



WATER AUDIT CALIFORNIA

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June 23, 2020

BY EMAIL

Joelle Gallagher
Chair
Napa County Planning Commission
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Dear Ms. Gallagher

RE: Planning Commission Meeting (Date to be noticed)

**7A BREMER GROUP LLC. / BREMER FAMILY WINERY / USE PERMIT EXCEPTION
TO THE CONSERVATION REGULATIONS FOR EXISTING SITE IMPROVEMENTS -
APPLICATION #P20-00143-UP**

Water Audit California (Water Audit) is an advocate for the public trust.

Water Audit has two concerns herein: (1) the preservation of the Napa County stream setback provision, and (2) the application of proper policies and practices considering environmental matters.

Water Audit believes that riparian ways should be seen as sacred ground, an essential foundation of the community's environmental health. The following comments relate solely to our assessment of fact and law, with no distortion or filter caused by identities, status or personalities. We assume that these Applicants will be treated no better or no worse than any other before this Commission.

THE PARTIES

John Alex Bremer and Laura Joyce Bremer, as Trustees of the Bremer Family 1995 Living Trust dated August 23, 1995, are the owners by Grant Deed for parcels APN 021-400-002 and APN 021-420-027. The interests or status of the individual persons, Bremer Group LLC, and the Bremer Winery are unknown to Water Audit. Each may be the agent of the other. Planning and building permits have been applied for and issued on various occasions for both commercial and residential uses. To simplify this complex situation for the sake of this comment, all and any of the aforesaid parties will be referred to as the "Applicants."

There presently are no supporting documents for P20-00143 in the public record, rendering any response to that matter purely speculative. For the record, attached hereto are copies of the original postings pursuant to the June 17, 2020, remand hearing, cancelled on June 16.¹ No new notice has been given of the P20-00143 hearing. *Prima facie* this is inadequate due process.

In light of this situation, and to make this comment timely and intelligible, "Application" herein will refer to the documents filed to initiate P19-00153, including the Napa County application form and all supporting documents concurrently provided to and utilized at the September 18, 2019, Planning Commission hearing.

Nevertheless, in the interests of judicial efficiency, Water Audit has reviewed the P19-00153 record as best possible so as to respond to what is believed to be Staff's Recommendation:

Option 1: Approve Applicant's Proposal to Retain the Four Improvements - A through D

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.

Water Audit respectfully disagrees and submits that it is in the public's best interest that the application for a ConRegs Exemption be denied, and that the Commission adopt Option 2 (remove the improvements) or Option 3 (deny the Request (and remove the improvements)).

Whatever the Commission's decision, this matter will be precedent setting in respect to Napa Valley riparian encroachment. To approve this Application would oblige the Commission to provide the same indulgence to all subsequent malefactors who ignore the law until caught and prosecuted. Such a precedence would render the conservation regulations irrelevant, and the process of enforcing the law into an endless game of whack-a-mole, with a foregone conclusion of futility. As any parent knows, one should not reward bad behavior lest it become a habit.

The law demands that the infringements be removed, and there is no good reason for the Applicants to not be held to the law.

PRIOR PROCEEDINGS

1. The record before the Commission is not the record remanded by the BOS.

The procedure that has returned this matter to the Commission is highly irregular. When a matter is heard on appeal, the adjudicator may deny the appeal, grant the appeal, or remand the matter. Supervisor Dillon succinctly stated the alternatives immediately before the vote on the Hackett appeal.

If the adjudicator denies the appeal, as herein, the matter is concluded, save for a potential appeal to a higher authority. If an appeal is denied, the matter is *res judicata*, and no further adjudication is possible. A "remand" is not appropriate after the denial of an appeal, nor does it provide for bifurcation. It is an interlocutory procedure used by higher jurisdictions to return matters to lower jurisdictions for further action consistent with instructions.

Analogously, an appeals court may remand a case to the trial court for further action if it reverses the judgment of the lower court. See analogous [CCP 583.320\(3\)](#) "If on appeal an order granting a new trial is affirmed or a judgment is reversed, and the action remanded for a new trial..." Reviewing a decision made following a remand, the Supreme Court stated: "The principal issue here

¹ See Exhibit 1 attached hereto.

is whether the city council, on remand, did in fact employ the test stated by the trial court.” No Oil, Inc. v. City of Los Angeles 13 Cal.3d 68 (Cal. 1974)

Herein the Board of Supervisors denied the appeal, which should have concluded the proceedings, save for a potential appeal to the Superior Court. Nevertheless, the Board then remanded the matter for further proceedings before the lower tribunal, i.e. the Planning Commission. This is the legal equivalent of a doctor declaring a patient deceased, and then scheduling them for further surgery.

Further, the matter before the Planning Commission is not the same as the matter remanded. A remand does not bifurcate or invoke or authorize a new and different proceeding; a remand directs a lower tribunal to revisit the same proceeding with instructions for further review. The Remand herein directed 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. ...

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.

It is County policy that a Use Permit for an exception to the Conservation Regulations must be approved by the Planning Commission prior to construction. Development may not begin until all necessary permits have been obtained, including any building or grading permits. The Applicants now seek forgiveness for their failure to comply with this law.

The differences between the matter remanded and the matter now under reconsideration are substantial and material. All Napa requests for conservation exceptions start with a standard form application. The subject Application (Supporting Document D, hereinafter the “Application”) states that it concerned Assessor’s Parcel Number (APN) 021-400-002, 975 Deer Park Road.

Permit review discloses that the same parcel has had, at different times, two different street addresses: 1000 Deer Park Road, and 975 Park Road. The latter is the current correct address for APN 021-400-002.

PROJECT NAME:	Bremer Family Winery
Assessor's Parcel #:	021-400-002
Site Address/Location:	975 Deer Park Road
	No. Street

Comparison of the Application with the County's standard form shows that the Application is missing pages 1 to 4, and all pages after page 10. The omitted pages include the Application Checklist, which would have revealed the Application was incomplete. Page 3 sets forth the bold type admonition: “**The Use Permit application is not complete until all the information listed on the checklist is submitted for review.**” Page 11 contained a requirement for a list of all property holders within 1,000 feet. **Page 12 mandates plans showing the boundary lines of all existing**

parcels. *Prima facie* the Application was incomplete. The County procedures clearly and unequivocally provide that an application is deemed submitted only when it is complete. Nevertheless, the planning department issued the number P19-00153 to the incomplete Application on the date of submission.

The Applicants *resubmitted* the Application on June 28, 2019, two days after receiving RSA+'s Encroachment and Site Plan Narrative (Supporting Document E, hereinafter the "RSA+ Encroachment Plan"). The RSA+ Encroachment Plan **does not show the property boundaries.** There is no restroom indicated; inexplicably the words "Top of Bank" indicate the infringement's location. The concrete crush pad is not distinguished from the asphalt paving, and the asphalt paving is not distinguished from the graveled areas. It may well be argued that the RSA+ Encroachment Plan conceals more than it reveals.

Inexplicably, the planning department considered the resubmitted Application complete, and it worked its way through the process to the Board of Supervisors, from where it was remanded. However, the matter assigned file number P19-00153 is not presently before the Commission. This proceeding is numbered P20-00143, and when last seen concerned two parcels, APN 021-400-002, and the adjoining parcel, APN 021-420-027. Note the property line indicated by the arrow between APN 021-400-002 and 021-420-027 that bifurcates the faintly indicated structures. (Magnification of the image makes the structures' outlines more visible.)



Staff has summarily bundled the two parcels together, arbitrarily asserting that because the two share a common business name and owners, they have become a single parcel for the purposes of this proceeding. The law holds otherwise. A "parcel" is a discrete and finite unit of land. As the County has stated:

[T]he California Legislature in the mid-1950s expanded the Subdivision Map Act ([Government Code 66410](#)) and gave local agencies broad "police powers" by authorizing general plan, zoning and building permit regulations.

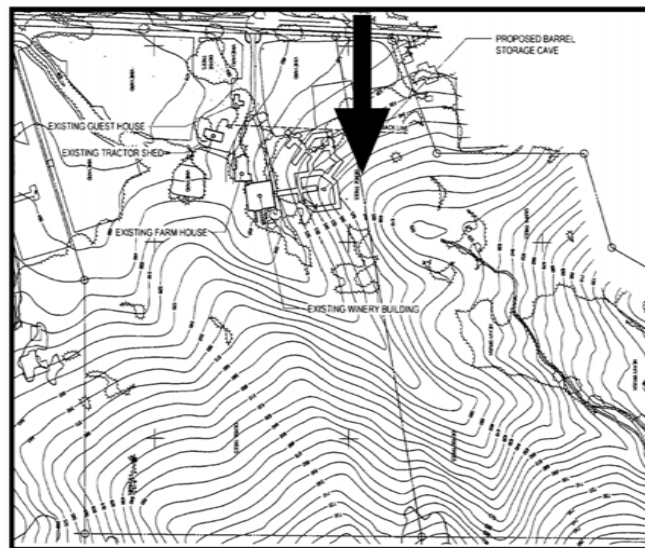
One key aspect of this new power was the ability to limit the amount of development on a legal parcel. Another was that the creation of legal parcels could be regulated by the local agency within whose jurisdiction the land was located. In the

unincorporated areas of Napa County all parcel divisions were subject to regulation beginning March 4, 1972. Creation of legal parcels, i.e. those that could be developed and receive a building permit, now required either an approved parcel or subdivision map or a lot line adjustment.

<https://www.countyofnapa.org/1209/Creating-New-Parcels>

Supporting Documents D to the Application, prepared by Ron Cox, represents that the land in question is one 44.82-acre parcel assigned APN 021-400-002. This is inconsistent with the County's records, and without legal foundation.

In an earlier submission Mr. Cox presented the property lines in a very different manner by, as shown below, unilaterally moving the parcel boundary (indicated by the arrow) between APN 021-400-002 and APN 021-420-027 substantially north to encompass a cave development. The motivation for this earlier misrepresentation is obvious: the prior owner, the Clarks, had in 1979 made a successful application (U-697879) for reactivation of a winery on APN 021-400-002. By misrepresenting the property in the cave permit applications, the Applicants were able to avoid a new Use review.



Further lack of clarity on this subject was provided by a report prepared by the Applicants' expert Monk & Associates, submitted by Planner Donald Barrella "as additional information" in advance of the October 2019 Commission hearing. The "Project Site" outline was drawn without apparent reference to the APN locations, although the legend misleadingly implies that the image complied with that information.



Applicants and the County are well aware of the distinct legal nature of their various parcels, but neither raised the issue to the attention of the Commission during either of the two earlier Commission proceedings, nor before the Board of Supervisors.

For limited examples, in 2007 the Applicants wrote: “We are the owners of this adjacent parcel and the house pad contains our existing primary residence.”²

In 2013 the Applicants submitted a Williamson Act contract application, which was subsequently withdrawn. In November 2013 Planner Barrella wrote a memo to record/file explaining why. “Based on the current available information and given contracting rules and peripheral subdivision issues the County does not have the ability to proceed with two contracts for the subject APNs (i.e. one contract covering each individual APN), and can only offer one contract for the property in question at this time. ... The applicant/owner has been advised ... to clarify the parcel/property status, and has also been directed [to] County Code Section 17.02.320 for what constitutes a legal lot.”

The impact of this issue herein is clearly seen in the Napa County GIS image following. The red line indicated by the arrow represents the property boundary on the map. Above the line APN 021-420-027 contains the crush pad and agricultural storage building, while APN 021-400-002, with the “carport,” “main house,” 2nd Dwelling and ADA washroom are below the line.

² The record is contradictory as to whether the Bremers remain resident on APN 021-400-002. See the discussion re W07-00895, in particular the topo plan of Napa Vineyard Engineering.



Cover Napa GIS parcel report

It is important to distinguish between two buildings. Staff writes: “these improvements include the winery building constructed in 1880, the residence constructed in 1930 (also known as -aka- the Farmhouse). Other denominations for the second structure include the “winery office” which tends to become confused with the “winery building.” Given to the uncertainty of nomenclature and the building’s origin story discussed below, we will refer to the building under the blue dot herein as “Frankenstein,” or “Frank” for short.

The square building to Frank’s immediate right is the winery building, while at the top right is the Ag. Storage Building. The long amber colored rectangle to the lower left is the bocce ball court, with the “carport” at its right end. The small building at the junction of the “V” of the driveways on the left is the 2nd Dwelling.

The Applicants could have consolidated the properties, lot line adjusted, or simply filed the Application for both parcels. They could have filed a second application, and consolidated. They could have sought leave to amend the Application. Instead, with the assistance of the planning department, Applicants created a new file, P20-0143, for which there is no application, no prior proceeding, and no hearing before the Board of Supervisors. The absence of full and proper notice of the proposed hearing compounds the impropriety.

Without waiving the aforesaid objections, and in the interest of judicial efficiency, Water Audit will comment on the only proceedings to date, in P19-0153.

2. A “finding of facts” requires a hearing of “evidence”

A Planning Commission hearing is quasi-judicial in nature. This Commission has a duty to hear and weigh evidence and make a finding of facts at the conclusion of its deliberations.

“Although such boards do not have the character of an ordinary court of law or equity, they frequently are required to exercise judicial functions in the course of the duties enjoined upon them. In *Robinson v. Board of Suprs.* (1979) 16 Cal. 208 the court says: ‘It is sufficient if they are invested by the legislature with power to decide on the property or rights of the citizen. In making their decision they act judicially

whatever may be their public character.” Nider v. Homan (1939) 32 Cal. App. 2d 11, at 16; 89 P.2d 136.

Courts have held that substantial evidence must support the award of a variance in order to ensure that legislative requirements have been satisfied. See Siller v. Board of Supervisors (1962) 58 Cal.2d 479, 482 [25 Cal.Rptr. 73, 375 P.2d 41]; Bradbeer v. England (1951) 104 Cal.App.2d 704, 707 [232 P.2d 308].

Only *admissible* evidence may be considered. To be admissible, evidence must be *relevant, material, and competent*. Any decision based on inadmissible evidence would be fundamentally unfair.

The only *relevant* and *material* evidence in this proceeding is that which pertains to the violations now in consideration. Discussion and testimony about rock walls and ornamental bridges is now irrelevant and immaterial.

Evidence is considered "*competent*" if it complies with certain traditional notions of reliability. For example, "hearsay evidence" is evidence of a statement that was made other than by a witness testifying at the hearing. Except as provided by law, hearsay evidence is inadmissible. Evidence Code § 1200. Witnesses must not speculate or testify without personal knowledge. If a witness does not have personal knowledge of a matter, testimony on that matter is to be excluded. Evidence Code § 702.

Both the oral and written statements by Mr. Monk and Mr. Blake regarding the opinions of Department of Fish and Wildlife employee Garrett Allen were inadmissible hearsay and should not have been accepted by the Commission as evidence. No evidence was given that Mr. Allen was unavailable to testify, or of any effort made by the Applicant to secure his participation. Mr. Allen could have offered his opinion, and it would have been relevant, admissible and competent, but Messrs. Monk and Blake could offer only *hearsay* of his opinions.

The result was predictable. As discussed in an email sent to the Commission and counsel on June 22, 2020, Mr. Allen characterized the testimony tendered by Mr. Monk as "inaccurate and misleading." He wrote: "I have never visited the Bremer Family Winery that is the subject of the letter and the Planning Commission meeting (project site) either alone or with a warden ... I told Mr. Monk that I was not involved in or familiar with this matter..."

Mr. Gilbreth's comments recorded in the September 18 hearing transcript at pages 24:9-33:9, 39:19, and in the October 16 hearing transcript at pages 15:11-22;13 and pages 50:11-53:17, *inter alia*, are inadmissible as evidence and cannot be the basis for a finding of fact. Setting aside the issue of veracity, Mr. Gilbreth is incompetent to testify.

"It is undeniable that the argument of counsel does not constitute evidence." Beagle v. Vasold 65 Cal.2d 166, p. 176. "While an attorney may argue all reasonable inferences from the evidence [Citation omitted] it is misconduct to argue matters not in evidence or to assert as fact matters allegedly within counsel's personal knowledge." Malkasian v. Irwin, 61 Cal.2d 738, 745-747 [40 Cal.Rptr. 78, 394 P.2d 822]; 4 Witkin. Cal. Procedure (2d ed.) pp. 2996-2997.)

This record reflects the real danger of placing weight on the argument of counsel. For example, in response to a commissioner's inquiry Applicants' counsel David Gilbreth avowed:

"Anna, we effectively have incredible compliance with the settlement agreement. On the winery site, we've obtained just about every permit and finalized just about every permit. ... I can't tell you because of the workloads, but probably within 60 to 90 days the last remaining items will be obtained and finalized on the winery site."
(September 18 Transcript at 26:1-27:4)

Mr. Gilbreth represented that the issues addressed in the Application were the last remaining matters in a long process of remediations. September 18 Transcript at 5:25:25; October 16 Transcript at 7:16:6; 7:19:4; 7:29:9.

Mr. Gilbreth is the only source for this testimony, and his comments may have influenced the October 16 decision, but the statements of Applicants' counsel do not accord with the County's records which show that numerous and significant permits remain open.³

Evidence Code 1523(a) states "Except as otherwise provided by statute, oral testimony is not admissible to prove the content of a writing." Evidence Code 1521(a) states in part: "The court shall exclude secondary evidence of the content of writing if the court determines either of the following: (1) A genuine dispute exists concerning material terms of the writing and justice requires the exclusion ..."

County staff *knew or should have known* this representation by Applicant's counsel was false. The Commission sought confirmation from County counsel on this subject, but the inquiry was evaded. Staff continues to remain silent on the outstanding permits, allowing the Applicants' misrepresentations to be uncorrected on the record. This fact strongly implies that staff has become an advocate for the Applicants at the expense of their primary duty to promote the general welfare of Napa residents.

LEGAL AUTHORITY

Through Government Code § 65800 et seq. the Legislature conveyed to the county the authority to adopt regulations and ordinances to promote the general welfare of the State's residents, while providing that the county's may exercise the maximum degree of control over zoning matters. Government Code § 65101 states in part: "The legislative body [i.e. the Board of Supervisors] may create one or more planning commissions each of which shall report directly to the legislative body."

The Napa County Planning Commission performs the function of a planning agency. Its five members are each appointed by the supervisor representing one of the counties' five districts for a term that expires one month after the appointing supervisor is no longer in office.

Notwithstanding the State's sweeping assignment of powers, the County remains subordinate to the control and direction of the senior levels of government. Napa Ordinances Title 16 and Title 18 were required to conform the County to state law. The state endows the highest priority on fish and wildlife protection and conservation. "The Legislature finds and declares that the protection and conservation of the fish and wildlife resources of the state are of utmost public interest. Fish and wildlife are the property of the people, and provide a major contribution to the property of the state ..." (Fish and Game Code § 1600) This statement is one of the foundations of Water Audit's mission, both generally and herein.

Napa County Ordinance (Ordinance) § 18.108.030 states in part: "'stream' means any of the following: 1. A watercourse designated by a solid line of dash and three dots symbol on the largest scale of the United States Geological Survey maps most recently published ..." Accordingly a "stream" passes through the Applicants property.

³ See for example the following open permits and their status: P19-00447 Review Process; B19-01695 (Commercial) Review Process; B19-00559 (Commercial) Record on Hold; B19-00435 (Commercial) Review Process; P16-00271 (ECP) Resubmittal; P11-00317 (ECP) Approved; W09-00883 Pending; W09-00096 Pending. In particular see E-19-00174 for installation of an outdoor sink waste line (Residential): "This permit is NOT VALID until Building Permit # B19-00513 is issued." There is no record that B19-00513 has ever been issued.

Ordinance § 16.04.040 declares the County's intent to, *inter alia*, control the alteration of stream channels.

A 'riparian way' is proximate to the stream flowing through the subject property. Ordinance § 16.04.010 states a County finding that riparian vegetation "is a valuable natural resource ... [many] wildlife species, particularly birds, live only in riparian cover."

Ordinance § 16.04.050 lists five County riparian objectives:

- A. Preserving fish and game habitats;
- B. Preventing or reducing erosion;
- C. Maintaining cool water temperature;
- D. Preventing or reducing siltation;
- E. Promoting wise uses and conservation of woodland and wildlife resources of the county.

Ordinance § 16.04.060 provides that the methods "of preserving riparian cover include regulating by permit all development activities within riparian zones."

Ordinance § 16.04.750 (B) prohibits any facility or structure within ten feet from the top of a stream bank.

Ordinance § 16.04.770 states: "No structure or facility shall be constructed, located, extended, converted *or altered* without full compliance with the provision of this chapter ... "

Ordinance § 18.108.050 states that that no permit shall be issued "for uses, buildings or purposes which would be in conflict with the provisions of this title." In further emphasis of the preeminence of the subject chapter.

Ordinance § 16.04.780 states in relevant part:

"Neither the issuance of a permit nor compliance with the conditions thereof ... shall act to relieve any person from any responsibility otherwise imposed by law. ... A permit issued pursuant to this chapter shall not relieve the permittee of the responsibility of securing and complying with all other permit requirements and procedures which may be required by any other rule or regulation. "

Ordinance § 18.108.050 sets forth categorical exemptions to the chapter. Review of the provisions disclose that none apply to the instant matter.

Ordinance § 18.108.040 sets forth the requirements in order to qualify for use permit that would allow a discretionary exception to environmental compliance. It provides that "the encroachment, if any, is the minimum necessary to implement the project."

Ordinance § 18.108.040 requires that there be a "project" of some form. The Applicant and the planning department agree that no work whatsoever will occur as a result of this application; however, as a matter of law, a project that does nothing is not a project. A "Project means the whole of an action, resulting in physical impact on the environment," Bozung v. Local Agency Formation Com., 13 Cal.3d 263, 278 n. 16 (Cal. 1975) "[T]he failure to act is not itself an activity, even if, as may commonly be true, there are consequences, possibly including environmental consequences, resulting from the inactivity." Lake Norconian Club Found. v. Dep't of Corr. & Rehab., 39 Cal.App.5th 1044, 1051 (Cal. Ct. App. 2019)

Ordinance § 18.108.040 provides that for agricultural projects there is a second condition of approval: "Impacts on streams and watercourses are minimized, and adequate setbacks along these drainages are or will be maintained. ..."

Ordinance § 18.108.025 (B)(3) sets forth the mandatory minimum setback provisions for streams: 35 feet "from the top of the bank on both sides of the stream ..." It states that construction of main or accessory structures "shall be prohibited within the stream setback areas ... "

There are three exemptions to the rule that would permit the approval of a use permit. None avail the Applicants. The first exemption, [Ordinance § 18.108.050](#), is factually inapplicable. The application did not concern land clearing, fire safety, or any other of the designated exceptions set forth in that provision.

Second, the Applicants are ineligible for an exemption because their proposal does not contain the necessary precondition of maintaining legal setbacks from the stream bank. See [Ordinance § 16.04.750 \(B\)](#) and [Ordinance § 18.108.025 \(B\)\(3\)](#). The Planning Commission is without authority to grant an exemption if the applicant does not meet that fundamental requirement. Other provisions of building and zoning it may waive, but this minimum protection of environmental interests is mandatory.

Third, although on first glance it seems that the Applicants may qualify under [Ordinance § 18.108.025\(E\)](#) which allows for “installation of stream crossings, recreational roads and equestrian and nonmotorized trails,” that provision is unavailing because it requires “appropriate permits from other state, federal and local use permit requirements,” and that the director determine “that the least damaging alternative has been selected as part of an approved project.” There is no state or federal permit, or evidence that the encroaching buildings are the least damaging alternative.

[Ordinance § 18.112.160](#) provides for mandatory abatement in situations where an encroachment has occurred:

Any building set up, erected, built, moved or maintained, and any use of property contrary to the provisions of this title, shall be and the same is hereby declared to be unlawful and a public nuisance and the county may immediately commence action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof in the manner provided by law, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate and remove such building or use and restrain and enjoin any persons, firm or corporation from setting up, erecting, building, moving or maintaining any such building or using any property contrary to provisions of this title.

[Ordinance § 18.144.030](#) provides it “*shall* be the duty of the director, and other county officials herein or otherwise charged by law with the enforcement of this title, to enforce this title and all of its provisions.” (Emphasis added)

Amongst the most venerable of California’s laws are the Maxims of Equity, otherwise known as the Maxims of Jurisprudence. Intended to integrate the concept of “what is fair and just” with statutory law, the Maxims import moral values into “legal” decisions. The Maxims include “He who seeks equity must do equity.” Applied herein, it is submitted that the Maxims mean that if the Applicants wish to receive relief from the legal constraints that prohibit their conduct, they must be completely and unreservedly truthful to this Commission. As is detailed below, they have repeatedly failed this test.

FACTS

*September 18, 2019, Application, Supporting Documents
Aerial View 975 Deer Park Road, St. Helena, CA*

As the predicate foundation for their opinion herein, staff has written: “All of the site improvements subject to this Use Permit Exception application are existing, many of which predate the County’s Conservation Regulations.”

Water Audit’s review of the underlying record has concluded that staff is in error. As will be evidenced below, no structure under consideration pre-dated the Applicants. Ordinance [16.04.770](#) is clear that no building shall be altered without compliance with stream setback requirements. It is not a justification for a current encroachment that there has been an historical encroachment. When a building naturally reaches the end of its useful life, the law requires that any successor building comply with current ordinances. We no longer permit outhouses.

Violation A: The “Aq Storage Barn”

Staff reported:

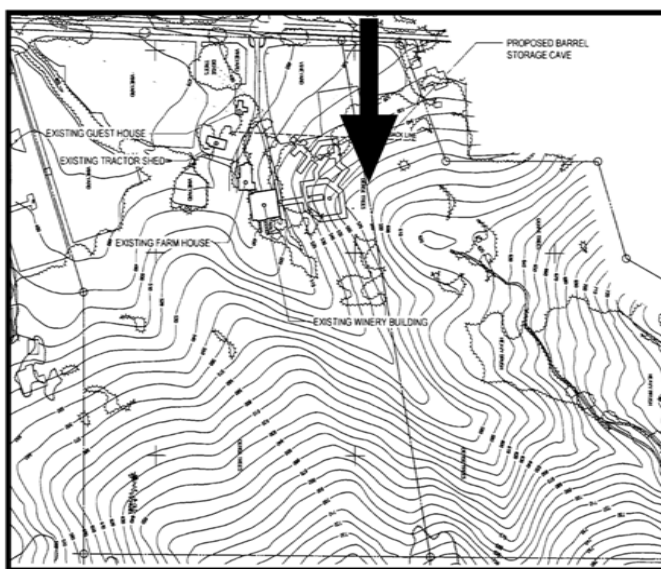
An approximate 2,200 sq. ft. agricultural barn and associated water tank:
This improvement was constructed in 2013. An Exception to the Conservation Regulations in the form of a Use Permit and a building permit were required. Neither permits were obtained. The applicant has indicated this structure is 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.

In order for staff's argument to have any merit, the existing building under consideration must be of the same configuration as in 1979. This is a statement of well-established Napa policy:

“To maintain a legal nonconforming status the use of the parcel or structure cannot be abandoned. Abandonment usually refers to a period of time with certain leeway for reconstruction *if the use was discontinued because of a calamity or misfortune*. ... If those uses had been done without permits or contrary to existing zoning at the time they were commenced, the use does not qualify as a legal nonconformity and would have to be discontinued and in some cases torn down.”

Tellingly, the Applicant did not directly image the current Ag Storage Barn in the Application. The substantial stone building, roughly equal in size to Frank, can only be seen by magnification of the background of a photo labeled “#7 - Bridge,” (Supporting Document H).

Close examination of Mr. Cox's drawing submitted in support of the cave development shows the existing winery building, "farmhouse," (a.k.a. Frank) "tractor shed," and guesthouse, but NO ag storage. See also a portion of the site plan submitted with P16-00271.



Part of Cox drawing



Part of Site Plan: P16-00271

Historically, there may have been some form of barn, but the original building is no longer there. There is no evidence that it was recently destroyed by calamity, and there can be no evidence to suggest that the existing building is in the same form. What is in front of the Commission now is a new violation, a monolith snubbing its nose at environmental constraints, waiting for its moment to be turned into an event center.

For the reasons set forth above, Water Audit prays that the Commission exercise Option 2 or 3, remove the encroachment, and reclaim the stream setback.

Violation B: The Concrete Pad

Staff reported:

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, and a modification to the winery use permit, all of which were required. None of the required permits were obtained.

It would seem that this is such a simple and mundane subject that no objection could arise, but that is not the case. Again, the underlying issue to be addressed is saying one thing and doing another, coupled with a problem of following the law.

The first recorded mention of the fermentation tanks was made in a letter by the Applicants to the Planning Commission in support of their effort to build a wine storage cave, P07-00654. They wrote in part:

Moving barrel storage from the exiting winery building to the caves will free up the existing winery building. This allows us to move inside our fermentation tanks that are currently stored outside giving the winery a neater appearance and improve the energy efficiency of the tanks.

The approval of the cave permit was in some part based upon the representation of some public benefit in a "neater appearance." The environment would benefit in some measure by having a few more square feet of permeable soil. Having obtained the permit, the Applicant unilaterally withdrew the offered benefit, while at the same time expanding its cave development by from 12,000 to 16,000 feet. To ratify this conduct is to encourage repetition.

The RSA+ Encroachment Plan shows that Applicants have more than adequate land on which to put their enterprises without infringement on the riparian way. It is not essential that this concrete pad be located where it is, and it would not be there had the Applicants not violated the law. Additionally, while it is acknowledged that driveways may be paved to suppress dust, that does not authorize the extensive concrete paving *in the riparian way* that is proximate to the subject pad. Although the planning department has abandoned this subject, that fact is just further evidence that the planning department has abandoned its protection of the public trust.

For the reasons set forth above, Water Audit prays that the Commission exercise Option 2 or 3, remove the encroachment, and reclaim the stream setback.

Violation C: The Main Dwelling/Farmhouse/Office (“Frank”)**Staff reported:**

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.

Staff further reports:

“[A]dditions to the residence/farmhouse (constructed 2005 and 2008 under B05-01249 and B08-00074 ...” “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 Modification⁴ approval.”

The reference to U-69789 pertains to the previous owners’ application made in May 1979 to reactivate the winery. The permits states:

CONDITIONS OF APPROVAL	
#U-697879, David S. Clark	Agenda Item: <u>11</u>
Meeting Date: <u>August 15, 1979</u>	
<input checked="" type="checkbox"/>	1. The permit be limited to: <u>reactivation of a ± 6780 sq. ft. Winery</u>
Any expansion or changes in use to be by separate Use Permit submitted for Commission consideration.	

The first permit, B05-01249 states it was issued for the addition of a deck and re-siding the “2nd DWLG” with cedar for a total cost of \$5,000. Although not disclosed to the Planning Commission, the work is revealed in the background of an image provided to the County by the Applicants to obtain a conservation regulations applicability determination. This was not a permit that related to Frank.



⁴ A “very minor modification” was formerly defined by Ordinance 18.124.130(C) as being less than ten percent.

B08-00074 (and a Permit Alternation Request) were commercial building permits issued for the “winery office.” This was consistent with U-697879, which concerned *only* the winery, and not Frank. Acreage was originally shown as “26 +/-” then on the Alteration Request as “46.” Planning permit P08-00088-VMM is shown on the parcel report as being applied for on February 13, 2008, two weeks after B08-00074.

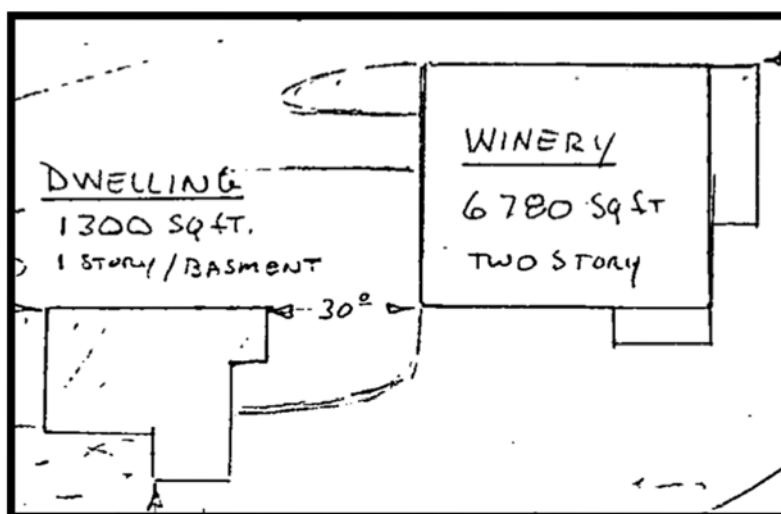
B08-00074 was filed for a roof replacement, and a total of 572 square feet of front porch, back deck and side porches to be added to the “winery office.” The Conditions of Approval state that the “permit shall be limited to: Repair and Expansion of 572 square feet of porch and deck to the exterior of the winery building with no change to marketing plan or production activities.” A roof was not included in the permit, although clearly it was part of application and the proposed construction.

Ordinance 18.124.130 provides in part:

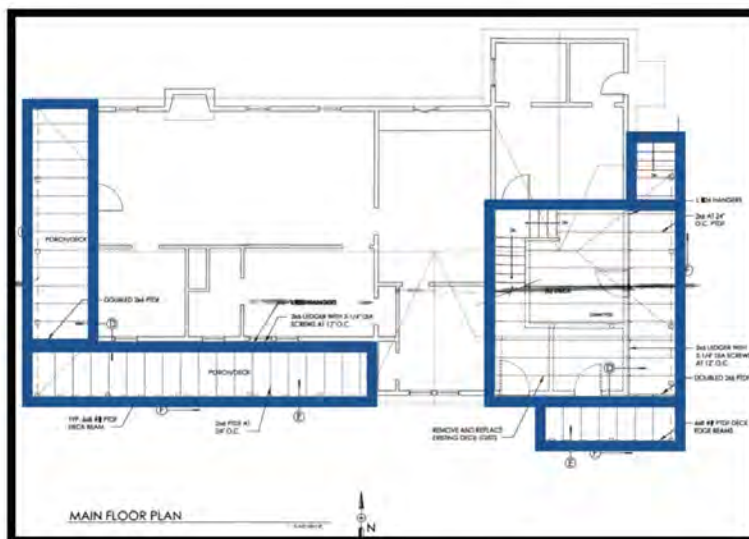
[T]he zoning administrator shall not consider or approve a minor modification if the result of the approval of the requested minor modification would result in any structure or the aggregate of all approved structures being increased more than twenty-five percent in size or one story in height based on the size allowed under the approved use permit.

B08-00074 does not discuss the substantial two-story addition to Frank shown in the P08-00088-VMM planning permit application. The notation “B08-0074” is visible in reverse on the last page of the P08-00088-VMM drawing set, but there is no copy of the other side of the page. Further, careful examination reveals that substantial portions of the original have been blocked out on the file copies.

The images of Frank submitted with the Application do not fully encompass the scope of the addition. However, by careful reference to the drawings submitted in support of P08-0088-VMM, a better understanding is possible. This appears to be yet another variation of what is popularly known as “the shell game.” A permit for a 572 square foot addition to the 6,780 square foot winery building qualified as a “very minor modification.” When the Applicants purchased from the Clarks, Frank was only 1,300 square feet. To avoid a Use review, the Applicants applied for a “very minor modification” permit to add onto the “winery building,” and then actually performed an addition to Frank, a completely different building.



The notable absence of any dimension on the drawings associated with P08-0088-VMM does not assist in reviewing this matter, but casual reference to the new construction relative to the existing structure shows the deception. Mentally adding on the ground floor work confirms the above calculus. Realty reports indicate that the present residence is 1,754 square feet, an increase of 454 square feet, or 35%. It would appear this number is exclusive of the ground floor, which would bring the net addition to approximately 44%.



Staff reports that in “September and October 2016, Notices of Violation were issued under Code Enforcement #CE16-00251⁵ for... alteration of the dwelling/Farmhouse including use as winery office...”

The left following image, blown up from the Application Supporting Document Photo Documentation, is the only useful shot of Frank in the Application, but it does not fully encompass the scope of the addition. To broaden the impression, the remaining images were copied from the Bremer Family Winery website, from Yelp reviews and from the website Napa Wine Project. They show the other side of the building, both literally and metaphorically.



Application, Frank, rear view



Image Napa Wine Project

5 This document is no longer in the web posted public record.



Frank, front view, Image Napa Project



Images: <https://www.bremerfamilywinery.com>



<https://www.bremerfamilywinery.com>

Image Napa Wine Project

Notwithstanding terms in the Settlement Agreement or the restrictions in the permits,, Yelp comments indicate that Bremer wine cave touring remains popular with the public. Chris L. from Oakland wrote: “Tim showed us the range of wines and walked us through the **caves** and grounds - so cool, tempted to join their wine club as they have monthly get-togethers for members.” Elliot K. from Santa Rosa: “After our fantastic tasting, Tom took us through the beautiful **cave** they have and it was just a cherry on top.”

Strangely, it seems that there may be yet another building permit issued in respect to Frank. B06-01434 was issued for the stated purpose of rehabilitation of an “ag storage.” There is no evidence of this work being performed aside from a note on the parcel report, but it’s true purpose may have been revealed by a letter from one of the Applicants. “We are close to completing the project listed above. We have only the roof structure to finish before the job is complete. We have been waiting on some specialty lumber which we are expecting shortly.”

Common sense would cause one to wonder if “specialty lumber” was actually utilized on an ag building, particularly given the fancy new roof line shown on P08-00088-VMM. Alternatively, the work may have been performed on the “carport” as part of its conversion to an outdoor kitchen and a catering center. Competent testimony from an Applicant could resolve the confusion.

Of the four identified violations Frank is the only one that *could possibly* have qualified under the Ordinances if timely and proper application had been made, although it should never have been permitted as a “very minor modification” to a different building. But as timely application was not made, and the Applicants have unclean hands, the remedy is clearly stated in Ordinance § 18.112.160: “abate and remove such building.”

For the reasons set forth above, Water Audit prays that the Commission exercise Option 2 or 3, remove the encroachment, and reclaim the stream setback.

Violation D: The Restroom

Staff reported:

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.

This subject is a further example of the Applicants making a representation to the County, obtaining the result desired, and then doing the opposite of what was originally promised.. The Applicants wrote: "The existing winery waste system/leach fields and tanks will not be impacted by this cave addition. We are not increasing production. We are not adding any bathroom facilities. There will be no additional sewage waste."

At the end of June 2012, the Applicants applied for a permit to construct an ADA compliant restroom. This application was made in the form of a permit alteration request in respect to B08-01030, the permit issued to construct the wine cave surreptitiously on APN 021-420-027. The permit had been closed a year earlier. The record of the permit does not indicate that the County was told of the proposed location, or inspected the work as it was performed.

The restroom was constructed on the edge of the stream bank, in the most ecologically offensive location on the site.



Ordinance § 16.04.750 (B) prohibits any facility or structure within ten feet from the top of bank. If the Planning Department were to properly apply the Ordinance, they could not have approved the restroom..

The Applicants own a great deal of land; the riparian way is very small. The symbolism implicit in this violation is obvious and intolerable. The Applicants and their guests are literally sitting on the edge of a blue line stream and defecating in the riparian way.

For the reasons set forth above, Water Audit prays that the Commission exercise Option 2 or 3, remove the encroachment, and reclaim the stream setback.

Bonus Violation E: the “carport” or “ag shop” or “tractor shed” or “catering portal.”

The Planning Department has, without explanation, exercised its “discretion” to not put several additional violations 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.”

During the course of the Applicants ownership this multi-named structure has changed from the classic “pole barn” type structure pictured below to a rather grand rock and concrete structure, complete with fireplace, outdoor kitchen and bocce ballcourt.



2002



2013



2019

Once again, it is useful to have a second perspective. In the view of the other side of the structure that follows one can see the associated outdoor kitchen, bocce ball court, and wedding venue. The chimney in the left of the image can be seen above the roof in the preceding images. One can easily image the catering vans backing up to the carport just before the festivities begin. To suggest that this structure is equal to the pole barn ...



Fifty years ago, the Ordinances had not been enacted. Water Audit concedes that the pole barn pre-dated the Applicants, and if it still existed it would be grandfathered. But the original building does not exist, and the outdoor kitchen is illegal where it is. Clearly the “carport” was “altered” by the Applicants, and planning review should have occurred. The Applicant has attempted to gloss this over, and the Planning Department has fully collaborated. The structure is a perfectly admirable building if it were not built in a riparian way.

The Ordinances provide for environmental remediation when a structure reaches the end of its useful life. The Ordinances do not allow the owner of a grandfathered infringement to double down on the offense, and yet that is exactly what happened here.

For the reasons set forth above, Water Audit prays that the Commission exercise Option 2 or 3, remove the encroachment, and reclaim the stream setback.

Violation F: “Outdoor Kitchen Sink”

It seems appropriate to end this comment by throwing in the kitchen sink. Peripheral to the conversion of the carport into a catering hub, the sink waste line was permitted by [E19-00174](#). Improperly located in the stream setback it should not be present any more than the adjacent building.

Although it is minor work, and apparently complete, the permit has not been closed because on its face it states that: "This Permit is NOT VALID until Building Permit B19-00513 is issued." There is no record of permit B19-00513. This is not the only anomaly in the record.⁶

For the reasons set forth above, Water Audit prays that the Commission exercise Option 2 or 3, remove the encroachment, and reclaim the stream setback.

CONCLUSION

The Applicants motivation is obvious: maximization of their investment. They apparently have no particular affection for the riparian way, and the law does not compel them to have one. The law only provides what they may do, or may not, and their only duty is to obey the law.

The planning department has a different role. They should apply the law to the facts and come to a fair and legal recommendation. It is not proper for a public employee to obfuscate. It is not their job to act as an advocate for the Applicants. There is a universe of highly compensated consultants available for that task. The planning department's role is to act as the public's advocate.

An inquiring mind is inevitably left with the unanswered question of the motive for all of this skullduggery, but Water Audit has concluded that for the moment the motive is of no matter. The Ordinances anticipate and provide precisely for this situation, and they make no provision for motive or party.

It is submitted that it is the duty of the Commission to conform the Applicants conduct to the law. The alternative is anarchy in this realm.

Respectfully,



Grant Reynolds
Director
Water Audit California

Recipient List and Exhibits 1 to 3 Attached

⁶ Note the reiteration of the permit number on the front page of the permit in a broad tipped felt pen, "E19-00174." and then on the following page note the number on the back side of the document: "E18-00174." Once the alteration of the record is observed on the reverse, the alteration on the front becomes obvious. The same situation occurred in B08-00074, where the back of the page did not have its companion front of the page. Penal Code 115 makes it a very serious offense to remove or alter a public record. Why would someone take that risk? Why did any of this happen? It makes no sense, unless the Applicants know that it is the intent of Napa is to repeal Ordinance Titles 17 & 18 by neglect, no matter what means are necessary.

Recipient List

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Kathy@KathyLynnFelch.com

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EXHIBIT 1

Planning Commission Regular Meeting June 17, 2020

Agenda,

Board Agenda Letter,

Meeting Supporting Documents,

Dox withdrawn, Cancellation Notice, Meeting deleted

Compiled June 10, 2020 through June 21, 2020

County of Napa

6/12/20, 6:27 PM



NAPA COUNTY
CALIFORNIA

AGENDAS & MINUTES

Napa County Planning Commission

This page shows online agendas, minutes, supporting documents and video for Napa County Planning Commission meetings from September 7, 2011 on. The meetings are arranged by date, with the most recent at the top of the list. To view documents for meetings prior to September 7, 2011 (without video), visit the old [Napa County Planning Commission meetings page](#). You may also search minutes for meetings prior to September 7, 2011 by visiting the [archive search page](#). You can search agendas and supporting documents for all meetings from this archive search page as well.

The Napa County Planning Commission will continue to meet pursuant to the [2020 calendar \(PDF\)](#). The Napa County Planning Commission realizes that not all County residents have the same ways to stay engaged, so several alternatives are offered. Please watch or listen to the Planning Commission meetings in one of the following ways:

- Watch on your TV - Napa Valley TV Channel 28.
- Listen on your cell phone - via Zoom at 1-669-900-6833 Enter Meeting ID 991-4190-6645 once you have joined the meeting.
- Watch via the Internet - view the Live Stream via Zoom by [clicking here](#), then enter Meeting ID 991-4190-6645.
- Via Granicus by [clicking here](#).

You may submit public comment for any item that appears on the agenda, or general public comment for any item or issue that does not appear on the agenda, as follows:

1. Via email - send your comment to the following email address: PC@countyofnapa.org. Please provide your name and indicate the agenda item upon which you are commenting. Email messages received after 9:00 A.M. may be read into the record following public comment provided in person or via telephone as directed by the Commission Chair.
2. Via telephone - please call the Planning Commission Public Comment Line at: (707)-299-1776. Please provide your name and the agenda item on which you are commenting. Your call will be placed on hold and heard by the Board in the order received.

Note: Please mute all audio on your devices and do not use the speakerphone function prior to calling in to prevent echoing.

The above-identified measures exceed all legal requirements for participation and public comment, including those imposed by the Ralph M. Brown Act and Executive Order N-29-20. If you have any questions, contact us via telephone at (707)-253-4417 or send an email to planningcommissionclerk@countyofnapa.org.

Upcoming Events

Meeting Type

Napa County Planning Commission Meeting

Meeting Date

June 17, 2020 - 9:00 AM

[Agenda/Docs](#)

Archived Events

To search Napa County Planning Commission agendas and minutes for meetings occurring after September 7, 2011, enter keywords in the text box below and click search. To search agendas and minutes for meetings that occurred prior to September 7, 2011, visit the [archive agenda/minutes search page](#).

Meeting Date	Meeting Type	Duration		
May 20, 2020	Napa County Planning Commission Meeting / ALUC Special Meeting	04h 30m	Agenda/Docs	Video
March 04, 2020	Napa County Planning Commission Meeting	01h 34m	Agenda/Docs	Minutes Video
February 19, 2020	Napa County Planning Commission Meeting	00h 50m	Agenda/Docs	Minutes Video
February 05, 2020	Napa County Planning Commission Meeting	05h 08m	Agenda/Docs	Minutes Video
January 22, 2020	Special Meeting of the Napa County Planning Commission	06h 25m	Agenda/Docs	Minutes Video
January 15, 2020	Napa County Planning Commission Meeting	04h 59m	Agenda/Docs	Minutes Video
December 18, 2019	Napa County Planning Commission Meeting	04h 08m	Agenda/Docs	Minutes Video
December 04, 2019	Napa County Planning Commission Meeting	06h 41m	Agenda/Docs	Minutes Video
November 20, 2019	Napa County Planning Commission Meeting / ALUC Special Meeting	02h 28m	Agenda/Docs	Minutes Video
November 06, 2019	Napa County Planning Commission Meeting	02h 20m	Agenda/Docs	Minutes Video
October 16, 2019	Napa County Planning Commission Meeting	05h 00m	Agenda/Docs	Minutes Video
October 02, 2019	Napa County Planning Commission Meeting	03h 02m	Agenda/Docs	Minutes Video
September 18, 2019	Napa County Planning Commission Meeting	02h 17m	Agenda/Docs	Minutes Video

Meeting Supporting Documents

Planning Commission 6/17/2020 Regular Meeting

Links to the official agenda(s), board letters and supporting documents are found here. If an item number is blue then a board letter is available for it, so click the item number to view the board letter. If an item has any supporting documents, they will be displayed by the item number. The document's title is a link to the actual document. The attachment type and file size are listed next to the title. Please see the agenda link(s) below for the official PDF agenda(s).

[View the Agenda](#)

[7A](#)

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

Supporting Documents

- A [Recommended Findings](#) (Adobe PDF - 266 kb)
- B [Recommended Conditions of Approval](#) (Adobe PDF - 934 kb)
- C [CEQA Memo](#) (Adobe PDF - 511 kb)
- D [Graphics and Site Improvements Plan](#) (Adobe PDF - 2068 kb)

7B

CAROL POOLE / NAPA WILDLIFE RESCUE RESERVE / USE PERMIT No. P19-00495-UP

CEQA Status: Consideration and possible adoption of Categorical Exemptions Class 1, 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 15303, Class 3 New Construction or Conversion of Small Structures; and Section 15304, Class 4 Minor Alterations to Land.] This project is not on any lists of hazardous waste sites enumerated under Government Code Section 65962.5.

Request: Approval of a request from Napa Wildlife Rescue for a Use Permit (No. P19-00495) to operate a Wildlife Rescue Center (N.C.C. \$18.08.638). The requested Use Permit would contain the following actions: 1) conversion of an existing 2,824 square foot single-family residence and garage, 2) conversion of an existing barn/workshop (3,600 square feet) and a dog kennel (460 square feet) and recognition of the structures as standalone wildlife cages and/or pens, 3) 120 square feet of small outdoor avian and animal enclosures, 4) 2,138 square feet of additional paving to add nine (9) parking stalls and bring the existing driveway up to current Napa County Road and Street Standards, and 5) a vegetable garden, fruit trees, and additional landscaping. The project is located within the Agricultural Watershed (AW) zoning district and Agricultural Resource (AR) general plan designation at 4001 Middle Avenue, Napa; Assessor's Parcel No's 047-202-005 and -006.

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

Staff Contact: Trevor Hawkes, Planner III at 707-253-4388 or email trevor.hawkes@countyofnapa.org

Applicant: Carol Poole; phone 707-363-7807 or email cpoole1135@yahoo.com

Supporting Documents

- A [Recommended Findings](#) (Adobe PDF - 173 kb)
- B [Recommended Conditions of Approval and Final Agency Approval Memos](#) (Adobe PDF - 1026 kb)
- C [CEQA Categorical Exemption Memo](#) (Adobe PDF - 433 kb)
- D [General Plan Consistency Analysis](#) (Adobe PDF - 139 kb)
- E [Use Permit Application](#) (Adobe PDF - 1485 kb)
- F [Water Availability Analysis](#) (Adobe PDF - 1629 kb)
- G [Graphics](#) (Adobe PDF - 5163 kb)
- H [Public Comments](#) (Adobe PDF - 1016 kb)

8A

COUNTY OF NAPA - WATER AVAILABILITY ANALYSIS (WAA) WORKSHOP

Request: Receive an overview and presentation of the County's Water Availability Analysis Guidance Document and related procedures, and hear an update on County groundwater monitoring and sustainability planning efforts.

Staff Recommendation: Information and discussion item. No action proposed.

Staff Contact: Brian Bordona, Deputy Planning Director (707) 259-5935
Brian.Bordona@countyofnapa.org

Supporting Documents

- A [Attachment A - Water Availability Analysis Guidance Document](#) (Adobe PDF - 1089 kb)
- B [Exec. Summary - 2019 Annual Groundwater Monitoring Report \(9mb\)](#) (Adobe PDF - 9559 kb)



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 6/17/2020

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 Categorically 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 Categorically 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 . Recommended Findings
- B . Recommended Conditions of Approval
- C . CEQA Memo
- D . Graphics and Site Improvements Plan

Napa County Planning Commission: Approve

Reviewed By: Brian Bordona

“A”

Recommended Findings

Use Permit Exception #P20-00143

Use Permit Exception to the Conservation Regulations
Bremer Family Winery #P20-00143-UP
Planning Commission Hearing - Wednesday, June 17, 2020

**PLANNING COMMISSION HEARING – June 17, 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, June 17, 2020 (Attachment C of the Napa County Planning Commission June 17, 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 June 17, 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 June 17, 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).

“B”

Recommended Conditions of
Approval

Use Permit Exception #P20-00143

Use Permit Exception to the Conservation Regulations
Bremer Family Winery #P20-00143-UP
Planning Commission Hearing - Wednesday, June 17, 2020

**PLANNING COMMISSION HEARING – June 17, 2020
CONDITIONS OF APPROVAL**

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

This permit encompasses and shall be limited to the project commonly known as *Bremer Family Winery Site Improvements Recognition and Retention*, located at 975 Deer Park Road, St. Helena. Part I encompasses the Project Scope and general conditions pertaining to statutory and local code references, project monitoring, and the process for any future changes or activities. Part II encompasses the ongoing conditions relevant to the operation of the project. Part III encompasses the conditions relevant to construction and the prerequisites for a Final Certificate of Occupancy. It is the responsibility of the permittee to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and guests of the winery to ensure compliance is achieved.

Where conditions are not applicable or relevant to this project, they shall be noted as “Reserved” and therefore have been removed.

When modifying a legally established entitlement related to this project, these conditions are not intended to be retroactive or to have any effect on existing vested rights except where specifically indicated.

PART I

1.0 PROJECT SCOPE

The permit encompasses and shall be limited to:

- 1.1** The recognition and approval of, the following existing site improvements, or portions thereof, in their existing configuration, that encroach into the minimum required stream setbacks pursuant to Napa County Code (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 Attachment D Site Improvement - Bremer Use Permit Exception.
- a. An approximate 2,200 square foot agricultural storage building and associated water tank;
 - b. An approximate 800 square foot concrete pad and associated walls attached to the winery;
 - c. An approximate 150 square foot ground floor/story addition and second floor/story deck to the farmhouse/office building;
 - d. An approximate 100 square foot freestanding restroom.

The recognition of the four existing site improvements located within required stream setbacks shall be those that are in substantial conformance with the submitted site plan, elevation drawings, and other submittal materials and shall comply with all requirements of the Napa County Code (the County Code). It is the responsibility of the permittee to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and the general public to ensure compliance is achieved. Any expansion of or change in use or alternative locations for fire suppression or other types of water tanks shall be approved in accordance with the County Code and may be subject to the permit modification process. The approval of the four site improvements within the required stream setbacks in no way authorizes their use for winery related purposes. Any use of these structures for winery related purposes would first require County approval of a use permit modification to the existing use permit.

2.0 STATUTORY AND CODE SECTION REFERENCES

All references to statutes and code sections shall refer to their successor as those sections or statutes may be subsequently amended from time to time.

3.0 MONITORING COSTS

All staff costs associated with monitoring compliance with these conditions, previous permit conditions, and project revisions shall be borne by the permittee and/or property owner. Costs associated with conditions of approval and mitigation measures that require monitoring, including investigation of complaints, other than those costs related to investigation of complaints of non-compliance that are determined to be unfounded, shall be charged to the property owner or permittee. Costs shall be as established by resolution of the Board of Supervisors in accordance with the hourly consulting rate established at the time of the monitoring and shall include maintenance of a \$500 deposit for construction compliance monitoring that shall be retained until issuance of a Final Certificate of Occupancy. Violations of conditions of approval or mitigation measures caused by the permittee's contractors, employees, and/or guests are the responsibility of the permittee.

The Planning Commission may implement an audit program if compliance deficiencies are noted. If evidence of a compliance deficiency is found to exist by the Planning Commission at sometime in the future, the Planning Commission may institute the program at the applicant's expense (including requiring a deposit of funds in an amount determined by the Commission) as needed until compliance assurance is achieved. The Planning Commission may also use the data, if so warranted, to commence revocation proceedings in accordance with the County Code.

PART II

4.0 OPERATIONAL CHARACTERISTICS OF THE PROJECT

Permittee shall comply with the following during operation of the winery:

4.1 GENERAL PROVISIONS [RESERVED]

4.2 TOURS AND TASTINGS/VISITATION [RESERVED]

4.3 MARKETING [RESERVED]

- 4.4 ON-PREMISES CONSUMPTION [RESERVED]**
- 4.5 RESIDENCE OR NON-WINERY STRUCTURES [RESERVED]**
- 4.6 GRAPE SOURCE [RESERVED]**
- 4.7 COMPLIANCE REVIEW [RESERVED]**
- 4.8 RENTAL/LEASING [RESERVED]**
- 4.9 GROUND WATER MANAGEMENT – WELLS [RESERVED]**
- 4.10 AMPLIFIED MUSIC [RESERVED]**
- 4.11 TRAFFIC [RESERVED]**
- 4.12 PARKING [RESERVED]**
- 4.13 BUILDING DIVISION – USE OR OCCUPANCY CHANGES [RESERVED]**
- 4.14 FIRE DEPARTMENT – TEMPORARY STRUCTURES [RESERVED]**
- 4.15 NAPA COUNTY MOSQUITO ABATEMENT PROGRAM [RESERVED]**
- 4.16 GENERAL PROPERTY MAINTENANCE – LIGHTING, LANDSCAPING, PAINTING, OUTDOOR EQUIPMENT STORAGE, AND TRASH ENCLOSURE AREAS**
 - a. [RESERVED]**
 - b. [RESERVED]**
 - c.** The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation. The permittee shall obtain the written approval of the Planning Division prior to any change in paint colors that differs from the approved building permit. Highly reflective surfaces are prohibited.
 - d.** Designated trash enclosure areas shall be made available and properly maintained for intended use.
- 4.17 NO TEMPORARY SIGNS**
Temporary off-site signage, such as “A-Frame” signs, is prohibited.
- 4.18 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES – OPERATIONAL CONDITIONS**
The attached project conditions of approval include all of the following County Divisions, Departments and Agencies’ requirements. Without limiting the force of those other requirements which may be applicable, the following are incorporated by reference as enumerated herein:

- a. Fire Department operational conditions as stated in their Inter-Office Memo dated May 30, 2019.

The determination as to whether or not the permittee has substantially complied with the requirements of other County Divisions, Departments and Agencies shall be determined by those County Divisions, Departments or Agencies. The inability to substantially comply with the requirements of other County Divisions, Departments and Agencies may result in the need to modify this permit.

4.19 OPERATIONAL MITIGATION MEASURES [RESERVED]

4.20 OTHER CONDITIONS APPLICABLE TO THE OPERATIONAL ASPECTS OF THE PROJECT [RESERVED]

4.21 PREVIOUS CONDITIONS [RESERVED]

PART III

5.0 PREREQUISITE FOR ISSUANCE OF PERMITS

5.1 PAYMENT OF FEES

No building, grading or sewage disposal permits shall be issued or other permits authorized until all accrued planning permit processing fees have been paid in full. This includes all fees associated with plan check and building inspections, associated development impact fees established by County Ordinance or Resolution, and the Napa County Affordable Housing Mitigation Fee in accordance with County Code.

6.0 GRADING/DEMOLITION/ENVIRONMENTAL/BUILDING PERMIT/OTHER PERMIT PREREQUISITES

Permittee shall comply with the following with the submittal of a grading, demolition, environmental, building and/or other applicable permit applications.

6.1 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES – PLAN REVIEW, CONSTRUCTION AND PREOCCUPANCY CONDITIONS [RESERVED]

6.2 BUILDING DIVISION – GENERAL CONDITIONS

- a. A building permit shall be obtained for all construction occurring on the site not otherwise exempt by the California Building Code (CBC) or any State or local amendment adopted thereto.
- b. If there are any existing structures and/or buildings on the property that will need to be removed to accommodate construction activities, a separate demolition permit shall be required from the Building Division prior to removal. The permittee shall provide a “J” number from the Bay Area Air Quality Management District (BAAQMD) at the time the permittee applies for a demolition permit if applicable.

- c. All areas of newly designed and newly constructed buildings, facilities and on-site improvements must comply with the CBC accessibility requirements, as well as, American with Disability Act requirements when applicable. When alterations or additions are made to existing buildings or facilities, an accessible path of travel to the specific area of alteration or addition shall be provided as required per the CBC.

6.3 LIGHTING – PLAN SUBMITTAL [RESERVED]

6.4 LANDSCAPING – PLAN SUBMITTAL [RESERVED]

6.5 COLORS

The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation. The permittee shall obtain the written approval of the Planning Division in conjunction with building permit review and/or prior to painting the building. Highly reflective surfaces are prohibited.

6.6 OUTDOOR STORAGE/SCREENING/UTILITIES

- a. Details of outdoor storage areas and structures shall be included on the building and landscape plans. All outdoor storage of winery equipment shall be screened from the view of residences of adjacent properties by a visual barrier consisting of fencing or dense landscaping. No stored item shall exceed the height of the screening. Water and fuel tanks, and similar structures, shall be screened to the extent practical so as to not be visible from public roads and adjacent parcels.
- b. New utility lines required for this project that are visible from any designated scenic transportation route (see Community Character Element of the General Plan and the County Code) shall be placed underground or in an equivalent manner be made virtually invisible from the subject roadway.
- c. Exterior winery equipment shall be located, enclosed or muffled so as not to exceed noise thresholds in the County Code.

6.7 TRASH ENCLOSURES

Adequate area must be provided for collection and loading of garbage and recyclables generated by the project. The applicant must work with the franchised garbage hauler for the service area in which they are located, in order to determine the area and the pedestrian and vehicle access needed for the collection site. The garbage and recycling enclosure shall meet the minimum enclosure requirements established by staff and the franchised hauler, which shall be included in the building permit submittal.

6.8 ADDRESSING [RESERVED]

6.9 HISTORIC RESOURCES [RESERVED]

6.10 DEMOLITION ACTIVITIES [RESERVED]

- 6.11 VIEWSHED – EXECUTION OF USE RESTRICTION **[RESERVED]**
- 6.12 PERMIT PREREQUISITE MITIGATION MEASURES **[RESERVED]**
- 6.13 PARCEL CHANGE REQUIREMENTS **[RESERVED]**
- 6.14 FINAL MAPS **[RESERVED]**
- 6.15 OTHER CONDITIONS APPLICABLE TO THE PROJECT PERMITTING PROCESS **[RESERVED]**
- 7.0 **PROJECT CONSTRUCTION**
 - Permittee shall comply with the following during project construction:
 - 7.1 SITE IMPROVEMENTS **[RESERVED]**
 - 7.2 ARCHEOLOGICAL FINDING **[RESERVED]**
 - 7.3 CONSTRUCTION NOISE **[RESERVED]**
 - 7.4 CONSTRUCTION MITIGATION MEASURES **[RESERVED]**
 - 7.5 OTHER CONSTRUCTION CONDITIONS APPLICABLE TO THE PROJECT PROPOSAL **[RESERVED]**
- 8.0 TEMPORARY CERTIFICATE OF OCCUPANCY – PREREQUISITES **[RESERVED]**
- 9.0 FINAL CERTIFICATE OF OCCUPANCY – PREREQUISITES **[RESERVED]**

“C”

CEQA Determination

Use Permit Exception #P20-00143

Use Permit Exception to the Conservation Regulations
Bremer Family Winery #P20-00143-UP
Planning Commission Hearing - Wednesday, June 17, 2020



A Tradition of Stewardship
A Commitment to Service

Planning, Building and Environmental Services

1195 Third Street, Suite 210
Napa, CA 94559
www.co.napa.ca.us

Main: (707) 253-4417
Fax: (707) 253-4336

David Morrison
Director

MEMORADUM

To: Planning Commission	From: Donald Barrella, Planner III
Date: June 17, 2020	Re: 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 C in the June 17, 2020 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 June 17, 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 (CNDDB), Owl habitat CNDDB, 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 theses 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.



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A Commitment to Service

Napa County Fire Department
Fire Marshal's Office
Hall of Justice, 2nd Floor
1125 3rd Street
Napa, CA 94559

Office: (707) 299-1461

Garrett Veyna
Fire Marshal

MEMORANDUM

TO:	Planning Department	DATE:	5/30/2019
FROM:	Adam Mone, Plans Examiner	PERMIT #	P19-00153
SUBJECT:	Bremer Family Winery	APN:	021-400-002-000

The Napa County Fire Marshal's Office has reviewed the submittal package for the above proposed project. The Fire Marshal approves as submitted and requires the following conditions to be incorporated as part of permit issuance.

1. Provide 100 feet of defensible space around all structures.
2. Provide 10 feet of defensible space fire hazard reduction on both sides of all roadways of the facility.

Please note that the comments noted above are based on a Fire Marshal's Office review only. There may be additional comments or information requested from other County Departments or Divisions reviewing this application submittal package. Napa County Fire Marshal's Office Development Guidelines can be found @ www.countyofnapa.org/firemarshal. Should you have any questions of me, contact me at (707)299-1466 or email at adam.mone@countyofnapa.org.

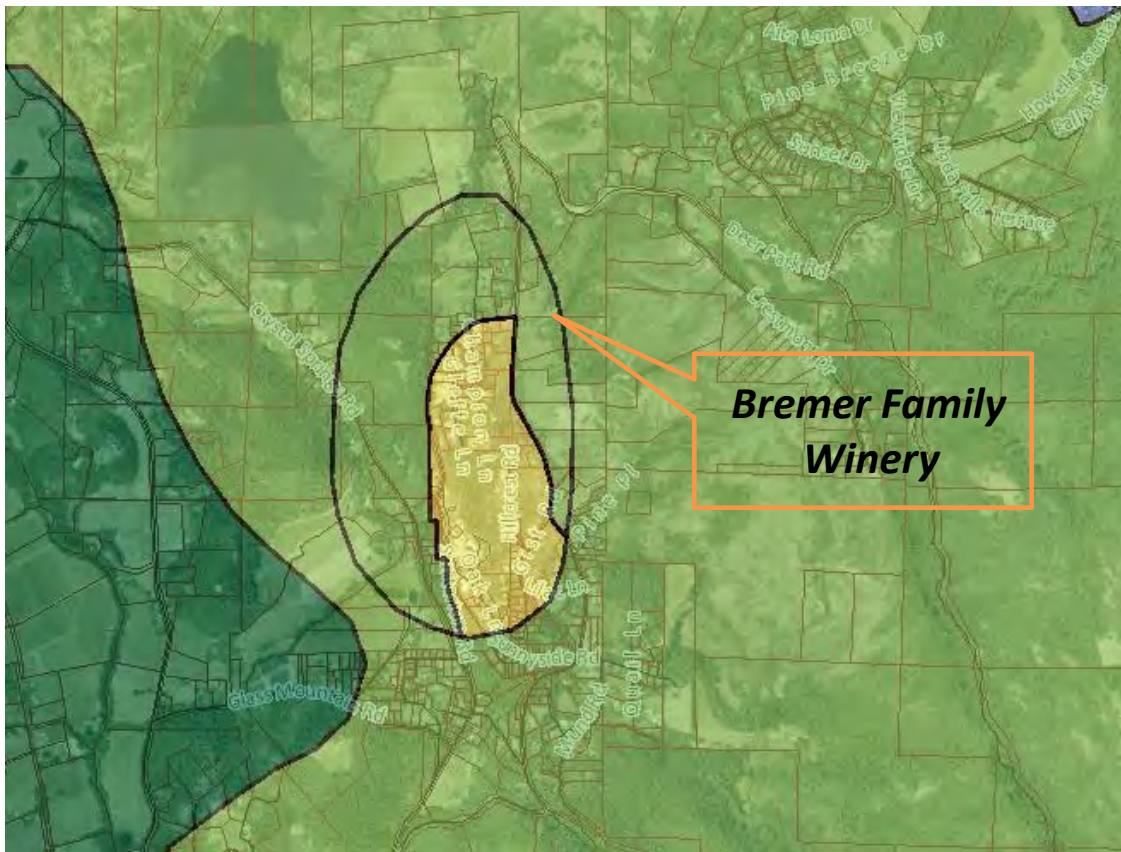
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Graphics and Site Improvement
Plan

Use Permit Exception #P20-00143

Use Permit Exception to the Conservation Regulations
Bremer Family Winery #P20-00143-UP
Planning Commission Hearing - Wednesday, June 17, 2020

NAPA COUNTY LAND USE PLAN 2008 – 2030



SCALE IN MILES
0 ½ Mile]

LEGEND



URBANIZED OR NON-AGRICULTURAL

- Study Area
- Cities
- Urban Residential*
- Rural Residential*
- Industrial
- Public-Institutional
- Napa Pipe Mixed Use

OPEN SPACE

- Agriculture, Watershed & Open Space
- Agricultural Resource

TRANSPORTATION

- Mineral Resource
- Limited Access Highway
- American Canyon ULL
- City of Napa RUL
- Landfill - General Plan
- Road
- Airport
- Railroad
- Airport Clear Zone

* See Action Item AG/LU-114.1 regarding agriculturally zoned areas within these land use designations.

APN: 021-400-002 & 021-420-027

Map Date: 09-06-19



LEGEND

— Zoning
 — Parcels

0 ¼ Mile



ZONING MAP

P19-00152-UP APNs: 021-400-002 & 021-420-027

Map Date: 09-06-19



Existing Conditions

P19-00152-UP APNs: 021-400-002 & 021-420-027

Map Date: 09-06-19

Site improvements subject to the County stream setback requirements. Improvements E and F were approved by the Board of Supervisors on May 5, 2020. Improvements A through D were remanded to the Planning Commission for reconsideration.

- A. An approximate 2,200 sq. ft. Ag Storage Barn and associated water tank that replaced an approximate 320 sq. ft. Barn;
- 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) constructed/completed in 2011 under Building Permit #B08-00074;
- D. An approximate 100 sq. ft. freestanding restroom constructed/completed in 2012 under Building Permit #B08-01030;
- E. Approximately 1,210 lineal feet of low decorative rock walls;
- F. Two pedestrian bridges.

ATTACHMENT "D"

A) APPROX. 2,200 SQ.FT. AG STORAGE BUILDING & TANK

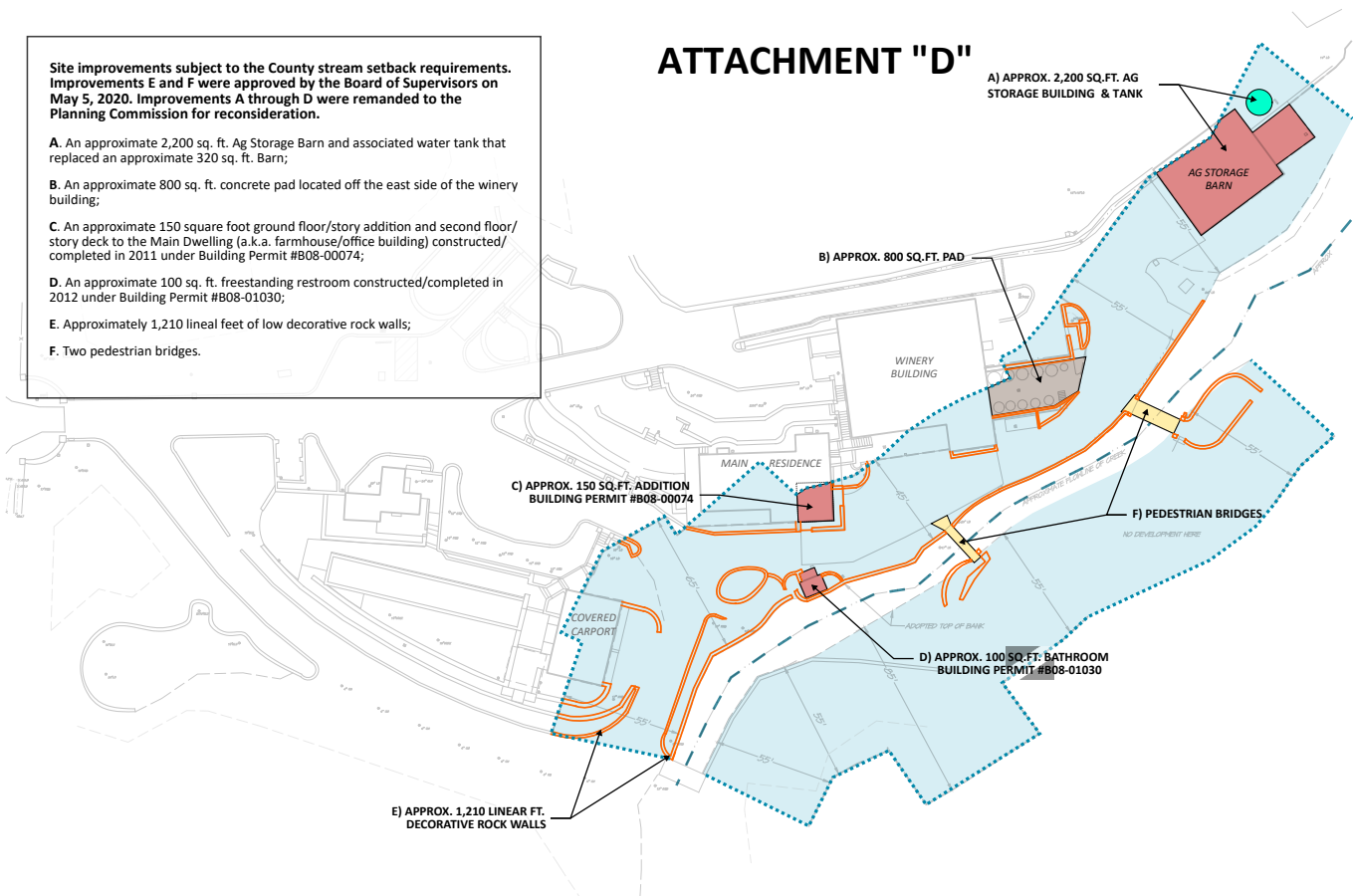
B) APPROX. 800 SQ.FT. PAD

C) APPROX. 150 SQ.FT. ADDITION BUILDING PERMIT #B08-00074

D) APPROX. 100 SQ.FT. BATHROOM BUILDING PERMIT #B08-01030

E) APPROX. 1,210 LINEAL FT. DECORATIVE ROCK WALLS

F) PEDESTRIAN BRIDGES



SITE IMPROVEMENTS - Bremer Use Permit Exception - ATTACHMENT "D"



Napa County Planning Commission

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2. Via telephone - please call the Planning Commission Public Comment Line at: (707)-299-1776. Please provide your name and the agenda item on which you are commenting. Your call will be placed on hold and heard by the Board in the order received.

Note: Please mute all audio on your devices and do not use the speakerphone function prior to calling in to prevent echoing.

The above-identified measures exceed all legal requirements for participation and public comment, including those imposed by the Ralph M. Brown Act and Executive Order N-29-20. If you have any questions, contact us via telephone at (707)-253-4417 or send an email to planningcommissionclerk@countyofnapa.org.

Upcoming Events

Meeting Type	Meeting Date	
Napa County Planning Commission Meeting	June 17, 2020 - 9:00 AM	Agenda/Docs

Archived Events

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Enter Keywords here		Search			
Meeting Date	Meeting Type	Duration	Agenda/Docs	Minutes	Video
May 20, 2020	Napa County Planning Commission Meeting / ALUC Special Meeting	04h 30m	Agenda/Docs	Minutes	Video
March 04, 2020	Napa County Planning Commission Meeting	01h 34m	Agenda/Docs	Minutes	Video
February 19, 2020	Napa County Planning Commission Meeting	00h 50m	Agenda/Docs	Minutes	Video
February 05, 2020	Napa County Planning Commission Meeting	05h 08m	Agenda/Docs	Minutes	Video
January 22, 2020	Special Meeting of the Napa County Planning Commission	06h 25m	Agenda/Docs	Minutes	Video
January 15, 2020	Napa County Planning Commission Meeting	04h 59m	Agenda/Docs	Minutes	Video
December 18, 2019	Napa County Planning Commission Meeting	04h 08m	Agenda/Docs	Minutes	Video
December 04, 2019	Napa County Planning Commission Meeting	06h 41m	Agenda/Docs	Minutes	Video
November 20, 2019	Napa County Planning Commission Meeting / ALUC Special Meeting	02h 28m	Agenda/Docs	Minutes	Video
November 06, 2019	Napa County Planning Commission Meeting	02h 20m	Agenda/Docs	Minutes	Video
October 16, 2019	Napa County Planning Commission Meeting	05h 00m	Agenda/Docs	Minutes	Video
October 02, 2019	Napa County Planning Commission Meeting	03h 02m	Agenda/Docs	Minutes	Video

Meeting Supporting Documents


Planning Commission 6/17/2020 Regular Meeting

Links to the official agenda(s), board letters and supporting documents are found here. If an item number is blue then a board letter is available for it, so click the item number to view the board letter. If an item has any supporting documents, they will be displayed by the item number. The document's title is a link to the actual document. The attachment type and file size are listed next to the title. Please see the agenda link(s) below for the official PDF agenda(s).

[View the Agenda](#)

There are no board letters or supporting documents for this meeting.

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Napa County Planning Commission

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Upcoming Events

Meeting Type	Meeting Date	
Napa County Planning Commission Meeting (Meeting Cancelled)	June 17, 2020 - 9:00 AM	Agenda/Docs

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Enter Keywords here
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February 05, 2020	Napa County Planning Commission Meeting	05h 08m	Agenda/Docs	Minutes	Video
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January 15, 2020	Napa County Planning Commission Meeting	04h 59m	Agenda/Docs	Minutes	Video
December 18, 2019	Napa County Planning Commission Meeting	04h 08m	Agenda/Docs	Minutes	Video
December 04, 2019	Napa County Planning Commission Meeting	06h 41m	Agenda/Docs	Minutes	Video
November 20, 2019	Napa County Planning Commission Meeting / ALUC Special Meeting	02h 28m	Agenda/Docs	Minutes	Video
November 06, 2019	Napa County Planning Commission Meeting	02h 20m	Agenda/Docs	Minutes	Video
October 16, 2019	Napa County Planning Commission Meeting	05h 00m	Agenda/Docs	Minutes	Video



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A Commitment to Service

MEETING CANCELLATION

NAPA COUNTY PLANNING COMMISSION

THE MEETING OF WEDNESDAY, JUNE 17, 2020
HAS BEEN CANCELLED DUE TO SCHEDULING CONFLICTS RELATED
TO THE BOARD OF SUPERVISORS ANNUAL BUDGET HEARINGS
THE NEXT REGULAR MEETING IS ON
WEDNESDAY, JULY 1, 2020

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You may submit public comment for any item that appears on the agenda, or general public comment for any item or issue that does not appear on the agenda, as follows:

1. Via email - send your comment to the following email address: PC@countyofnapa.org. Please provide your name and indicate the agenda item upon which you are commenting. Email messages received after 9:00 A.M. may be read into the record following public comment provided in person or via telephone as directed by the Commission Chair.
2. Via telephone - please call the Planning Commission Public Comment Line at: (707)-299-1776. Please provide your name and the agenda item on which you are commenting. Your call will be placed on hold and heard by the Board in the order received.

Note: Please mute all audio on your devices and do not use the speakerphone function prior to calling in to prevent echoing.

The above-identified measures exceed all legal requirements for participation and public comment, including those imposed by the Ralph M. Brown Act and Executive Order N-29-20. If you have any questions, contact us via telephone at (707)-253-4417 or send an email to planningcommissionclerk@countyofnapa.org.

Upcoming Events

Meeting Type	Meeting Date
Currently there are no upcoming events.	

Archived Events

To search Napa County Planning Commission agendas and minutes for meetings occurring after September 7, 2011, enter keywords in the text box below and click search. To search agendas and minutes for meetings that occurred prior to September 7, 2011, visit the [archive agenda/minutes search page](#).

Enter Keywords here
Search

Meeting Date	Meeting Type	Duration	Agenda/Docs	Minutes	Video
May 20, 2020	Napa County Planning Commission Meeting / ALUC Special Meeting	04h 30m	Agenda/Docs	Minutes	Video
March 04, 2020	Napa County Planning Commission Meeting	01h 34m	Agenda/Docs	Minutes	Video
February 19, 2020	Napa County Planning Commission Meeting	00h 50m	Agenda/Docs	Minutes	Video
February 05, 2020	Napa County Planning Commission Meeting	05h 08m	Agenda/Docs	Minutes	Video
January 22, 2020	Special Meeting of the Napa County Planning Commission	06h 25m	Agenda/Docs	Minutes	Video
January 15, 2020	Napa County Planning Commission Meeting	04h 59m	Agenda/Docs	Minutes	Video
December 18, 2019	Napa County Planning Commission Meeting	04h 08m	Agenda/Docs	Minutes	Video
December 04, 2019	Napa County Planning Commission Meeting	06h 41m	Agenda/Docs	Minutes	Video
November 20, 2019	Napa County Planning Commission Meeting / ALUC Special Meeting	02h 28m	Agenda/Docs	Minutes	Video
November 06, 2019	Napa County Planning Commission Meeting	02h 20m	Agenda/Docs	Minutes	Video
October 16, 2019	Napa County Planning Commission Meeting	05h 00m	Agenda/Docs	Minutes	Video
October 02, 2019	Napa County Planning Commission Meeting	03h 02m	Agenda/Docs	Minutes	Video
September 18, 2019	Napa County Planning Commission Meeting	02h 17m	Agenda/Docs	Minutes	Video
August 21, 2019	Napa County Planning Commission Meeting	00h 53m	Agenda/Docs	Minutes	Video
July 17, 2019	Napa County Planning Commission Meeting	02h 05m	Agenda/Docs	Minutes	Video

EXHIBIT 2



Search

Search Type

PBES PAV CQ

NOTE: Searching by APN or Establishment ID only will yield the most results; too many filled fields will narrow results.

Permit

Establishment ID

Parcel # (###-###-###-000)

021-420-027-000

PBES Division

Street

Street Name

PBES Program

Year


Search

Reset

Results

PBES Division	Parcel # (###-###-###-000)	Permit #	Street #	Street Name	Establishment ID	PBES Program	Year	Document Type
	021-420-027-000	P13-00345						PBES-CSD
PLANNING	021-420-027-000	P13-00344	975	DEER PARK	0	CON	0000	PBES-ASM

PBES Electronic Document Retrieval APN 021-400-002-000 LIST screen-shots compiled June 15, 2020


NAPA COUNTY
 CALIFORNIA

English

Search

Search Type

PBES PAV CO

NOTE: Searching by APN or Establishment ID only will yield the most results; too many filled fields will narrow results.

Permit #

Establishment ID

Parcel # (###-###-###-000)

021-400-002-000

PBES Division

Street #

Street Name

PBES Program

Year

Search Reset

Results

PBES Division	Parcel # (###-###-###-000)	Permit #	Street #	Street Name	Establishment ID	PBES Program	Year	Document Type
BUILDING	021-400-002-000	25747	1000	DEER PARK		BLD	1979	PBES-ASM
BUILDING	021-400-002-000	25748	1000	DEER PARK		BLD	1979	PBES-ASM
PLANNING	021-400-002-000	897879	975	DEER PARK ROAD		USE	1979	PBES-DD
BUILDING	021-400-002-000	26010	1001	DEER PARK		BLD	1979	PBES-ASM
ENVIRONMENTAL	021-400-002-000		975	DEER PARK		SD	2007	PBES-NOV-A
PLANNING	021-400-002-000	P07-00654	975	DEER PARK ROAD		USE	2007	PBES-DD
PLANNING	021-400-002-000	P08-00088	975	DEER PARK ROAD		USE	2008	PBES-DD
PLANNING	021-400-002-000	P09-00178	975	DEER PARK ROAD		USE	2009	PBES-DD
PLANNING	021-400-002-000	P11-00317	975	DEER PARK		ECP		PBES-PLNS-A
PLANNING	021-400-002-000	P11-00317	975	DEER PARK		ECP		PBES-PLNS-A
PLANNING	021-400-002-000	P11-00317	975	DEER PARK	0	ECP	0000	PBES-ASM
PLANNING	021-400-002-000	P11-00317	975	DEER PARK	0	ECP	0000	PBES-ASM
PLANNING	021-400-002-000	P11-00317	975	DEER PARK	0	ECP	0000	PBES-DD
PLANNING	021-400-002-000	P11-00317	975	DEER PARK	0	ECP	0000	PBES-ENVR
PLANNING	021-400-002-000	P11-00317	975	DEER PARK	0	ECP	0000	PBES-ENVR
PLANNING	021-400-002-000	P11-00317	975	DEER PARK	0	ECP	0000	PBES-COR
PLANNING	021-400-002-000	P11-00317	975	DEER PARK		ECP		PBES-NOT
PLANNING	021-400-002-000	P11-00317	975	DEER PARK	0	ECP	0000	PBES-ENVR
PLANNING	021-400-002-000	P11-00317	975	DEER PARK	0	ECP	0000	PBES-COR
PLANNING	021-400-002-000	P11-00317	975	DEER PARK	0	ECP	0000	PBES-ASM
PLANNING	021-400-002-000	P11-00317	975	DEER PARK		ECP		PBES-TECH
PLANNING	021-400-002-000	P10-00300	975	DEER PARK	0	ECP	0000	PBES-CSD
PLANNING	021-400-002-000	P10-00300	975	DEER PARK	0	ECP	0000	PBES-COR
PLANNING	021-400-002-000	P10-00300	975	DEER PARK	0	ECP	0000	PBES-ASM
PLANNING	021-400-002-000	P11-00317	975	DEER PARK	0	ECP	0000	PBES-ENVR
PLANNING	021-400-002-000	P11-00317	975	DEER PARK		ECP		PBES-PLNS-A
PLANNING	021-400-002-000	P11-00317	975	DEER PARK		ECP		PBES-PLNS-A

Search

Search Type

PBES PAV CQ

NOTE: Searching by APN or Establishment ID only will yield the most results; too many filled fields will narrow results.

Permit #

Establishment ID

Parcel # (###-###-###-000)

021-400-002-000

PBES Division

Street #

Street Name

PBES Program

Year

Search

Reset

Results

🔗	PLANNING	021-400-002-000	P13-00344	975	DEER PARK	0	CON	0000	PBES-CSD
🔗	PLANNING	021-400-002-000	P13-00345	975	DEER PARK	0	CON	0000	PBES-ASM
🔗	BUILDING	021-400-002-000	B11-00996	975	DEER PARK	0	BLD	0000	PBES-ASM
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🔗	BUILDING	021-400-002-000	B10-00576	975	DEER PARK ROAD	0	BLD	2010	PBES-ASM
🔗	BUILDING	021-400-002-000	B09-01138	975	DEER PARK	0	BLD	2009	PBES-ASM
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🔗	BUILDING	021-400-002-000	B08-01030	975	DEER PARK ROAD	0	BLD	2008	PBES-ASM
🔗	BUILDING	021-400-002-000	B08-01030	975	DEER PARK ROAD	0	BLD	2008	PBES-ASM
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🔗	BUILDING	021-400-002-000	B08-01030	975	DEER PARK ROAD	0	BLD	2008	PBES-ASM
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🔗	BUILDING	021-400-002-000	B08-01030	975	DEER PARK ROAD	0	BLD	2008	PBES-ASM
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🔗	BUILDING	021-400-002-000	B08-00074	975	DEER PARK ROAD	0	BLD	2008	PBES-ASM
🔗	BUILDING	021-400-002-000	B06-01434	975	DEER PARK ROAD	0	BLD	2006	PBES-ASM
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🔗	BUILDING	021-400-002-000	51101	975	DEER PARK ROAD	0	BLD	1992	PBES-ASM
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🔗	BUILDING	021-400-002-000	25748	975	DEER PARK ROAD	0	BLD	1979	PBES-ASM
🔗	BUILDING	021-400-002-000	25747	975	DEER PARK ROAD	0	BLD	1979	PBES-ASM

Search

Search Type

PBES PAV CQ

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Permit

Establishment ID

Parcel # (###-###-###-000)

021-400-002-000

PBES Division

Street

Street Name

PBES Program

Year

Search

Reset

Results

BUILDING	021-400-002-000	25747	975	DEER PARK ROAD 0	BLD	1979	PBES-ASM
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PLANNING	021-400-002-000	CDP05-0445	975	DEER PARK ROAD	PCOR	2006	PBES-COR
PLANNING	021-400-002-000	57879	975	DEER PARK RD 0	ZON	1979	PBES-DD
PLANNING	021-400-002-000	57879	975	DEER PARK RD 0	ZON	1979	PBES-ASM
PLANNING	021-400-002-000	57879	975	DEER PARK RD	ZON	1979	PBES-STR
PLANNING	021-400-002-000	57879	975	DEER PARK RD	ZON	1979	PBES-COR
PLANNING	021-400-002-000	57879	975	DEER PARK RD	ZON	1979	PBES-NOT
PLANNING	021-400-002-000	57879	975	DEER PARK RD 0	ZON	1979	PBES-ASM
PLANNING	021-400-002-000	478485	975	DEER PARK ROAD 0	USE	1985	PBES-DD
PLANNING	021-400-002-000	478485	975	DEER PARK ROAD 0	USE	1985	PBES-ASM
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PLANNING	021-400-002-000	478485	975	DEER PARK ROAD	USE	1985	PBES-ENVR
PLANNING	021-400-002-000	478485	975	DEER PARK ROAD	USE	1985	PBES-COR
PLANNING	021-400-002-000	478485	975	DEER PARK ROAD	USE	1985	PBES-NOT
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PLANNING	021-400-002-000	P05-0161	975	DEER PARK ROAD 0	SGN	2005	PBES-ASM
PLANNING	021-400-002-000	P05-0161	975	DEER PARK ROAD	SGN	2005	PBES-COR
PLANNING	021-400-002-000	P05-0161	975	DEER PARK ROAD 0	SGN	2005	PBES-ASM
PLANNING	021-400-002-000	P05-0161	975	DEER PARK ROAD	SGN	2005	PBES-PLNS-A
PLANNING	021-400-002-000	P08-00088	975	DEER PARK ROAD 0	USE	2008	PBES-DD
PLANNING	021-400-002-000	P08-00088	975	DEER PARK ROAD 0	USE	2008	PBES-ASM
PLANNING	021-400-002-000	P09-00178	975	DEER PARK ROAD 0	USE	2009	PBES-DD
PLANNING	021-400-002-000	P09-00178	975	DEER PARK ROAD 0	USE	2009	PBES-ASM
PLANNING	021-400-002-000	P09-00178	975	DEER PARK ROAD	USE	2009	PBES-COR
PLANNING	021-400-002-000	P09-00178	975	DEER PARK ROAD 0	USE	2009	PBES-ASM
PLANNING	021-400-002-000	P07-00654	975	DEER PARK ROAD 0	USE	2007	PBES-DD
PLANNING	021-400-002-000	P07-00654	975	DEER PARK ROAD 0	USE	2007	PBES-ASM



Search

Search Type

PBES PAV CQ

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Permit

Establishment ID

Parcel # (###-###-###-000)

021-400-002-000

PBES Division

Street

Street Name

PBES Program

Year

Search

Reset

Results

🔗	PLANNING	021-400-002-000	P07-00654	975	DEER PARK ROAD	USE	2007	PBES-COR
🔗	PLANNING	021-400-002-000	P07-00654	975	DEER PARK ROAD 0	USE	2007	PBES-ENVR
🔗	PLANNING	021-400-002-000	P07-00654	975	DEER PARK ROAD	USE	2007	PBES-COR
🔗	PLANNING	021-400-002-000	P07-00654	975	DEER PARK ROAD	USE	2007	PBES-TECH
🔗	PLANNING	021-400-002-000	P07-00654	975	DEER PARK ROAD 0	USE	2007	PBES-ASM
🔗	PLANNING	021-400-002-000	P08-00088	975	DEER PARK ROAD	USE	2008	PBES-PLNS-A
🔗	PLANNING	021-400-002-000	697879	0000	DEER PARK RD 0	USE	1979	PBES-DD
🔗	PLANNING	021-400-002-000	697879	0000	DEER PARK RD 0	USE	1979	PBES-ASM
🔗	PLANNING	021-400-002-000	697879	0000	DEER PARK RD 0	USE	1979	PBES-STR
🔗	PLANNING	021-400-002-000	697879	0000	DEER PARK RD 0	USE	1979	PBES-ENVR
🔗	PLANNING	021-400-002-000	697879		DEER PARK RD	USE	1979	PBES-COR
🔗	PLANNING	021-400-002-000	697879		DEER PARK RD	USE	1979	PBES-NOT
🔗	PLANNING	021-400-002-000	697879	0000	DEER PARK RD 0	USE	1979	PBES-ASM
🔗	PLANNING	021-400-002-000	P07-00654	975	DEER PARK ROAD	USE	2007	PBES-PLNS-A
🔗	PLANNING	021-400-002-000	P09-00178	975	DEER PARK ROAD	USE	2009	PBES-PLNS-A
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🔗	ENVIRONMENTAL	021-400-002-000	E07-00934	975	DEER PARK	SD	2007	PBES-PMT
🔗	ENVIRONMENTAL	021-400-002-000	E07-00561	975	DEER PARK	SD	2008	PBES-SER
🔗	ENVIRONMENTAL	021-400-002-000		1000	DEER PARK	WELL	2004	PBES-PMT
🔗	ENVIRONMENTAL	021-400-002-000	E08-00452	975	DEER PARK	SD	2009	PBES-ASBLT
🔗	ENVIRONMENTAL	021-400-002-000	E08-00452	975	DEER PARK	SD	2008	PBES-PMT
🔗	ENVIRONMENTAL	021-400-002-000		975	DEER PARK	SD	1985	PBES-IR
🔗	ENVIRONMENTAL	021-400-002-000		975	DEER PARK	SD	1991	PBES-PMT
🔗	ENVIRONMENTAL	021-400-002-000		1000	DEER PARK	SD	1999	PBES-PMT
🔗	ENVIRONMENTAL	021-400-002-000		1000	DEER PARK	SD	1979	PBES-COR
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🔗	ENVIRONMENTAL	021-400-002-000		975	DEER PARK	BLD	2008	PBES-CORBC
🔗	ENVIRONMENTAL	021-400-002-000		975	DEER PARK	UP	2007	PBES-COR

 BUILDING	021-400-002-000	B19-00307	975	DEER PARK	0	BLD	2019	PBES-ASM
 BUILDING	021-400-002-000	B19-00460	975	DEER PARK	0	BLD		PBES-ASM
 ENVIRONMENTAL	021-400-002-000	E19-00176	975	DEER PARK	0	SD	2019	PBES-PMT
 BUILDING	021-400-002-000	B19-01454	975	DEER PARK	0	BLD	2019	PBES-ASM

EXHIBIT 3

From: Weightman, Craig@Wildlife
Sent: Monday, June 22, 2020 1:52 PM
To: joelleqPC@gmail.com; PC@countyofnapa.org; David.Morrison@countyofnapa.org; Brian.Bordona@countyofnapa.org; Donald.Barrella@countyofnapa.org
Cc: Allen, Garrett@Wildlife <Garrett.Allen@wildlife.ca.gov>; Puccini, Stephen@Wildlife <Stephen.Puccini@wildlife.ca.gov>; Weiss, Karen@Wildlife <Karen.Weiss@wildlife.ca.gov>; dbgilbreth@gmail.com; laura.anderson@countyofnapa.org; jeffrey.brax@countyofnapa.org
Subject: FW: Bremer Family Winery - Napa County

Napa County Planning Commission:

I am forwarding to you an email I received this morning from one of my staff, Environmental Scientist Garret Allen (see below). As Mr. Allen explains in his email, he is concerned about statements made by a consultant for Bremer Winery, Geoff Monk, in a letter submitted to the Napa County Planning Commission, and in a meeting before the commission regarding an application by Bremer Winery for a use permit exception to Napa County's creek setback regulations. As Mr. Allen explains, the statements are inaccurate and potentially misleading.

The Department has not been involved in this matter, but is bringing this issue to your attention for two reasons: to ensure that any decision by the Planning Commission regarding the winery's application is based on correct information, and to protect the reputation and integrity of Mr. Allen.

If necessary, Mr. Allen is available to conduct a site visit if review of this site as it pertains to Fish & Game Code section 1600 is needed.

If you have any questions, I can be reached (707) 339-1332 or craig.weightman@wildlife.ca.gov.

Sincerely,
Craig

Craig J. Weightman
Environmental Program Manager
California Department of Fish and Wildlife
2825 Cordelia Road, Ste. 100
Fairfield, CA 94534

(707) 944-5577 voice
(707) 339-1332 cell

From: Allen, Garrett@Wildlife <Garrett.Allen@wildlife.ca.gov>
Sent: Monday, June 22, 2020 10:25 AM
To: Weightman, Craig@Wildlife <Craig.Weightman@wildlife.ca.gov>; Weiss, Karen@Wildlife <Karen.Weiss@wildlife.ca.gov>
Cc: Puccini, Stephen@Wildlife <Stephen.Puccini@wildlife.ca.gov>
Subject: Bremer Family Winery - Napa County
Importance: High

Craig and Karen:

Sorry for the long email, but I wanted to bring something to your attention that concerns me. Last week I received copies of documents regarding an application submitted by Bremer Family Winery in March 2019 for a use permit exception to Napa County's conservation regulations on creek setbacks. Two of the documents summarize a phone conversation between me and Geoff Monk regarding the project site that is the subject of the application. The summary in both instances is inaccurate and misleading. The two documents are: 1) a letter from Geoff Monk and Sara Lynch, Monk and Associates, to Mr. David Gilbreth, Esq. dated October 4, 2019, and 2) the transcript from a Napa County Planning Commission meeting on October 16, 2019 concerning the application.

In the letter, Mr. Monk and Ms. Lynch write:

"Mr. Monk also learned from his conversation with Mr. Bordona that Mr. Mr. [sic] Garrett Allen, Environmental Scientist with the California Department of Fish and Wildlife (CDFW)...that he recently visited the Bremer Winery to determine if there could have been Fish and Game Code section 1602 violations. Following up on this information, Mr. Monk and Ms. Lynch called Mr. Allen who stated that yes, he and a CDFW warden visited the Bremer Winery to investigate if there could have been any violations of Fish and Game Code section 1602 (stream protection code).

Mr. Allen told M&A that he had been in contact with the county and that he understands their concerns and issues. He stated that CDFW will not be taking any enforcement action for the activities at the historical winery site since much of the bridge construction and improvement work along the creek is historical in nature and occurred in historically used areas of the site. Regardless, it was clear that all improvements occurred a long time ago. Mr. Garrett further stated that provided the structures and improvements, as they occur today, remain as they are, then there is no requirement for a Streambed Alteration Agreement ("1602 permit") for any of this previously completed work...."

At the Planning Commission meeting, similar to what he and Ms. Lynch stated in their October 4, 2019, letter, Mr. Monk stated:

"I work with Agnes Farres and Xavier Fernandez with the Water Board. They are involved with this project. I work with them every week, and I have for a long time. Also, the Department of Fish and Wildlife, Garrett Allen, I have worked with him since he got to Yountville, now Fairfield. The office has moved.

I did interview -- I called up, Sarah and I both called up Garrett Allen, and we asked him what his involvement was with the project; and he explained that he had gone out there with enforcement, a warden, to determine if there had been any violations. And what he said was, is there was a lot of old construction, he found no apparent and obvious violations, and there would not be any kind of an enforcement action from the Department of Fish and Wildlife.

What he did say is, is that if people start pulling things out and moving things around, then we would require a permit, but it's not their recommendation. Their recommendations is to leave everything as it is."

(Meeting Transcript, pp. 28-29.)

The summary of my conversation with Mr. Monk and Ms. Lynch in the letter and transcript is flawed in several respects, as follows:

- I recall having a phone conversation with Mr. Monk to discuss Bremer Family Winery, but not with Ms. Lynch.
- I have never visited the Bremer Family Winery site that is the subject of the letter and Planning Commission meeting (project site), either alone or with a warden.
- I told Mr. Monk that I was not involved in or familiar with this matter and that I had only been to the Bremer Family Winery's property one time in the past, and not with a warden, but alone, to investigate a stream located approximately 0.17 mile away from the project site that had been significantly altered. In other words, I never went to the project site "with enforcement, a warden, to determine if there had been any violation" at that location. The location I visited was some distance away and not related to the work done at the project site.
- Having never visited the project site, it cannot be the case that I told Mr. Monk that I had "found no apparent and obvious violations [at the site], and there would not be any kind of an enforcement action" by us. Similarly, I would not have told Mr. Monk "to leave everything as it is" without first visiting the site. In fact, I recall telling Mr. Monk that because I had not been to the site to see the work that had been done, I would need more details before I would feel comfortable making any recommendation.
- The county contacted me, I believe by email, several months prior to Mr. Monk calling me. I do not remember what we might have discussed and no longer have the county's email or any response I might have sent to the county.
- I did talk to Mr. Monk about Fish and Game Code section 1602. Specifically, I told him that if the county decides that structures must be removed, and their removal will substantially change the bed, bank, or channel of the stream, then the Bremer Family Winery should notify the Department prior to performing the work, after which the Department would determine if a streambed alteration agreement is needed.

To refresh my recollection, I searched for any correspondence between me and Mr. Monk. I found the following exchange which is consistent with everything I wrote above:

From: Allen, Garrett@Wildlife

Sent: Friday, March 20, 2020 8:42 AM

To: Geoff Monk <Geoff@monkassociates.com>

Subject: RE: Bremmer Winery Pedestrian Bridge ADA Modifications Required

Hi Geoff,

Thanks for your email. My family and I are all doing well and staying healthy. I'm glad to hear that you are recovering from what appears to be a cold (and not the virus), and I hope that your family is doing well too.

I wanted to clarify that I have never gone out to this site with a warden. I visited a different part of Bremer Family Winery's vineyard in response to another code violation. As for the three bridges you mentioned, if all they need is new railings, this may not require a Streambed Alteration Agreement, as long as the work does not include substantial alterations to the bed, bank, or channel of the creek. Before I can advise further, I would need to see more detailed project plans.

I did not see your cell phone number in your below email so I hope this email will suffice.

Take care,

Garrett Allen

Environmental Scientist (Serving: Napa County, Vallejo, Benicia)

California Department of Fish and Wildlife – Bay Delta Region

Habitat Conservation Program

2825 Cordelia Road, Suite 100

Fairfield, CA 94534

(707) 428-2002 (front desk)

(707) 428-2076 (direct line)*

***NOTE: I will be working from home through the end of March**

From: Geoff Monk <Geoff@monkassociates.com>

Sent: Thursday, March 19, 2020 2:47 PM

To: Allen, Garrett@Wildlife <Garrett.Allen@wildlife.ca.gov>

Subject: Bremmer Winery Pedestrian Bridge ADA Modifications Required

Hi Garrett,

I trust you are doing well in these very strange times. Like you, I am working from home, sheltering in place. My office was all sent home to do the same this last Monday. A few bugs accessing the M&A's file server but it seems to be getting ironed out. So, new normal times.

You might recall that Sarah Lynch and I spoke with you about the Bremmer Winery project some months ago after you had visited the winery with a warden. Over the phone with Sarah and me you stated that no F&G Code permitting action would be required unless Bremmer modified/removed any existing feature in the creek corridor.

Then he would need a 1602 Agreement. So far nothing has to be removed. However, it turns out that the railings on the bridges (I think there were 3 bridges) are not ADA compliant and the bridges are also going through structural engineering analyses. They were likely built plenty strong enough but the railings likely have to be modified to bring them up to ADA codes that were not a factor when the bridges were constructed decades ago. Turns out that there was testimony that the bridges/rock walls being present, I believe, in 1992 so they were constructed before that year and certainly years before Bremer purchased the winery.

Owing to the sensitivity of the project, there is the thought that a CDFW 1602 Agreement would be required for modifications to the railings on these bridges. So far no structural changes are thought necessary for the bridges, but stay tuned on that subject as they are now pretty old bridges, and the final word has not come in from the engineer yet.

Would you kindly call my cell phone below so we can further discuss appropriate CDFW permitting when you get the chance.

I have a bad cold since last Sunday, but is showing signs of improvement today. Doesn't seem to be Corona.

I trust you and family are all staying healthy!
Geoff Monk

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I wanted to bring this matter to your attention because regardless of the Planning Commission's decision on the application, I do not want it based on statements I did not make or events that did not occur, which ultimately will be ascribed to the Department. To that end, I recommend that we make the Planning Commission aware of the inaccuracies in the statements I excerpted above from the letter and transcript.

Let me know if you have any questions.

Thanks,

Garrett Allen
Environmental Scientist (Serving: Napa County, Vallejo, Benicia)
California Department of Fish and Wildlife – Bay Delta Region (Region 3)
Habitat Conservation Program
2825 Cordelia Road, Suite 100
Fairfield, CA 94534

(707) 428-2002 (front desk)

(707) 428-2076 (direct line) **NOTE:** I will be working from home for the foreseeable future and will not be available by phone. I will be checking voicemails periodically.

Please be advised that CDFW will be transitioning to the Environmental Permit Information Management System (EPIMS), an online system, for all Lake or Streambed Alteration (LSA) notifications. EPIMS will be available for standard Notifications starting July 1, 2020. Soon, paper copies and PDFs, including Joint Aquatic Resource Permit Applications (JARPAs), will no longer be accepted outside of EPIMs. For more information about EPIMS please visit <https://epims.wildlife.ca.gov/index.do>