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Recommended Findings

Use Permit Exception #P20-00143

**PLANNING COMMISSION HEARING – July 1, 2020
RECOMMENDED FINDINGS**

**Bremer Family Winery
Use Permit Exception to the Conservation Regulation
Application Number P20-00143-UP
975 Deer Park Road, St. Helena, California
APNs 021-400-002 and 021-420-027**

ENVIRONMENTAL:

The Planning Commission (Commission) has received and reviewed the proposed Categorical Exemption pursuant to the provisions of the California Environmental Quality Act (CEQA) and of Napa County's Local Procedures for Implementing CEQA, and finds that:

1. Because the project includes the recognition and retention of four existing site improvements in their current configurations, and no construction or grading is proposed, it has been determined that this project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act pursuant to Section 15301, Class 1 Minor Alterations to Existing Facilities, Section 2, Class 2 replacement and Reconstruction, Section 15303, Class 3 New Construction or Conversion of Small Structures, Section 15304, Class 4 Minor Alterations to Land, Section 15333, and the "General Rule" Exemption in that it can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment as detailed in the Project's CEQA Determination Memo prepared by Napa County, July 1, 2020 (Attachment C of the Napa County Planning Commission July 1, 2020 staff report).
2. The site of this proposed project is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5 and is not within the boundaries of any airport land use plan.
3. The Secretary of the Commission is the custodian of the records of the proceedings on which this decision is based. The records are located at the Napa County Planning, Building & Environmental Services Department, 1195 Third Street, Second Floor, Napa, California.

USE PERMIT:

The Commission has reviewed the use permit major modification request in accordance with the requirements of the Napa County Code §18.124.070 and makes the following findings:

4. The Commission has the power to issue a Use Permit under the Zoning Regulations in effect as applied to property.

Analysis: Exceptions to the County's Conservation Regulations are subject to a Use Permit, and Use Permits are subject to review by the Commission (County Code Sections 18.108.040 and 18.124.010). There is no companion action necessary for the requested Use Permit that would require action by the Board of Supervisors. The project site is located in the Agricultural Watershed (AW) zoning district. The recognition and retention of four existing site improvements that are

intended for residential or winery uses are permitted in the AW District. The project, as conditioned, complies with the requirements of the Zoning Code as applicable.

5. The procedural requirements for a Use Permit set forth in Chapter 18.124 of the Napa County Code (zoning regulations) have been met.

Analysis: The application for a Conservation Regulation Use Permit Exception has been appropriately filed, and notice and public hearing requirements of Napa County Code (NCC) Section 18.136.040 and CEQA Guidelines Section 15072 have been met. On June 5, 2020, notice of public hearing and intent to adopt a Categorical Exemption was published in the Napa Valley Register, posted with the Napa County Clerk, mailed via first class mail to owners of property within 1,000 feet of the subject parcel, and mailed via first class mail or electronic mail to the applicant, and posted on the County's website.

6. The grant of the Use Permit, as conditioned, will not adversely affect the public health, safety or welfare of the County of Napa.

Analysis: Granting the Conservation Regulation Use Permit Exception for the project, as proposed and conditioned, will not adversely affect the health, safety or welfare of the County. The project includes the recognition, retention and maintenance of four existing site improvements that serve the site's existing residential or winery uses: no new construction or grading would occur as part of this Permit. No new or expanded uses or development are proposed or considered in this Permit that would generate new vehicle trips on the road network in the vicinity of the site. Additionally, the Use Permit Exception will be conditioned to ensure the protection of the public health, safety, and welfare.

7. The proposed use complies with applicable provisions of the Napa County Code and is consistent with the policies and standards of the Napa County General Plan and any applicable specific plan.

Analysis: The proposed Use Permit Exception will recognize and allow four existing site improvements that encroach into the stream setback required pursuant to NCC Section 18.108.025, to be retained and maintained. The County's Conservation Regulations (NCC Section 18.108.040) identify the Use Permit as the appropriate mechanism for allowing exceptions to the standard stream setbacks. The project site is located in the Agricultural Watershed (AW) zoning district which allows residential and winery uses. Recognizing, retaining and maintaining the four existing residential and winery site improvements would not be inconsistent with the sites zoning designation and current use limitations. The proposed Exception would not result in tree removal, consistent with General Plan Goal CON-6 which encourages the preservation of woodlands for their environmental and open space value. The Exception will not impact or cause removal of any vegetation along or within the stream, significantly change the natural state of the stream, or impair the vital ecological functions of the creek.

EXCEPTION TO CONSERVATION REGULATIONS:

8. Roads, driveways, buildings and other man-made structures have been designed to complement the natural landform and to avoid excessive grading.

Analysis: This Permit is to recognize and maintain four existing site improvements, located within required stream setbacks, in their current configurations and use limitations: no new construction or grading, or new use or use modifications are included or considered with this Permit. Because several of the site improvements subject to this Permit are primarily a result of minor alterations, maintenance or replacement of historic site development and use as shown in #U-697879, that has been done in a manner to complement pre-existing development (such as through the use of natural stone and low walls) and are generally limited to the historic development envelope or areas immediately adjacent thereto, that minimized grading necessary for the improvements and were designed to complement existing and natural features as evident in the field and Exhibits within the subject application (Attachment D of the Napa County Planning Commission July 1, 2020 staff report).

9. Primary and accessory structures employ architectural and design elements which in total serve to reduce the amount of grading and earthmoving activity required for the project including the following elements: a) multiple-floor levels which follow existing, natural slopes; b) foundation types such as poles, piles, or stepping levels which minimize cut and fill and the need for retaining walls; c) fence lines, walls, and other features which blend with the existing terrain rather than strike off at an angle against it.

Analysis: As detailed in Finding #8, this Permit is to recognize and maintain four existing site improvements located within required stream setbacks in their current configurations and use limitations. No new construction or grading, or new use or use modifications are included or considered with this Permit. Additionally because the four site improvements subject to this Permit are primarily a result of minor alterations, maintenance or replacement of past/historic site development and use as shown in #U-697879, that have been done in a manner to complement the character of pre-existing development (such as through the use of natural stone and low walls) and are generally limited to the past/historic development envelope or areas immediately adjacent thereto, that minimized grading, the site improvements were designed to complement and blend with existing and natural features and site development as evident in the field and Exhibits within the subject application (Attachment D of the Napa County Planning Commission July 1, 2020 staff report). Furthermore, these site improvements are approximately 400 feet or further from Deer Park Road and are oriented to the roadway in a manner that intervening vegetation and terrain partially screen the site.

10. The development project minimizes removal of existing vegetation, incorporates existing vegetation into the final design plan, and replacement vegetation of appropriate size, quality and quantity is included to mitigate adverse environmental effects.

Analysis: This Permit is to recognize and maintain four existing site improvements located within required stream setbacks in their current configurations and use limitations: no new grading or vegetation removal is included or considered with this Permit and existing vegetation and site

conditions will remain unchanged. Based on historic aerial image review and interpretation it does not appear that any significant vegetation has been removed within the stream setback area since the Bremer's have acquired the property in 2002.

11. Adequate fire safety measures have been incorporated into the design of the proposed development.

Analysis: Because this Permit is limited to the recognition and maintenance of four existing site improvements located within required stream setbacks in their current configurations and use limitations, and no new construction or uses are being proposed or considered under this Permit, new or expanded fire safety measures are not necessitated. Additionally, the existing access is anticipated to provide adequate emergency ingress and egress to the site, and any future request to modify existing use limitations or introduce a new conditional use will necessitate compliance with the County Road and Street Standards.

12. Disturbance to streams and watercourses shall be minimized, and the encroachment if any, is the minimum necessary to implement the project.

Analysis: This Permit is to recognize, retain and maintain existing site improvements located within required stream setbacks in their current configurations, many of which occurred as a result of maintenance or alteration of past/historic site development as shown in #U-697879. No new stream encroachments are proposed or considered under this Permit: improvements within the stream setback that are subject to this Permit are existing and will remain unchanged. No new construction or grading, new or modified uses, or disturbance of the stream are included or considered with this Permit. Furthermore, the existing walls and improvements built within the stream corridor have not significantly changed the natural state of the stream and that there is no impairment of the vital ecological functions of the creek (FirstCarbon Solutions Environmental Consulting, Biological Report, March 2019).

13. The project does not adversely impact threatened or endangered plant or animal habitats as designated by state or federal agencies with jurisdiction and identified on the County's environmental sensitivity maps.

Analysis: No new construction, grading or site development, or modification or existing use limitations, is included in this Permit. The stream and its ecological functions were evaluated by two biologists and a certified professional erosion and sediment control (CPESC) consultant. All three professionals opined that the stream is functioning normally and that the native vegetation present is typical for this part of the County. The CPESC consultant's report noted that "overall stream health and riparian function in the upper reach by the winery are in good condition." (Planning Commission Staff Report, September 18, 2019, Attachment E.) The Biological Report from FirstCarbon Solution found that, "The creek meanders through the property, uninterrupted, largely in its natural state and appears to be functioning as such. ... It is our biological professional opinion that the walls and improvements built within the creek corridor have not significantly changed the natural state of the ephemeral creek and there is no impairment of the vital ecological function of the creek." (Planning Commission Staff Report, September 18, 2019, Attachment D.) These opinions were echoed in biologist Geoff Monk's testimony: "the channel is functioning very well, fine. All the flows are well below any structure that has been constructed. There's no constriction,

there's no sedimentation issues. It's a very stable stream channel the way it is now." (Certified Planning Commission Hearing Transcript, October 16, 2019, page 17:21-24.)

Additional sources including the Napa County Geographic Information Sensitivity maps/layers Sensitive biotic vegetation groups, US Fish & Wildlife Critical Habitat, California Natural Diversity Database (CNDDDB), Owl habitat CNDDDB, and Wetlands and Vernal Pools; Kjeldsen Biological Consulting November 2011; and, Theodore Wooster, Consulting Biologist, March and December 2011 further substantiate the project site and unnamed blue line stream which traverses the site are not mapped as an environmentally sensitive resource.

14. An erosion control plan, or equivalent NPDES stormwater management plan, has been prepared in accordance with Section 18.108.080 and has been approved by the Director or designee.

Analysis: The site is currently covered by an Industrial Stormwater Pollution Prevention Plan pursuant to NCC Section 16.28.100: WDID# 2-28I027266 (Application ID#488948).