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CEQA Determination

Use Permit Exception #P20-00143

Use Permit Exception to the Conservation Regulations  
Bremer Family Winery #P20-00143-UP  
Planning Commission Hearing - Wednesday, July 15, 2020



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**David Morrison**  
Director

**MEMORADUM**

<b>To:</b> Planning Commission	<b>From:</b> Donald Barrella, Planner III
<b>Date:</b> July 1, 2020	<b>Re:</b> Bremer Family Winery Use Permit Exception to the Conservation Regulations #P20-00143 Categorical Exemption Determination Assessor Parcel #021-400-002 & #021- 420-027

**BACKGROUND**

Pursuant to Section 303 of Napa County’s Local Procedures for Implementing the California Quality Act (CEQA), the Planning Division has prepared this environmental evaluation for the proposed Bremer Family Winery Use Permit Exception to the Conservation Regulations (File #P20-00143-UP).

The project proposes the recognition, retention, and maintenance in their current configuration and use limitations the following four existing site improvements, or portions thereof, that encroach into minimum stream setbacks required pursuant to Napa County Code (NCC) Section 18.108.025(B) that range from 45 feet to 65 feet from the top of bank of an unnamed blue-line stream, and as depicted in the Bremer Use Permit Exception – Attachment D in the staff report to the Planning Commission:

1. an approximate 2,200 square foot agricultural storage building and associated water tank,
2. an approximate 800 square foot pad and associated walls attached to the winery,
3. an approximate 150 square foot ground floor/story addition and second floor/story deck to the farmhouse/office building, and
4. an approximate 100 square foot freestanding restroom.

**EXISTING SETTING**

The project is located on an approximate 47.1 acre holding (APN 021-400-002 and 021-420-027: 975 Deer Park Road) that have a General Plan land use designation of Agriculture, Watershed and Open Space (AWOS), and are located in the AW (Agricultural Watershed) zoning district.

The site was originally developed in the late 1800's and early 1900's with a winery, a dwelling/farmhouse and associated accessory structures, such as a barn and other agricultural buildings/sheds, and site improvements such as but not limited to access and landscape improvements. Overall development on the property includes: a winery building and associated pad, an Ag storage building, a residence/farmhouse, freestanding restroom, tractor shed/covered carport, access drives/ways, low decorative and landscape walls and associated landscaping, three pedestrian bridges, a

wine cave and associated portal, second dwelling unit, two shade structures, bocce court, outdoor kitchen, retaining walls, and approximately 5 acres of vineyard.

Access to the property is from Deer Park Road via a paved driveway. The nearest residence to the project site is approximately 675 feet to the northeast. An unnamed blue line stream traverses the site in a northeast to southwest direction, a majority of the existing site improvements are located on the north side of the stream.

The project site is not located on any of the lists of hazardous material sites compiled pursuant to Government Code Section 65962.

### **PAST APPROVALS**

August 15, 1979: Use Permit #U-697879 was approved by the Planning Commission for the subject site to reactivate a 6,780 square foot winery with a maximum production capacity of 14,400 gallons per year, and with limited if any visitation (i.e. public tours or tastings).

December 13, 2007: The Planning Director approved #P07-00654-UP for a Minor Use Permit Modification, which authorized an approximate 11,685 sf cave.

June 4, 2009: The Planning Director approved #P08-00088-VMM for a very minor modification to #P07-00654 to increase the cave from 11,685 sf to 16,136 sf.

May 5, 2020: The Board of Supervisors upheld a portion of the Planning Commission's September 18, 2019 decision to approve #P19-00153, approving two of six existing site improvements within the required stream setbacks, including decorative rock walls and two pedestrian bridges. The Board took further action and remanded the four remaining existing structures described listed above in the Background section to the Planning Commission to reconsider, each on its own merits, and with greater scrutiny. The Planning Commission is scheduled to reconsider the four remaining structures at their July 15, 2020 meeting.

### **CONSIDERATION OF THE PUBLIC TRUST**

With respect to the consideration of public trust resources, the public trust doctrine requires the state and its legal subdivisions to "consider," give "due regard," and "take the public trust into account" when considering actions that may adversely impact a navigable waterway. (*Environmental Law Foundation v. State Water Resources Control Bd.* (2018) 26 Cal.App.5th 844, 861, 868; *San Francisco Baykeeper, Inc. v. State Lands Com.* (2018) 29 Cal.App.5th 562, 569.) There is no "procedural matrix" governing how an agency should consider public trust uses. (*Citizens for East Shore Parks v. State Lands Com.* (2011) 202 Cal.App.4th 549, 576.) Rather, the level of analysis "begins and ends with whether the challenged activity harms a navigable waterway and thereby violates the public trust." (*Environmental Law Foundation*, 26 Cal.App.5th at p. 403.) As outlined below, three qualified professionals reached the conclusion that no harm has occurred to the onsite waterway.

Furthermore, evaluating project impacts within a regulatory scheme like CEQA is sufficient "consideration" for public trust purposes. (*Citizens for East Shore Parks*, 202 Cal.App.4th at pp. 576-577.) The courts have refused to impose factual evaluation requirements or procedural constraints on agencies considering the public trust. (*Citizens for East Shore Parks*, 202 Cal.App.4th at p. 577; *World*

*Business Academy*, 24 Cal.App.5th at p. 509.) Additional justification related to the consideration of public trust resources can be found in the Finding of Fact and Decision on Appeal for Use Permit No. P19-00153-UP, adopted by the Napa County Board of Supervisors on May 5, 2020.  
<https://services.countyofnapa.org/AgendaNetDocs/Agendas/BOS/5-5-2020/9C.pdf>

## **CEQA EXEMPTION CRITERIA AND ANALYSIS**

Article 19 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA Guidelines) establishes a list of classes of projects that are categorically exempt from the provisions of CEQA. This project qualifies as an exempt activity under five sections of Article 19:

- California Code of Regulations (CCR) §15301 (Class 1, Existing Facilities), which exempts operation, repair, maintenance, permitting, or minor alteration of existing structures, facilities, or topographical features involving negligible or no expansion of use beyond that existing at time of the lead agencies environmental baseline determination;
- CCR §15302 (Class 2, Replacement or Reconstruction), which exempts the replacement or reconstruction of existing structures and facilities where the new structures will be located on the same site as the structure being replaced and will have substantially the same purpose and capacity of the structure replaced;
- CCR §15303 (Class 3, New Construction or Conversion of Small Structures), which exempts the construction of small facilities or structures including accessory structures;
- CCR §15304 (Class 4, Minor Alterations to Land), which exempts alterations in the condition of land including grading on land with a slope of less than 10 percent, new landscaping, and minor trenching where the surface is restored; and,

Under CEQA Guidelines Section 15300.2, Class 3 and 4 Categorical Exemptions cannot be used if the project substantially affects mapped or designated environmentally sensitive areas or resources.

Additionally, the CEQA Guidelines include an exemption based on “the general rule that CEQA applies only to projects which have the potential to cause a significant effect on the environment.” (14 CCR, § 15061(b)(3); see *Muzzy Ranch Co. v. Solano County Airport Land Use Comm’n* (2007) 41 Cal.4th 372.) Under this exemption, an agency can find a project is exempt from environmental review if “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” (14 CCR, § 15061(b)(3).).

Pursuant to Public Resources Code Section 15125 the 'baseline conditions' (or the environmental setting) that a project's potential effects are compared against are typically the physical environmental conditions present when an application is submitted and the environmental analysis is commenced. In this case, all the site improvements subject to this use permit exception application are existing, some of which predate the County's Conservation Regulations. Additionally, legal precedent has established that existing unauthorized or illegal activities do not require baseline conditions to be rolled back to earlier/previous environmental conditions, because rolled back baselines are considered difficult to define and a hypothetical comparison (*Kenneth F. Fat v. County of Sacramento*), and that enforcement to rectify past illegal activity is not in the realm of CEQA (*Riverwatch v. County of San Diego*). Accordingly, the County is utilizing the existing site conditions and improvements as the environmental baseline for the CEQA analysis and exemption determination associated with this application.

The recognition, retention, and maintenance of the subject four existing site improvements in their current configurations and use limitation qualifies as an exempt activity under CCR §15301 (Class 1, Minor Alteration to Existing Facilities), in that no additional construction or grading is proposed or would occur to recognize and maintain the site improvements subject to this application. The intent of the project is to permit pursuant to NCC Section 18.108.040 (Exceptions in the form of a use permit) the existing site improvements or portions thereof located within required stream setbacks pursuant to NCC Section 18.108.025 (General provisions – Intermittent/perennial streams) so that they can be retained and maintained.

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.

Therefore, the project does not result in effects to mapped or designated environmentally sensitive areas or resources. Additionally, no grading has or would occur in the bed of the stream, a wetland, a flood zone or Bremer Family Winery Use Permit Exception to Conservation Regulations P20-00143 Page 4 floodway, or in officially mapped areas of severe geologic hazard such as an Alquist-Priolo Earthquake Fault Zone or within an official Seismic Hazard Zone, as delineated by the State Geologist.

Regarding the Class 2, 3 and 4, exemptions, because no construction, grading, or expansion of the existing site improvements subject to this application are being proposed or contemplated under this use permit exception, and that the site is not located within an environmental sensitive area, PBES staff has determined the exemptions as applicable in this case. Additionally, it has been determined that past modification of existing site improvements that occurred after adoption of the Conservation Regulations would have likely qualified for one or more these exemption classes, in addition to the Class 1 Exemption.

Furthermore, because the subject application does not propose or include construction or grading activities, or alterations to existing site improvements or use limitations, there would be no direct or

indirect physical changes to the environment; therefore, PBES staff has also determined the subject Exception Request would also qualify for a general rule exemption pursuant to CCR, § 15061(b)(3).

Therefore, for all of the reasons articulated above and contained within the administrative record for the Project, PBES staff have determined the Project is categorically exempt, in that there is no reasonable possibility that the project would have a significant effect on the environment, because there will no changes in the existing environment or to the existing site improvements, except for the enhancement of a portion of a stream to offset existing encroachments which has also been determined to be exempt. Furthermore, none of the exceptions in 14 CCR Section 15300.2 for the Class 3 and 4 exemptions are applicable because the site is not in a mapped environmentally sensitive area, and the project is limited to recognition and retention of existing site improvements and features, with no increase in building or structure footprints and no modification or intensification of existing use limitations.