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Agenda Date: 10/16/2019

Agenda Placement: 7A

Continued From: September 18, 2019

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission

FROM: Charlene Gallina for David Morrison - Director
Planning, Building and Environmental Services

REPORT BY: Donald Barrella, Planner III - 707-299-1338

SUBJECT: Bremer Family Winery - Stream Setback Use Permit Exception to the Conservation Regulations
P19-00153

RECOMMENDATION

BREMER GROUP LLC. / BREMER FAMILY WINERY / USE PERMIT EXCEPTION TO THE CONSERVATION REGULATIONS FOR EXISTING SITE IMPROVEMENTS - APPLICATION #P19-00153-UP

CEQA Status: Consideration and possible adoption of Categorical Exemptions Class 1, 2, 3, and 4. It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. [See Section 15301, Class 1 Minor Alterations to Existing Facilities; Section 15302, Class 2 Replacement or Reconstruction; Section 15303 Class 3 New Construction or Conversion of Small Structures; Section 15304, and Class 4 Minor Alterations to Land, which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15301, §15302, and §15304. This project has also been determined to be exempt pursuant to CCR §15061 in that the recognition, retention, and maintenance of existing site improvements has no possibility of causing a significant effect. This project is not on any lists of hazardous waste sites enumerated under Government Code Section 65962.5.

Request: Approval of a request for an exception to the Napa County Conservation Regulations (County Code Chapter 18.108), in the form of a Use Permit, in order to maintain in their current configuration the following existing physical site improvements, or portions thereof, that encroach into the minimum required stream setbacks pursuant to County Code Section 18.108.025(B) ranging from 45 feet to 65 feet from the top of bank of an unnamed blue-line stream. **A. Components Necessary to Remedy Existing Violations by Recognition of the following:** (1) an approximate 2,200 square foot agricultural storage building and associated water tank, ~~(2) an approximate 200 square foot ground story/floor remodel of a winery building;~~ (3) 2) approximate 800 square foot pad and associated walls attached to the winery, ~~(4) 3) an approximate 150 square foot ground floor/story addition and second floor/story deck to the farmhouse/office building;~~ (5) 4) an approximate 100 square foot freestanding restroom, ~~(6) an approximate 1,000 square foot carport;~~ (7) approximately 13,800 square feet of internal access drive ~~(+7,982 square feet paved and +5,820 square feet gravel surfaced);~~ (8) 5) approximately 3,740 square feet of landscaping, ~~(9) 6) approximately 1,210 lineal feet of rock walls;~~ and ~~(10) 7) three~~ two pedestrian bridges over a blue-line stream;

B. Expansion Beyond Existing Site Improvements or Entitlements: None.

The Applicant has proposed an Intermittent Channel Enhancement (ICE) Plan for a 400 foot stretch of the blue-line stream; however, because the ICE Plan is already required by another public agency it is not part of the Use Permit Exception request before the Commission. Staff has clarified that the components of the application shown as deleted above either pre-date the Conservation Regulations or were previously entitled and therefore not subject to the Use Permit Exception Request.

The project is located on an approximate 47.1-acre holding (APNs 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.

Staff Recommendation: Find the project categorically exempt from CEQA and approve the Use Permit Exception request as conditioned.

Staff Contact: Donald Barrella, Planner III; phone (707) 299-1338; email, donald.barrella@countyofnapa.org

Applicant: John Bremer, on behalf of the Bremer Group LLC.

Representative: David B. Gilbreth, Attorney; phone (707) 337-6412; email, dbgilbreth@gmail.com

CONTINUED FROM THE SEPTEMBER 18, 2019 COMMISSION MEETING**EXECUTIVE SUMMARY****Proposed Actions:**

That the Planning Commission:

1. Find the project Categorical Exempt based on Findings 1-3 of Attachment A (as revised); and
2. Approve an Exception to the Conservation Regulations in the form of a Use Permit (#P19-00153), based on Findings 4-14 of Attachment A (as revised), and subject to the Conditions of Approval listed in Attachment B (as revised).

Discussion:

On September 18, 2019, the Planning Commission held a public hearing to consider a Use Permit Exception to the Conservation Regulations to recognize and allow existing site improvements associated with the property's long standing winery and the residence that presently encroach into required stream setbacks in County Code §18.108.025 (General provisions - Intermittent/perennial streams). The September 18, 2019 Staff Report is available at: (<http://services.countyofnapa.org/AgendaNet/GranicusMeetingDocuments.aspx?id=5735>)

Prior to and at the September meeting, the Commission received requests by the public to continue the item to allow additional time to research the property records. The item was subsequently continued by the Planning Commission to the October 16, 2019 meeting to provide staff additional time to clarify which improvements within the stream setback predated the Conservation Regulations and are therefore exempt and which improvements post-date the Conservation Regulations and trigger the Use Permit Exception for stream setbacks. The Commission also directed staff to: 1) explain how the application integrates with the terms of the Settlement Agreement between Napa County and the Bremer's; 2) clarify baseline conditions and impact analysis and determinations pursuant to CEQA; 3) and provide more information regarding the ICE Plan and its relationship to

past vineyard removal and the State Water Board's Final Corrective Action Workplan (Final CAW).

This application was submitted to comply with Section 10 of the Settlement Agreement which requires the Bremer's to apply for a Use Permit Exception to the Conservation Regulations to recognize and allow improvements existing within the creek setback. The application was also submitted to participate in the County's Code Compliance Program (Resolution No. 2018-164) adopted by the County on December 4, 2018. The application does not include any expansion or modification to the existing site improvements, or to the existing residential or winery uses or operations that have been previously entitled. This application is for the sole purpose of recognizing and allowing the existing site improvements that encroach into required stream setbacks that were constructed after the enactment of the Conservation Regulations in 1991. As further described below, since the last Commission meeting staff has clarified: 1) which components of the application pre-date adoption of the Conservation Regulations and therefore not subject to the Use Permit Exception; 2) which components of the application are within the scope of the winery's 1979 use permit and therefore previously entitled and not subject to the Use Permit Exception; and 3) which components of the application post-date adoption of the Conservation Regulations and require the Commission action on the Use Permit Exception.

Staff continues to believe the necessary findings can be made to approve the Use Permit Exception because: 1) the project would not result in substantial effects to mapped or designated environmentally sensitive areas or resources; 2) no work would be performed within the defined bed or bank of the stream; and 3) all of the site improvements located within stream setbacks are existing and would remain unchanged. Staff recommends approval of the project (i.e. the recognition) of the existing site improvements located with required stream setbacks subject to the recommended conditions of approval.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No

County Strategic Plan pillar addressed:

ENVIRONMENTAL IMPACT

Pursuant to Public Resources Code §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, many of which predate the County's Conservation Regulations.

Consideration and possible adoption of Categorical Exemptions Class 1, 2, 3, and 4. It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. [See Section 15301, Class 1 Minor Alterations to Existing Facilities; Section 15302, Class 2 Replacement or Reconstruction; Section 15303 Class 3 New Construction or Conversion of Small Structures; and Section 15304, Class 4 Minor Alterations to Land, which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15301, §15302, and §15304. This project has also been determined to be exempt pursuant to CCR §15061 in that the recognition, retention, and maintenance of existing site improvements has no possibility of causing a significant effect. This project is not on any lists of hazardous waste sites enumerated under Government Code Section 65962.5.

BACKGROUND AND DISCUSSION

This application was continued from the Planning Commission meeting on September 18, 2019 to provide additional information and at the public's request. Since the last Commission meeting, staff has clarified: 1) which components of the application pre-date adoption of the Conservation Regulations and therefore not subject to the Use Permit Exception; 2) which components of the application are within the scope of the winery's 1979 use permit and previously entitled and therefore not subject to the Use Permit Exception; and 3) which components of the application post-date adoption of the Conservation Regulations and require the Commission to act on the Use Permit Exception.

Site Development and Stream Setback Encroachment History:

Site Improvements Subject to the Conservation Regulations that Require Commission Action on the Use Permit Exception Request - The following improvements located within the stream setbacks occurred after adoption of the Conservation Regulations in 1991 and require a Use Permit Exception. The Commission is being asked to recognize and approve the following within stream setbacks:

- i. Replacement of the 320 sq. ft. Barn with an approximate 2,200 sq. ft. Ag Storage Barn;
- ii. An approximate 800 sq. ft. concrete pad located off the east side of the winery building;
- iii. An approximate 150 square foot ground floor/story addition and second floor/story deck to the Main Dwelling (a.k.a. farmhouse/office building);
- iv. An approximate 100 sq. ft. freestanding restroom;
- v. Approximately 1,210 lineal feet of low decorative rock walls; and
- vi. Two pedestrian bridges.

Site Improvements that Pre-Date the Conservation Regulations and are Entitled Under the 1979 Winery Use Permit and not Subject to the Use Permit Exception Request - Several of the site improvements that the Applicant included in the application existed prior to adoption of the Conservation Regulations (1991) and implementation of stream setbacks. These improvements are also memorialized in the property's 1979 Winery Use Permit (#U-697879)(the 1979 Use Permit) approval documents. Since the following improvements are already entitled, they are not subject to the Use Permit Exception request and are not before the Commission for action:

- i. Main Dwelling (a.k.a. - the Farmhouse), approximately 1,300 sq. ft.;
- ii. Winery Building, 6,780 approximately sq. ft.;
- iii. Garage/Shed (a.k.a. the tractor shed or covered carport), approximately 1,125 sq. ft.;
- iv. Parking and access areas, approximately 13,802 sq. ft.;
- v. Barn (a.k.a. the Ag Storage Barn), approximately 320 sq. ft.;
- vi. Vehicle bridge (southern bridge).

Based on the site plans for the 1979 Use Permit, historic aerial imagery interpretation, and site inspections and reports, the overall footprint of improvements within stream setbacks have not materially changed. The resurfacing of the access and parking areas pursuant to the 1979 Use Permit conditions of approval would have required a paved all weather surface consisting of 5 inches of aggregate base with a double seal coat, covering approximately 13,802 sq. ft.

Site Improvements that Occurred Within Previously Disturbed and Entitled Areas and not Subject to the Use Permit Exception Request - Several site improvements were made to structures and features identified and entitled under the 1979 Use Permit. Because these improvements occurred to existing legally established structures within existing disturbed areas, and did not encroach further into required stream setbacks, they are not part of the Use Permit Exception request and are not before the Commission for action:

- i. Replacement of the existing 1,125 sq. ft. Garage/Shed with an approximate 1,000 sq. ft. Covered Carport within the existing footprint;
- ii. Installation of approximately 3,740 sq. ft. of landscaping; and
- iii. An approximate 200 sq. ft. ground story/floor remodel of the building projection located on the south side of the winery building;

Settlement Agreement:

Section 10 of the Agreement is the subject of this Use Permit Exception to the Conservation Regulations (#P19-00153-UP) and required the Bremer's to submit a Conservation Regulation Use Permit Exception application so that the County could consider allowing the improvements located within the creek setback to be recognized and approved in their current configuration. While Section 10 of the Settlement Agreement specifies that County staff reasonably would recommend approval of this Use Permit Exception if it is consistent with the County Code and would not result in any significant adverse environmental impacts, that recommendation is not binding on the Commission. The Planning Commission retains its discretion on this project.

Intermittent Channel Enhancement (ICE) Plan:

The Applicant originally offered restoration of an approximate 400 linear foot stretch of the blue-line stream (located +/-300 feet southwest of the project site), encompassing approximately 0.33-acres (+14,375 square feet). Questions were raised by the public and Commission as to how the ICE Plan relates to a prior requirement to restore areas of the site and to the Final Corrective Action Workplan (Final CAW) required by the State Water Resources Control Board (SWRCB). Staff has subsequently determined that the ICE Plan is already required by the SWRCB pursuant to the Final CAW related to the vineyard (P16-00271-ECPA) and therefore is not part of the Use Permit Exception request before the Commission.

Public Comments - At the time of staff report preparation, no additional public comments had been received.

Decision-Making Options (Components Necessary to Remedy Existing Stream Setback Violations located on APNs 021-400-002 & 021-420-027, 975 Deer Park Road):Option 1: Approve Applicant's Proposal (Staff Recommendation) Discussion

This option would allow the existing site improvements that encroach into the County's minimum required stream setbacks to be maintained and utilized for their authorized uses. No other exceptions or variances to the County Standards are requested or necessary.

Action Required - Follow the proposed action listed in the Executive Summary. If recommended condition(s) of approval are to be amended, identify specify conditions to be amended at time motion is made. This option has been analyzed for its environmental impacts and was found to be Categorically Exempt from CEQA.

Option 2: Redesign Alternative

Discussion - This option would require the Planning Commission to identify what site improvements should be removed and underlying areas to be restored. This option would likely still require a use permit exception to recognize and maintain those site improvements located within setbacks that could be retained.

Staff does not support this option because they are associated with site improvements that predate the Conservation Regulations and/or occur within the existing footprint of Pre Conservation Regulation development. And that their removal could result in potential impacts to the stream and riparian corridor as a result of grading

and earthwork necessary to remove the site improvements and restore the underlying area(s), which could also include the need for additional CEQA review.

Action Required - Follow proposed actions listed in the Executive Summary and amend scope and project specific conditions of approval to identify which site improvements could be retained and which improvements that need to be removed and underlying areas restored. Should the Commission want to redesign the project, staff would recommend that the Commission continue the item to a future hearing date, at its discretion to allow staff to reevaluate the project.

Option 3: Deny the Requested Use Permit

Discussion - Denial of the requested use permit would require all site improvements encroaching into stream setbacks, other than the ones developed prior to the adoption of the Conservation Regulations, to be removed and underlying areas restored. Staff does not support this option for the reasons noted in Option 2.

In the event the Commission determines that the project as conditioned does not or cannot meet the required findings for grant of a use permit exception, the Commissioners should articulate what aspect or aspects of the project are in conflict with the required findings. State law requires the Commission to adopt findings, based on the General Plan and County Code, setting forth why the proposed use permit exception is not being approved.

Action Required - Commission would adopt a tentative motion to deny the project and remand the matter to staff for preparation of required findings to return to the Commission at a future hearing date.

Option 4: Continuance Option

The Commission may continue an item to a future hearing date, at its discretion.

SUPPORTING DOCUMENTS

A . Recommended Revised Findings

B . Recommended Revised Conditions of Approval & Agency Memos

Napa County Planning Commission: Approve

Reviewed By: Charlene Gallina