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Agenda Date: 7/1/2020

Agenda Placement: 7A

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission

FROM: Brian Bordona for David Morrison - Director
Planning, Building and Environmental Services

REPORT BY: Brian Bordona, Deputy Director of PBES - (707) 259-5935

SUBJECT: Bremer Family Winery - Stream Setback Use Permit Exception to the Conservation Regulations
P20-00143

RECOMMENDATION

BREMER GROUP LLC. / BREMER FAMILY WINERY / USE PERMIT EXCEPTION TO THE CONSERVATION REGULATIONS FOR EXISTING SITE IMPROVEMENTS - APPLICATION #P20-00143-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, to maintain the following existing site improvements that encroach into the required stream setbacks: 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. The project is located on an approximate 47.1-acre holding (APNs 021-400-002 and 021-420-027: 975 Deer Park Road) that has a General Plan land use designation of Agriculture, Watershed and Open Space (AWOS), and is 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: Brian Bordona, Deputy Planning Director; phone (707) 259-5935, or 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

REMANDED TO BACK THE PLANNING COMMISSION BY BOARD OF SUPERVISORS AT THEIR MAY 5, 2020 MEETING

EXECUTIVE SUMMARY

Proposed Actions:

That the Planning Commission:

1. Find the project Categorically 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 (#P20-00143), based on Findings 4-14 of Attachment A, and subject to the Conditions of Approval listed in Attachment B.

Discussion:

On October 16, 2019, the Planning Commission approved an Exception to the Conservation Regulations in the form of a Use Permit (P19-00153-UP) legalizing six (6) existing improvements within the County stream setbacks. The previous staff reports and related attachments can be found here: (<http://services.countyofnapa.org/AgendaNet/GranicusMeetingDocuments.aspx?id=5735>).

The Planning Commission's October 16, 2019 decision was appealed by Michael Hackett to the Board of Supervisors. On March 17, 2020, the Board heard the appeal and after considering all of the evidence presented, adopted a motion of intent to 1) deny the appeal; and 2) uphold the Planning Commission's approval of Use Permit #P19-00153, but only as to the approximately 1,210 lineal feet of low decorative rock walls and the two pedestrian bridges. As to the four remaining structures, the Board took final action by remanding to the Planning Commission to further consider the approximate 2,200 sq. ft. agricultural storage barn and associated water tank that replaced an approximate 320 sq. ft. barn; an approximate 800 sq. ft. concrete pad located off the east side of the winery building; an approximate 150 sq. ft. ground floor/story addition and second floor/story deck to the main dwelling (a.k.a. farmhouse/office building); and an approximate 100 sq. ft. freestanding restroom, all four of which currently encroach into required stream setbacks.

On May 5, 2020, the Board took final action and adopted Resolution No. 2020-65 (Findings of Fact and Decision on Appeal), which can be found here: (<http://services.countyofnapa.org/AgendaNet/GranicusMeetingDocuments.aspx?id=5945>). The Findings of Fact provided further clarification and direction as it relates to the Planning Commission's reconsideration of the four remaining existing structures, noting that the Commission should consider each structure individually on its own merits, with greater scrutiny, and without further reference to the settlement agreement given these four structures are not affected by said agreement.

Staff believes 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.

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

On October 16, 2019, the Planning Commission approved an Exception to the Conservation Regulations in the form of a Use Permit (P19-00153-UP) legalizing the following improvements within the County stream setbacks:

- A. Replacement of the 320 sq. ft. barn with an approximate 2,200 sq. ft. agricultural storage barn and associated water tank;
- B. An approximate 800 sq. ft. concrete pad located off the east side of the winery building;
- C. An approximate 150 square foot ground floor/story addition and second floor/story deck to the Main Dwelling (a.k.a. farmhouse/office building);
- D. An approximate 100 sq. ft. freestanding restroom;
- E. Approximately 1,210 lineal feet of low decorative rock walls; and
- F. Two pedestrian bridges.

The Commission's approval was limited to the placement of the improvements within the stream setback and did not constitute approval for winery related uses and any required building permits. The project site includes additional improvements within the County's stream setbacks. However, given they were constructed prior to the adoption of the County's stream setback requirements in 1991, they are considered legally established from a stream setback conformance perspective and not included as part of this proposal. For further details regarding site development history and related details, the previous Planning Commission staff reports and

related attachments can be found here: September 19, 2019 Planning Commission Staff Report: (<http://services.countyofnapa.org/AgendaNet/GranicusMeetingDocuments.aspx?id=5735>) October 16, 2019 Planning Commission Staff Report: (<http://services.countyofnapa.org/AgendaNet/GranicusMeetingDocuments.aspx?id=5737>).

The Planning Commission's October 16, 2019 decision was appealed by Michael Hackett (Appellant) to the Board of Supervisors. On March 17, 2020, the Board heard and considered evidence submitted from the Appellant, the Applicant, and members for the public regarding the appeal. After considering all of the evidence presented, the Board adopted a motion of intent to 1) deny the appeal; and 2) uphold the Planning Commission's approval of Use Permit #P19-00153, but only as to the approximately 1,210 lineal feet of low decorative rock walls and the two pedestrian bridges. As to the four remaining structures, the Board took final action by remanding to the Planning Commission to further consider the approximate 2,200 sq. ft. agricultural storage barn and associated water tank that replaced an approximate 320 sq. ft. barn; an approximate 800 sq. ft. concrete pad located off the east side of the winery building; an approximate 150 sq. ft. ground floor/story addition and second floor/story deck to the main dwelling (a.k.a. farmhouse/office building); and an approximate 100 sq. ft. freestanding restroom, all four of which currently encroach into required stream setbacks. Please see the site plan in Attachment D, which illustrates the two improvements (Improvements E and F) approved the Board and the four improvements that are the subject of this proposal (Improvements A through D).

On May 5, 2020, the Board took final action and adopted Resolution No. 2020-65 (Findings of Fact and Decision on Appeal), which can be found here: (<http://services.countyofnapa.org/AgendaNet/GranicusMeetingDocuments.aspx?id=5945>). The Findings of Fact provided further clarification and direction as it relates to the Planning Commission's reconsideration of the four remaining existing structures, noting that the Commission should consider each structure individually on its own merits, with greater scrutiny, and without further reference to the settlement agreement given these four structures are not affected by said agreement. As discussed in previous staff reports, the settlement agreement 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, approved and remain in their current configuration. While 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 continues to retain its discretion on this project to approve all, some, and/or none of the four remaining subject improvements.

To further facilitate the Planning Commission's reconsideration of the subject proposal, the following provides a timeline of when the improvements were constructed, what permits were required, and which improvements obtained permits:

Improvement A - an approximate 2,200 sq. ft. agricultural barn and associated water tank: This improvement was constructed in 2013. An Exception to the Conservation Regulations in the form of a Use Permit and a building permit were required. Neither permits were obtained. The applicant has indicated this structure is not used for winery purposes and is solely used as an accessory structure to the vineyards on the property. During a site visit conducted by the Code Enforcement Division the structure was found to be empty. A Use Permit Modification to the existing winery use permit would need to be obtained prior to any uses related to the winery.

Improvement B - an approximate 800 sq. ft. concrete pad: Based on the interpretation of the County aerial photos, this improvement was constructed some time prior to 2002. The County has no records of an approved building permit, an Exception to the Conservation Regulations in the form of a Use Permit, a building permit, and a modification to the winery use permit, all of which were required. None of the required permits were obtained.

Improvement C - an approximate 150 sq. ft. two story addition to the main dwelling (a.k.a. farmhouse/office building): The ground floor addition was permitted through building permit #B05-01249 and finalized by the Building

Division on September 1, 2006. The second story was permitted through building permit #B08-00074 and finalized by the Building Division on September 15, 2011. An Exception to the Conservation Regulations in the form of a Use permit and a modification to the winery use permit should have been required by staff prior to the approval of the building permit for the addition to the winery. However that requirement was inadvertently omitted by staff.

Improvement D - an approximate 100 sq. ft. restroom: The restroom was permitted through building permit #B08-01030 and finalized by the Building Division on January 14, 2013. An Exception to the Conservation Regulations in the form of a Use permit and a modification to the winery use permit should have been required by staff prior to the approval of the building permit for the addition. However that requirement was inadvertently omitted by staff.

Public Comments - At the time of staff report preparation, no additional public comments were 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 to Retain the Four Improvements - A through D (Staff Recommendation)

This option would allow the subject four site improvements that encroach into the County's 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 the time motion is made. This option has been analyzed for its environmental impacts and was found to be Categorical Exempt from CEQA.

Option 2: Removal of One or More Improvements Alternative

Discussion - In the event the Planning Commission elected to require the removal of the four improvements, or portions thereof, this option would enable the Planning Commission to identify which of the four site improvements should be removed (in whole or in part) and underlying areas to be restored. If this option is selected, any remaining improvements within the required stream setbacks would continue to require a use permit exception to recognize and maintain those site improvements located within setbacks. While Staff's analysis (in part in reliance on the technical reports provided by the Applicant) has found potential environmental impacts to natural resources to be Categorical Exempt from CEQA, the Planning Commission nevertheless has the discretion to require the removal of some, none or all of the four improvements. If this option is selected, Staff recommends the Planning Commission clearly identify the structures required for removal (in whole or in part), require the Applicant submit to the County for review and approval a demolition permit and restoration plan within 90 days of the effective date of the Planning Commission's decision. The restoration plan shall include adequate best management practices to ensure water quality related impacts to the stream are minimized.

Action Required - Follow proposed actions listed in the Executive Summary and amend scope and project specific conditions of approval to identify which of the four site improvements are to be retained and which are to be removed and underlying areas restored. Depending on the extent of the Commission's redesign the project, staff may 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 the four subject site improvements encroaching into stream setbacks to be removed and underlying areas restored.

In the event the Planning 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. As outlined in Option 2 above, demolition permits for the four improvements and a restoration plan would be required.

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 . Attachment A - Recommended Findings
- B . Attachment B - Recommended Conditions of Approval
- C . Attachment C - CEQA Memo
- D . Attachment D - Graphics and Site Improvement Plan

Napa County Planning Commission: Approve

Reviewed By: Brian Bordona