

From: ruralangwin . <kelliegato@gmail.com>
Sent: Tuesday, October 15, 2019 5:04 PM
To: Barrella, Donald <Donald.BARRELLA@countyofnapa.org>
Cc: Morrison, David <David.Morrison@countyofnapa.org>; Bordona, Brian <Brian.Bordona@countyofnapa.org>
Subject: Fwd: Comments on Use Permit Exception Item 7A Bremer Family Winery LLC

Donald,

Please include the attached comments for the Planning Commission Item 7A.

Thank you,

Kellie Anderson
Linda Falls Alliance

----- Forwarded message -----

From: ruralangwin . <kelliegato@gmail.com>
Date: Tuesday, October 15, 2019
Subject: Comments on Use Permit Exception Item 7A Bremer Family Winery LLC
To: joellegPC@gmail.com
Cc: andrewmazotti@gmail.com, anne.cottrell@lucene.com, JeriGillPC@outlook.com, dave.whitmer@countyofnapa.org

Dear Commissioners,

Please accept the attached comment letter on item A7 for tomorrow's Planning Commission meeting.

I will provide hard copies of County Notice of Violation/Non Compliance at the hearing.

Thank you,

Kellie Anderson

To: Joelle Gallagher
Napa County Planning Commission Chair
1195 Third St.
Napa CA 94558

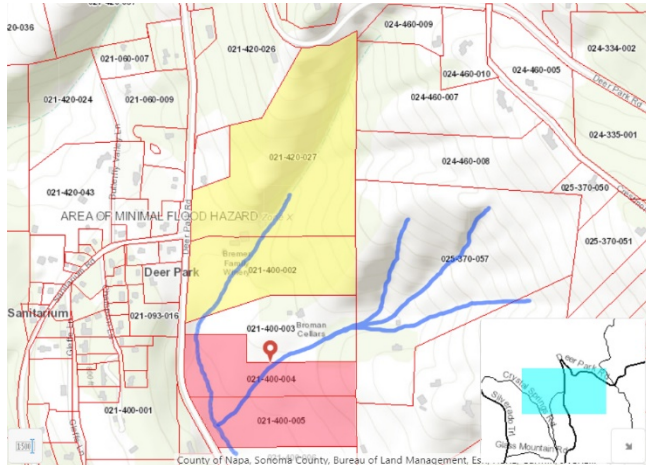
From Kellie Anderson
Linda Falls Alliance
Angwin CA

October 15, 2019

Dear Commissioner Gallagher,

Please accept the following comments on the Agenda Item 7A Bremer Group LLC Use Permit Exception.

1 The staff report **incorrectly** states the *Intermittent Channel Enhancement Plan* proposed to mitigate for stream encroachments is already required by another public agency and is therefore **not** part of the Use Permit Exception you are considering. This is incorrect. The parcels that are the subject of the Use Permit Exception are APN # 021-400-002 & 021-420-027. Shown in yellow on map.



These two parcels are the location of the unnamed stream south of the winery which is impacted by building and infrastructure encroachments within required stream setbacks.

A Cleanup and Abatement (CAO Order No. R2-2017-00XX Bremer Family Winery) was issued by The Regional Water Quality Board RWQB for unauthorized construction activities on an entirely different ephemeral stream reach, located on APN # 021-400-004 & 021-400-005 south of the stream which is the subject of the Use Permit Exception request. Shown in red on map. **The Regional Water Quality Control Board CAO does not address the encroachments you are considering, the parcels you are considering, nor the stream segment you are considering.** See CAO attached.

https://www.waterboards.ca.gov/sanfranciscobay/board_info/agendas/2017/May/bremer/TO.pdf

As the RWQB CAO does not apply to the stream encroachments in the Use Permit Exception request, the staff report is in error and the applicants' proposed Channel Enhancement Plan cannot be dismissed for the reason stated.

Adoption of the Use Permit Exception as recommend would be based upon inaccurate information. Given the complexity, confusion and legal status of this matter I request you once again delay this hearing until such time that the staff report is corrected to accurately reflect that no other agency is involved with mitigations on the stream reach impacted by winery encroachments.

2. The *Intermittent Chanel Enhancement Plan* (proposed in the September 18, 2019 staff report) to mitigate for stream encroachments is unacceptable because **prior stream encroachment violations (which were the subject of County of Napa Notice of Non Compliance/Notice of Violation dated November 4, 2015) for vineyard encroachments into stream setbacks) **already burdens** the footprint of the proposed Intermittent Channel Enhancement Plan. It is unreasonable for multiple, unrelated stream set back encroachment violations to offer mitigation and or restoration on the same footprint. Each environmental violation must be subject to an individual restoration, remediation or mitigation to offset environmental harm.**

I remain completely baffled, as I am sure the Commission is, as to how Staff could be unaware of the prior mitigation measures it specifically required, but never implemented for previous stream set back violations. The November 4, 2015 Notice states:

NOTICE OF NONCOMPLIANCE

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

As you are aware through the approved plan, the County's March 3, 2015 letter, and subsequent conversations on this matter portions of Vineyard Block A-1 and B-2, as identified on the approved ECPA, encroach into required stream setbacks, and that the encroaching vines are required to be removed and underlying area restored as specified in approved ECPA #P11-00317 and supporting documentation

1 to establish conforming stream setbacks as part of the project. Based on a June 4, 2015 site inspection of these vines it was determined that the vines you removed (or otherwise rendered unproductive) and the additional vines that you flagged for removal observed the required setback except for the following: within Block A-1 in Vine rows 5 through 11 and in Vine row 16, additional vines

that need to be removed to meet the required setback were identified. The additional vines that need to be removed were marked with orange spray paint.

A revision to Agricultural Erosion Control Plan # P11-00317-ECPA 7-31-2012 states:

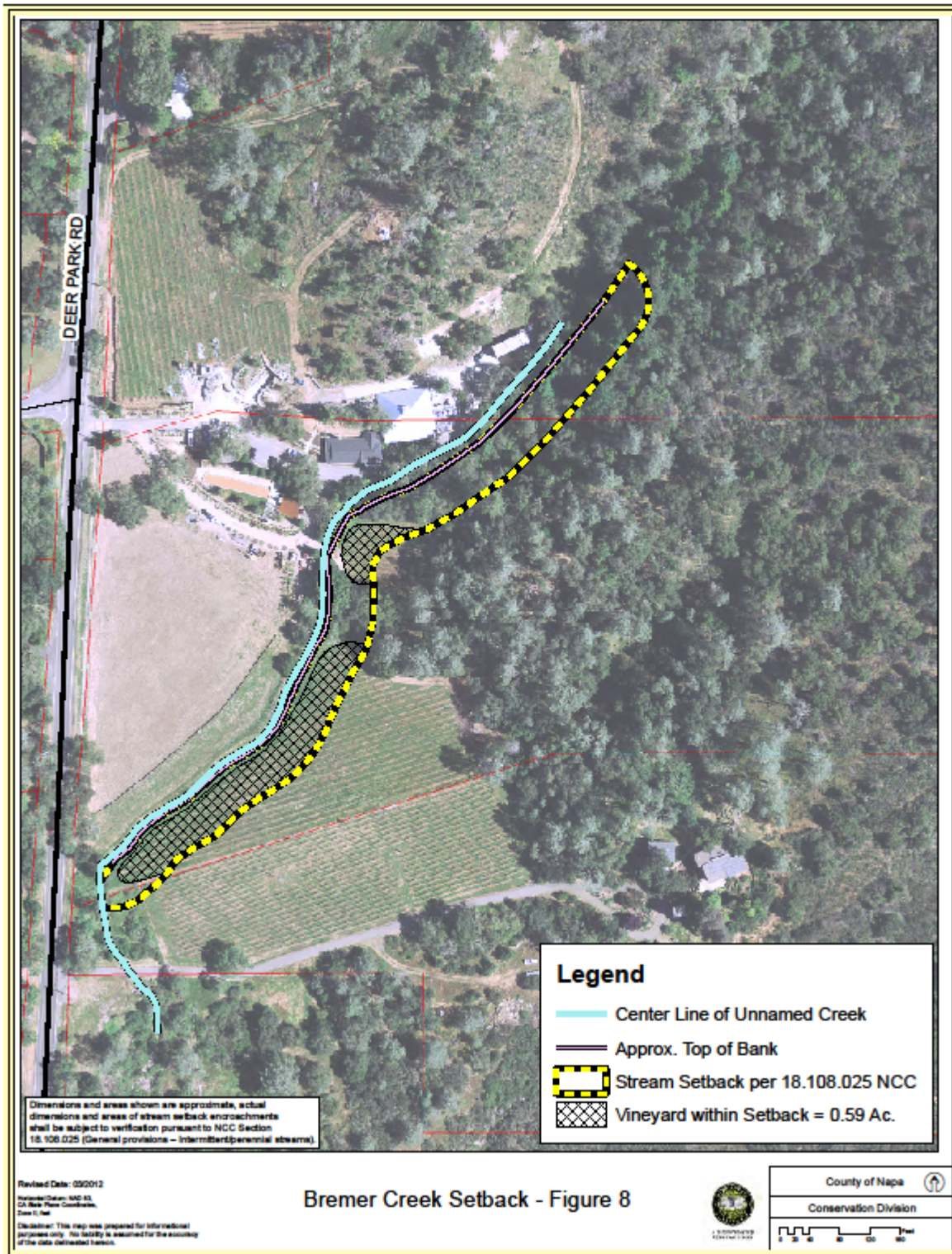
The proposed Re-vegetation plan specified in Mitigation Measure BR-1.c shall include a stream setback restoration component to restore areas within required County stream setbacks resulting from existing vineyard development encroaching into the designated stream setbacks as required by Mitigation Measure BR-4a along the southern side of the blue line tributary located on APN #021-400-002. The plant pallet of the re-vegetation plan shall include native ground cover, shrubs and a minimum of 25 oak trees that are typically found in this area and are compatible/consistent with the area to be restored: plant selection, procurement, and survival criteria for the stream setback restoration component shall be that specified in Mitigation Measure BR-1.c.

The area called for in Mitigation Measure BR-1.c of the modified Erosion Control Plan is the same foot print called out for mitigation in the Use Permit Exception. This is unacceptable as MM BR-1.c was never actually implemented and the site cannot provide mitigation for yet another Bremen stream encroachment violation!

Mitigation Measure of the Modified Erosion Control Plan BR-1c.iv further states:

Following implementation of the re-vegetation plan, a monitoring report shall be provided to the County annually until which time a minimum 80% survival rate has been reported. Monitoring reports shall include the success of planting, number of replacements necessary, photographs, and other information that illustrates the condition and location of any failed plantings.

This mitigation measures from 2012 have never been implemented by the Bremers nor have they been monitored by the County for compliance for stream set back violation restoration requirements. See Map Figure 8 Bremer Creek Set Back from 2012.



Note the map in Figure 8 is the same foot print of the previously proposed Intermittent Channel Enhancement Plan shown below.



Two separate stream encroachments cannot be mitigated in the same location. Loss of riparian habitat has not been mitigated for in either of the encroachments violations.

3 The impacts of the stream encroachment violations that occurred during Bremers ownership cannot be dismissed because some encroachments predate their ownership. Mitigation on some **developable** lands must be required to offset stream encroachment impacts which are the result of Bremer activities within stream setbacks.

I recommend the following: implementation of all previously required stream restoration work from Notice of Violation and Modified ECPA be immediately implemented.

Additionally an independent, qualified botanist will identify locations of rare Holly Leaf Ceanothus on undeveloped areas of the Bremer property (see mitigated negative declaration) and these plants be provided a reasonable buffer by elimination of vineyard blocks that would otherwise destroy individual plants. No relocation of Holly Leafed Ceanothus should be permitted. An independent, qualified botanist should be required to annually verify avoidance and survival of Ceanothus populations and publish a report of success on County Current Projects Web Site. A deed restriction must be recorded to ensure protection of the rare Ceanothus area.

Lastly, mitigation for steam encroachments considered in the Use Permit Exception request should require elimination of all fertilizer, pesticides, and nutrient use on landscape plantings within required stream setbacks to protect aquatic resources from run off into creek.

Please accept my comments for consideration in solving this most unusual and complex situation.

Sincerely,

Kellie Anderson

Linda Falls Alliance

Angwin CA