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Agenda Date: 9/18/2019

Agenda Placement: 7A

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, 4 and 33. 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, Class 4 Minor Alterations to Land; and Section 15333, Class 33 Small Habitat Restoration Projects, which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15301, §15302, §15304, and §15333. 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, Napa County Code (NCC) Chapter 18.108, in the form of a Use Permit, in order to maintain in their current configuration the following existing site improvements, or portions thereof, that encroach into the minimum required stream setbacks pursuant to Napa NCC Section 18.108.025(B) ranging from 45 feet to 65 feet from the top of bank of an unnamed blue-line stream, as depicted in the Bremer Family Winery Stream Setback Exhibit 2 (RSA+, June 26, 2019): **A.**

Components Necessary to Remedy Existing Violations: (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) an approximate 800 square foot pad and associated walls attached to the winery, (4) an approximate 150 square foot ground floor/story addition and second floor/story deck to the farmhouse/office building, (5) 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 (\pm 7,982 square feet paved and \pm 5,820 square feet gravel

surfaced), (8) approximately 3,740 square feet of landscaping, (9) approximately 1,210 lineal feet of rock walls, and (10) three pedestrian bridges over a blue-line stream; **B. Expansion Beyond Existing Site Improvements or Entitlements:** None. The request also includes an Intermittent Channel Enhancement Plan along an approximate 400 foot stretch of the blue-line stream, covering approximately 0.33-acres (+14,375 square feet), to offset existing setback encroachments.

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

EXECUTIVE SUMMARY

Proposed Actions:

That the Planning Commission:

1. Find the project Categorical Exempt based on Findings 1-3 of Attachment A; 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, and subject to the Conditions of Approval listed in Attachment B.

Discussion:

The proposed project is 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 allow existing site improvements associated with the sites historic winery and residential uses, that encroach into required stream setbacks which range from 45 feet to 65 feet as measured from the top of bank pursuant to Napa County Code (NCC) Section 18.108.025 (General provisions - Intermittent/perennial streams) to be recognized and maintained in their current configurations. No expansion or augmentation of existing site improvements, or current entitled uses or operations, are requested as part of this application. The application also includes an Intermittent Channel Enhancement Plan along an approximate 400 foot stretch of the blue-line stream (located \pm 300 feet southwest of the project site), covering approximately 0.33-acres (\pm 14,375 square feet), with plant pallet composed exclusively of native plant species, to offset existing stream setback encroachments.

This application was submitted to comply with the terms of a Settlement Agreement between Napa County and the Bremer's entered into on February 6, 2019, and to participate in the County's Code Compliance Program (Resolution No. 2018-164) adopted by the Napa County Board of Supervisors on December 4, 2018. Under the program, property owners may apply for a permit to voluntarily remedy existing compliance matters. Specific to Section 10 of the Settlement Agreement (Alleged Conservation Regulation Violations and ECP Claims), The Bremer's shall submit a complete application for an exception to the Conservation Regulations as provided in NCC Section 18.108.040, to allow the walls, bridge structures, and improvements located within the creek setback,

and County staff shall reasonably recommend approval of the exception if it is consistent with the Napa County Code and will not result in any significant adverse environmental impact (see Attachment C).

Several of the site improvements that are the subject of this application and Settlement Agreement existed prior to the adoption of the Conservation Regulations and implementation of stream setbacks as identified in the property's 1979 winery Use Permit #U-697879 (Attachment H). These improvements include the winery building constructed in 1880, the residence constructed in 1930 (also known as - aka - the Farmhouse), garage/shed (aka the tractor shed or covered carport) and barn (aka the Ag Storage Barn) which construction dates are unknown but are shown in the 1979 site plan, and portions of the access drives and areas. See Attachment H for Use Permit #U-697879 site plans showing these improvements. While these improvements predate the County's Conservation Regulations they are included in this request because the uses allowed within required setbacks pursuant to Section 18.108.025(E) (Uses Permitted Within Required Stream Setbacks) and Section 18.108.050 (Exemptions), do not expressly call out the ongoing maintenance and use of these improvements without a use permit exception, except for maintenance of access roads.

Improvements or remodeling of existing site improvements occurring after enactment of the Conservation Regulation include reconstruction of the garage/shed and associates walls (presumed construction 2012), additions to the residence/farmhouse (constructed 2005 and 2008 under B05-01249 and B08-00074), the winery pad and associated walls, the freestanding restroom (constructed in 2008 under building permit B08-01030), reconstruction of the Ag Storage Barn (presumed construction 2013), landscaping, other walls and the pedestrian bridges. As noted the additions to the Farmhouse and the freestanding restroom were constructed with building permits issued by the county; however, the issuance of these building permits were inadvertently not subjected to necessary use permit exceptions. This oversight may have been result of Use Permit #U-697879 site plans showing the area along the creek as parking and access, and the assumption that subsequent work in previously disturbed areas within streams setback would be exempt from a use permit exemption.

Unless otherwise noted it is not certain when the other site improvements, in particular the walls, pedestrian bridges, landscaping and additional access improvements were constructed. However, it is presumed based on property/permit history research, the Settlement Agreement, and historic aerial imagery interpretation, that they existed prior to the acquisition of the property by the Bremer's in 2002, and were subsequently maintained and/or repaired by the Bremer's between 2002 and 2014. It should be noted that some of these features, in particular walls, landscaping and flatwork associated with access ways would not typically need building or grading permits.

This application does not include Agricultural Erosion Control Plan (ECP) violations identified in Section 11 of the Settlement Agreement which are located on the subject parcels or other neighboring properties owned by The Bremer's which include APNs 021-400-004, 021-400-005 (881 Deer Park Road), 025-370-057 (160 Pine Place), and 023-370-058 (150 Pine Place). These ECP matters are being addressed separately under pending Agricultural Erosion Control Application P16-00271-ECPA.

The subject application was determined to be substantially conforming per Resolution No. 2018-164; therefore, the County may use the existing site conditions and improvements as the environmental baseline for the CEQA analysis related to this application. Furthermore, pursuant to Public Resources Code Section 15125 the 'baseline conditions' (or the environmental setting) are typically the physical environmental conditions present when an application is submitted and environmental analysis is commended. In this case, all the site improvements subject to this use permit exception request are existing, some of which predate the Conservation Regulations. Accordingly, the County has elected to utilize the existing site conditions and improvements as the environmental baseline for the CEQA analysis and exemption determination associated with this application (Attachment C). This baseline determination is limited to the existing improvements shown in the Bremer Family Winery Stream Setback Exhibit 2 (RSA+ June 26, 2019) and specific to Settlement Agreement Section 10.

Staff believes that the necessary findings can be made to approve the requested exception to the Conservation

Regulations, consistent with the Settlement Agreement, because of the following: the project does not result in substantial effects to mapped or designated environmentally sensitive areas or resources; no native trees or native vegetation would be removed to maintain the site improvements; no work would be performed within the defined bed or bank of the stream; all site improvements subject to this application that are located within stream setbacks are existing and would remain unchanged; and, the project includes an enhancement plan to offset existing stream setback encroachments. Based on the reasons stated above, staff recommends approval of the project (i.e. the components necessary to remedy existing stream setback violations) subject to the recommended conditions of approval.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No

County Strategic Plan pillar addressed:

ENVIRONMENTAL IMPACT

Consideration and possible adoption of Categorical Exemptions Class 1, 2, 3, 4, 33 and the General Rule: 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 of Reconstruction; Section 15303, Class 3 New Construction or Conversion of Small Structures; Section 15304, Class 4 Minor Alterations to Land; and, Section 15333, Class 33 Small Habitat Restoration Projects, and Section 15061 Review for Exemption (i.e. General Rule Exemption in and therefore CEQA is not applicable, which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15061, §15301, §15302, §15303, §15304, and §15333. This project is not on any lists of hazardous waste sites enumerated under Government Code Section 65962.5.

BACKGROUND AND DISCUSSION

Property Owner: John Bremer, The Bremer Family 1995 Living Trust and the Bremer Group LLC

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

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

Zoning: Agricultural Watershed (AW) District

General Plan Designation: Agricultural, Watershed and Open Space (AWOS)

Application Filed: March 29, 2019; **Resubmittal:** June 28, 2019

Application Complete: July 28, 2019

Holding Size: ±47.1 acres

Existing Development: In addition to the existing improvements or portions thereof that are the subject of this application (i.e. Winery building and associated pad, Ag Storage Building, Residence/Farmhouse, freestanding bathroom, tractor shed/covered carport, access drives/ways, walls, three pedestrian bridges and landscaping) the

property also contains a wine cave and associated portal, second dwelling unit, two shade structures, bocce court, outdoor kitchen, other walls and landscaping, and approximately 5 acres of vineyard. Access to the property is from Deer Park Road via a paved driveway.

Setback (Required): 45 to 65 feet from top of bank of the unnamed blue-line stream.

Setback (Proposed): 0 feet from top of bank of the unnamed blue-line stream.

Adjacent General Plan Designations, Zoning Districts and Land Uses:

West: A pocket of land with a Rural Residential land use designation and a Residential Single zoning district with a B-5 overlay located between Deer Park Road and Sanitarium Road north of the terminus of Hillcrest Road. North of Sanitarium Road are AWOS designated lands within an AW Zoning District.

North, South and East: AWOS designate lands within an AW Zoning District.

Land uses within the immediate vicinity (i.e. within approximately 0.5 to 1 mile) of the subject property predominately consist of semirural residential, scattered agricultural uses (vineyards and wineries), and undeveloped woodlands and shrub-lands. There are four producing wineries (Rossini, Burgess Cellars, Viader Vineyards, and the Bremer Family Winery) and 3 approved wineries (Broman Cellars, Vineyard 22, and Woodbridge) within approximately one-half mile of the project site. The St. Helena Hospital is located approximately 0.5 miles to the southwest of the property and Bell Canyon Reservoir is located approximately 0.5 miles to the northwest of the property. The closest residences to the project site are located between 200 feet and 400 feet to the north, west and south.

Property and Compliance History:

As indicated in the Executive Summary Section, the site was originally developed in the late 1800's and early 1900's with a winery, a farmhouse and associated accessory structures, such as a barn and other agricultural buildings/sheds and site improvements such as but not limited to access improvements.

August 1979, Use Permit #U-697879 to reactivate a 6,780 square foot winery on the subject site is approved by the Planning Commission (Attachment H). Use Permit #U-697879 plans show an existing dwelling/farmhouse, a guest house, a garage/shed (tractor shed), winery and barn (Ag storage barn).

October 2002, the Bremer's purchase Deer Park Winery (APNs 021-420-027 and 021-400-002).

August 2005, a Notice of Violation is issued for construction and/or reconstruction of a deck on the dwelling/farmhouse, remodeling of a barn, and construction of stone wall without building permits (Code Enforcement Case #CE-2686). Building Permit #B05-01249 is issued September 2005, and Building Permit #B06-01434 is issued August 2006 to rectify these matters.

December 2007, application #P07-00654-UP to modify Use Permit #U-697879 to allow a 11,685 sf cave was approved by the Planning Commission. Building Permit #B08-01030 was issued for the wine storage cave utilities. This building permit also included the freestanding bathroom.

February 2008, application #P08-00088-VMM for a Very Minor Modification to Use Permit #U-697879 was approved by the Director to repair and expand 572 sf of porch and deck, replace roof and siding, and add side porch to the dwelling/farmhouse. The building permit for these improvements (#B08-00074) was issued in advance of the Very Minor Modification approval.

June 2009, Very Minor Modification #P09-00178-VMM to increase the wine cave to 16,136 sf was approved was approved by the Director . Building permit #B09-01138 was issued for the west entrance cave portal and

associated retaining walls based on #P09-00178-VMM approval.

In September and October 2016, Notices of Violation were issued under Code Enforcement Case #CE16-00251 for the following: construction and use matters: site grading; installation of a sink in the outdoor kitchen; alteration of the dwelling/Farmhouse including use as winery office; wine cave occupancy and use; increased parking; winery visitation and marketing events including food service; rental of winery for events, and use of other site improvements (primarily the bocce court and outdoor kitchen area) for events and tastings.

January 2017, a Use Permit Major Modification application was submitted (#P17-00023), however this application was closed due to a civil complaint being filed by the County in August of 2017 against the Bremer's as result of the aforementioned violations.

August 2017, a Civil Complaint was filed by the County, and in February of 2019 a Settlement Agreement was entered into between the Bremer's and the County to rectify, in part, the aforementioned violations (i.e. Alleged Conservation Regulation Violations and ECP Claims - Section 10).

March 2019 through July 2019, building permits were issued by the PBES Department to satisfy some of the Settlement Agreement terms and aforementioned violations. These permits include #B19-00307 for retaining walls, #B19-00339 for work done in the second floor of the winery building, #B19-00460 to install handrails at various locations, and #B19-00513 for the sink in the outdoor kitchen. It should be noted issuance of these building permits did not include areas within required stream setbacks (unless occurring within an existing structure) or authorize any uses, either residential or winery, that had not been previously entitled. Any modification (s) to existing use limitations as identified in the Settlement Agreement, or additional setback encroachments, would require a separate use permit application.

Discussion Points:

Conservation Regulations - Among the purposes of the Conservation Regulations (County Code Section 18.108.010) are intentions for the County to: 1) minimize the effects of cut, fill, earthmoving, grading operations and similar activities on the natural terrain; 2) minimize soil erosion caused by human modifications to the natural terrain; 3) maintain and improve water quality by regulating stormwater quality and quantity; 4) preserve riparian areas and other natural habitat near streams; and 5) encourage development that minimizes impacts to existing land forms, avoids steep slopes and preserves existing vegetation and unique geologic features.

The project site and unnamed blue line stream which traverses the site is not mapped as an environmentally sensitive resource (sources: 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). Additionally, the applicant has provided an opinion from FirstCarbon Solutions Environmental Consulting (March 2019) that the 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 (Attachment D).

The requested use permit would grant an exception to the Conservation Regulations to allow the existing site improvements that encroach into required stream setbacks to be maintained in their existing conditions. Slopes within the project/request area are moderate ranging from 5% to less than 30% resulting in stream setbacks between 45 feet and 65 feet as depicted in the Bremer Family Winery Stream Setback Exhibit 2 prepared by RSA+, June 26, 2019 (Attachment E). While these site improvements (several of which predate stream setback requirements) encroach into the stream setbacks, they are generally consistent with the intent of the Conservation Regulations because the project does not result in substantial effects to mapped or designated environmentally sensitive areas or resources. Several mature native trees bound the locations of these improvements, however no

trees or riparian habitat would be disturbed and no work would be performed within the defined bed and bank of the stream through their continued maintenance. There are no anticipated threats to water quality as a result of continued maintenance of these site improvements.

Exception Use Permit Findings - County Code Section 18.108.040 allows landowners or leaseholders to request exceptions to the requirements of the County's Conservation Regulations. Such requests are made in the form of a use permit application, which is subject to decision by the Planning Commission. Pursuant to County Code Section 18.124.070, the Commission's decision to grant or deny a use permit must be based on findings that the granting of the use permit would not adversely affect public health, safety or welfare of the county, and that the request is consistent with the policies and standards of the County's General Plan. In addition, pursuant to County Code Section 18.108.040, the Commission's decision to grant or deny a Use Permit Exception to the Conservation Regulations is subject to additional findings, including findings that the proposed project would complement natural landforms; would require minimal grading, minimal removal of vegetation, and minimal disturbance to watercourses; and would not result in significant adverse impacts to sensitive species or water quality.

Staff believes that the necessary findings can be made to approve the requested exception to the Conservation Regulations in this case because the retention and maintenance of these existing site improvements, and implementation of the Intermittent Channel Enhancement Plan would not result in substantial effects to environmentally sensitive areas or resources in that no trees or riparian habitat would be disturbed, no work would be performed within the defined bed and bank of the stream, and there are no anticipated threats to water quality (also see Attachment C).

Intermittent Channel Enhancement Plan - This plan has been included as part of the application by The Bremer's to offset existing stream setback encroachments. Pursuant to NCC Section 18.108.025(E)(9) (Uses Permitted Within Required Stream Setbacks) construction activities undertaken by or under the auspices of a federal, state or local agency to preserve or restore existing habitat areas, shall be permitted within the required stream setbacks.

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

Decision-Making Options: (Components Necessary to Remedy Existing Violations)

Upon consideration of additional public comment and close of the public hearing, the Commission may take one of the following actions:

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. This is consistent with the terms of the Settlement Agreement. 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 many of the site improvements predate the Conservation Regulations and could result in 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), leading to greater environmental impact and 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 re-evaluate 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 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 with conditions 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 Findings
- B . Recommended Conditions and Agency Memos
- C . CEQA Determination
- D . Application Submittal Documents
- E . Encroachment and Exception Site Plans
- F . Intermittent Channel Enhancement Plan
- G . Use Permit #U-697879
- H . Graphics

Napa County Planning Commission: Approve

Reviewed By: Brian Bordona