, 2024 at 4:17 PM Cecily Condon <Cecily.Condon@sonoma-county.org> wrote:

> I am sorry to have missed you,
> I am the one currently assigned to complete the item for hearing, materials related to the status of conditions had been submitted just after Blakes departure. The final hearing materials are still in development. We are tentatively scheduled to bring the item forward on March 28, 2024 to the BZA. The item will be publicly noticed 10 days prior to the hearing date which would serve as confirmation of the hearing. If this hearing date is not possible for you please let us know so we can reschedule accordingly.
>
> Thank you,
> Cecily
>
> -----Original Message-----
> From: ferinatrucking@gmail.com <ferinatrucking@gmail.com>
> Sent: Monday, March 4, 2024 3:52 PM
> To: Cecily Condon <Cecily.Condon@sonoma-county.org>
> Subject: Re: Bza meeting
>
> EXTERNAL
>
> Follow up. Hello Cecily, we never heard back from you, we came in and were told you're working from home. Got no where would like some answers please.
>
> > Who didn't complete additional materials?
>
> > Is there a tentative or estimated date this will be brought back to BZA?
>
> Is the BZA aware of all of the safety issues with this use permit? That was the main question at the last bza meeting however the attorney didn't address or answer the question.
>
> Much appreciated.
>
> Sent from my iPhone
>
> > On Feb 22, 2024, at 1:48 PM, ferinatrucking@gmail.com wrote:
> >
> > Ok, who didn't complete additional materials? Is there a tentative or estimated date this will be brought back to BZA? Thank you again for keeping me informed.

>
> Sent from Suzanne's iPhone
>
>> On Feb 22, 2024, at 1:42 PM, Cecily Condon <Cecily.Condon@sonoma-county.org> wrote:
>>
>> Suzanne,
>> The item was not held for hearing today because additional materials from the original continued hearing were not complete in time for the required legal noticing deadlines and the file has since been reassigned to me directly after the retirement of Blake. We will let you know when a new target date is established.
>>
>> Cecily
>>
>> -----Original Message-----
>> From: ferinatrucking@gmail.com <ferinatrucking@gmail.com>
>> Sent: Wednesday, February 21, 2024 1:10 PM
>> To: Cecily Condon <Cecily.Condon@sonoma-county.org>
>> Subject: Re: Bza meeting
>>
>> EXTERNAL
>>
>> Thanks for the update. Why was this canceled? Please keep me informed.
>> Much appreciated
>> Sent from Suzanne's iPhone
>>
>>>> On Feb 20, 2024, at 1:29 PM, Cecily Condon <Cecily.Condon@sonoma-county.org> wrote:
>>>
>>> This item is not scheduled for Thursday 2/22 I am working to find the next viable date and will inform you as soon as possible.
>>>
>>> Cecily
>>>
>>> -----Original Message-----
>>> From: ferinatrucking@gmail.com <ferinatrucking@gmail.com>
>>> Sent: Tuesday, February 20, 2024 7:52 AM
>>> To: Cecily Condon <Cecily.Condon@sonoma-county.org>
>>> Subject: Bza meeting
>>>
>>> EXTERNAL
>>>
>>> Hello is the BZA meeting still on for 2/22? Regarding 3660 Copperhill Lane? Please advise.
>>> Sent from my iPhone
>>>
>>>
>>> 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.
> >>
> >>
> >> THIS EMAIL ORIGINATED OUTSIDE OF THE SONOMA COUNTY EMAIL SYSTEM.
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