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Planning, Building & Environmental Services

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MEMORANDUM

To:	Planning Commission	From:	Pam Arifian, PBES
Date:	August 4, 2021	Re:	#P19-00203-UP / Burhenne Residence Use Permit Exception to Conservation Regulations CEQA Exemption Determination 1080 Greenfield Road / APN 025-390-006

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 Exception to the Conservation Regulations Use Permit Application (File No. P19-00203-UP).

The project proposes the recognition, retention, and maintenance in their current configuration and use limitations the following existing site improvements that encroach into required stream setbacks pursuant to Napa County Code (NCC) Section 18.108.025.B:

1. A 10x7-foot accessory structure ("cave") built into the stream bank with concrete stairs and patio on the roof;
2. Three (3) storm drain outfalls in the stream bank;
3. Gravel parking space, subdrain pipe, retaining wall, fire protection tank, propane tank, and dry draft fire hydrant;
4. Well appurtenances, two (2) mechanical pads and sheds against the western exterior of the house and Barn;
5. Two (2) equipment sheds, each under 120 square feet, and backyard patio, pizza oven and firepit with gas line.

The project also includes the following expansion beyond existing site improvements or entitlements:

6. Development of a gravel fire truck turnout in the Greenfield Road right-of-way and relocation of generator pad;
7. Reconfiguration of stormwater catchment and conveyance and installation of erosion control measures to stabilize the stream bank; and

Recognition, retention and maintenance of the existing Improvements 1-5 listed above, in addition to the proposed Improvements 6-7 beyond what is existing and entitled triggers an exception to the Conservation Regulations (in the form of a use permit). This use permit is a discretionary action before the Planning Commission, and therefore is subject to CEQA.

Existing Setting

The approximate 0.40-acre subject property (APN 025-390-006: 1080 Greenfield Road) is a triangular-shaped parcel bound by Greenfield Road on the north and west, approximately 1.5 miles from its intersection with Conn Valley Road, with a General Plan land use designation of Agriculture, Watershed and Open Space (AWOS) and within the Agricultural Watershed (AW) zoning district. The residence and some existing improvements within the stream setback were legally

established through a Variance #96503-VAR, which granted a reduction of the 55-foot stream setback to allow for residential development on the constrained parcel. The site was developed beginning in the early 2000s with a dwelling and associated accessory structures, including a Wisconsin-mound sanitary wastewater treatment system, a “Barn” (#B08-00206) and two sheds, a 10x7-foot accessory structure (“cave”) built into the top of bank and accessed by concrete stairs and with a patio on top. Other development includes a 10,500 gallon water tank, a 2,500 gallon fire protection tank, propane tank, fence, stormwater infrastructure and landscape improvements, including retaining wall, outdoor kitchen, decorative stone walls and entry structure, backyard pavers, planters and firepit.

The site is accessed by two driveways from Greenfield Road, including a paved driveway along the southern end of the parcel and a gravel driveway with parking spaces in the front yard and partially within the Greenfield Road ROW. The nearest residence to the property is approximately 400 feet to the north. A County-definitional stream traverses the western portion of the site in a north to south direction, and, including required stream setbacks, occupies approximately 50% of the property on the west. A majority of the existing site improvements are located on or near the eastern bank of the stream channel. Approximately 330-feet south of the parcel boundary, the stream is identified as an unnamed blue-line stream that flows into Lake Hennessey, approximately 1.2 miles to the south. The riparian corridor within the defined bed and bank of the stream contains significant tree cover from several mature native trees and a moderate understory of native and nonnative flora. Undeveloped grazing land is located immediately south of the parcel. The project site is not located on any of the lists of hazardous material sites compiled pursuant to Government Code Section 65962.

Property History

The property was originally part of a larger parcel created in the 1880s, and designated as Separated For Assessment Purposes (SFAP) in 1983. The property was sold at public auction by the Napa County Treasurer/Tax Collector on August 8, 1992 to recover delinquent and unpaid property taxes, thereby establishing the property as a legal parcel.

On July 11, 1997, the Zoning Administrator adopted a Negative Declaration and approved Variance #96503-VAR for the parcel. The Variance granted a reduction of stream setback requirements of the Conservation Regulations from 55-feet to 20-feet, allowing construction of the single family residence, and placement of one 10,500-gallon water storage tank within 5’ from the top of bank, and one well within 10’ from the top of bank. The Variance also granted a reduction to the front yard setback from 20’ to 10’, which allowed for the construction of the required parking spaces 10’ into the front yard setback. The reduced front yard setback also allowed for the construction of the Wisconsin mound type sanitary wastewater treatment system associated with the residence, and located in the side yard east of the house. The approved storm drain improvements included in the Erosion Control Plan associated with this Variance would have collected runoff from the culvert outfall from under Greenfield Road into an inlet in the ROW and through a subdrain that would have conveyed the stormwater immediately west to outfall into a rock slope energy dissipater and into the stream bank.

On July 23, 1997, the decision was appealed by Joseph Barkley and John Buehler, who argued that the sale of the subject property by the Treasurer/Tax Collector in 1992 was void. Public hearings were conducted on September 9, 1997, October 28, 1997 and November 4, 1997, and subsequently the Variance was upheld by the Board of Supervisors with the adoption of Resolution No. 98-7 on January 20, 1998. The property was developed according to the Variance (Building Permit #00-00325; approved June 28, 2000 and finalized September 30, 2005), with the exception of the approved stormwater infrastructure, which was installed as shown on the current plans.

The property changed hands two more times before the Burhennes took ownership in 2017. Prior to 2017, two sheds (component of Improvement 5) were constructed on the site sometime between 2005 and 2008, as well as the southern driveway and backyard improvements. The “Barn” was constructed as an agricultural equipment storage building under building permit #B08-00206 (issued March 4, 2008 and finalized April 17, 2009, despite its location within the stream setback). An encroachment permit (#W19-00420) was approved on May 22, 2020 to allow the oleander plants in the ROW, the existing dry draft fire hydrant, proposed gravel turnout required by CalFire & portions of the retaining wall along the driveway.

Compliance History:

#CE17-00363 – Notice of Reported or Apparent Code Violation of NCC Code Section 18.108.025 Stream Setbacks was issued on June 19, 2018 for an accessory structure with patio on top and stairs in the creek bank, hardscape retaining wall at driveway, solar building with all the solar electrical, gas line to fire pit, outdoor kitchen and wall with electrical, all installed in the stream setback. The Notice also included violations of Section 105.1 of the 2016 California Residential Building Code for interior and exterior alterations to the storage building (“Barn”) within the stream setback, and solar panels mounted on the roof and alterations to the dwelling interior, and of NCC 18.104.275 for an entry structure.

CEQA Exemption Criteria and Analysis

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, site improvements 1-8 listed above subject to this use permit exception application are existing. 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 c. 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.

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 agency’s environmental baseline determination;
- CCR §15061 (Common Sense Exemption) that exempts activities that have no possibility of causing a significant effect.
- CCR §15302 (Class 2, Replacement or Reconstruction), which exempts replacement of existing structures and facilities where the new facility is in the same site and will have substantially the same purpose and capacity as the facility replaced, including existing utility systems.
- 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, as well as minor trenching and backfilling where the surface is restored. EXEMPT IN SENSITIVE
- CCR §15308 (Class 8, Actions By Regulatory Agencies for Protection of the Environment), which exempts actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.
- CCR §15333 (Class 33, Small Habitat Restoration Project), which exempts projects not exceeding 5 acres in size to assure the restoration or enhancement of habitat for plants or wildlife such as revegetation of disturbed areas with native plants provided that there would be no significant impact on endangered species or their habitat;

Under CEQA Guidelines §15300.2, Exceptions, Class 3 and 4 Categorical Exemptions cannot be used if the project substantially affects mapped or designated environmentally sensitive areas or resources. The stream and project area are not mapped as environmentally sensitive resources subject to state and federal protection, (Napa County Geographic Information Sensitivity maps/layers US Fish & Wildlife Critical Habitat, California Natural Diversity Database (CNDDB), Owl habitat CNDDB, and Wetlands and Vernal Pools); however, the stream corridor within the parcel contains riparian

woodland that is considered a sensitive resource protected by Napa County (Napa County Geographic Information System including Sensitive Biotic Vegetation layer). The stream corridor within the project area is not designated as a critical linkage corridor, and the general vicinity is not mapped as potentially sensitive to archaeological resources. (Napa County Geographic Information Sensitivity maps/layers Key Riparian Corridors, Riparian Buffer Zones, Linkage Designs, Archaeologic Sensitive Areas). The area is designated as having very low potential for liquefaction, the nearest fault line runs in a northwest to southeast direction and crosses the easternmost corner of the parcel and the nearest landslide is located approximately 200 feet northeast of the parcel (Napa County Geographic Information Sensitivity maps/layers Sensitivity maps/layers Faults, Liquefaction and Landslides). The project site is not visible from scenic highways, and is not located on any of the lists of hazardous material sites compiled pursuant to Government Code Section 65962. In addition, the area is not located within the Milliken-Sarco-Tulocay water deficient basin nor in the area where groundwater is being actively monitored by the County (Napa County Geographic Information Sensitivity maps/layers Groundwater Deficient Areas and NE Napa Management Area).

The intent of the project is to permit pursuant to NCC §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, as appropriate. As conditioned, the project would require removal of the unpermitted accessory structure (“cave”) with stairs and patio (Improvement 1) located in the bank, followed by restoration of the bank in concert with the proposed stormdrain outfall erosion control measures at and above the toe-of-bank (Improvement 7). As conditioned, the removal of the cave structure would be performed in a manner that minimizes impacts to the bank and setback, including use of hand tools exclusively within the bank and within the setback to the extent possible, and would be performed under the authorization of the California Department of Fish and Wildlife through the Section 1602 Lake and Streambed Alteration Agreement process. The County Engineering Division would ensure that the Regional Water Quality Control Board’s SWPPP is implemented. Further, as conditioned, the work would be scheduled during the dry season, which reduces potential impacts to the riparian woodland and reduce and/or minimize erosion of the drainage course bank and bed, which would decrease sediment transport within the watercourse, thereby improving the health of the fish, wildlife and vegetation in the surrounding area and downstream. The restoration plan would be prepared by a qualified biologist and would ensure that the bank is restored in a manner that ensures long term bank stability and supports native riparian habitat. With incorporation of the condition as outlined about to remove the “cave,” the project qualifies as an exempt activity under **CCR §15333 (Class 33, Small Habitat Restoration Projects)**, in that it would assure the maintenance, enhancement and restoration of riparian habitat that would not result in significant adverse impacts on special-status species, accomplished through bank stabilization with native vegetation and bioengineered techniques such as rock or log energy dissipaters, the primary purpose of which is to reduce or eliminate erosion and sedimentation.

The recognition, retention and maintenance of existing site improvements in their current configurations and use limitations (Improvements 2-5) qualifies as an exempt activity under **CCR §15301 (Class 1, 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, and involves no expansion of use. 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.

With respect to implementation of Improvements 6 and 7, the relocation of the generator pad and reconfiguration of the stormwater infrastructure qualifies as an exempt activity under **CCR §15302 (Class 2, Replacement or Reconstruction)**, in that they involve replacement of existing facilities in the same site as the structure replaced and have the same purpose and capacity. While these Improvements would be reconstructed in slightly different locations, they remain within the existing developed area and within 50 feet of the facilities they are replacing, in order to address existing code violations concerning proximity of the generator pad and drainage to the southern property line. Development of the fire truck turnout and installation of erosion control measures qualifies as exempt activities under **CCR §15304 (Class 4, Minor Alterations to Land)**, in that these improvements involve minor alterations that do not involve removal of healthy, mature trees and would result in negligible or no permanent effects on the environment. The proposed gravel fire truck

turnout area would be constructed within the County ROW approximately 25 feet east of the culvert through which the stream passes to enter the parcel on the northern property line. The area is within the stream setback; however, the impact is negligible given the location within the disturbed ROW, and that no mature trees would be removed. The turnout is required by CalFire, and grading, over-excavation and/or compaction of the proposed turnout would be limited to the minimum requirements outlined in the Napa County Road and Street Standards. Regarding Class 4 exemption in relation to the exception noted in CCR §15300.2, the proposed improvements to the stormwater capture and conveyance system outside of the CDFW jurisdiction would occur within already disturbed land and would involve minor trenching and backfilling where the surface is restored. Since the proposed erosion control measures in the bank would restore the bank and enhance the stream channel, thereby protecting downstream users and Lake Hennessey from increased sedimentation, PBES staff has determined the exemption as applicable in this case.

Improvement 7 would also qualify as an exempt activity under **CCR §15308 (Class 8, Actions by Regulatory Agencies for Protection of the Environment)**, in that the Improvement is in response to concerns about erosion in the bank directly beneath the storm drain outfall as observed by PBES staff and California Department of Fish and Wildlife. The proposed erosion control measures, as conditioned, would be installed using hand tools in the toe of bank and bank of the stream, would not result in the removal of mature native trees or native vegetation, and would be authorized under jurisdiction of the CDFW.

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 be no changes to the existing site improvements, with the exception of improvements to the stormwater catchment, conveyance system and bank stabilization, erosion control measures below the outfalls in the bank of the stream, and restoration plan which would reduce existing erosion impacts in the bed and bank of the stream and improve the riparian habitat.

Based on the proposed project as described above, the Burhenne Use Permit Exception to Conservation Regulations request meets the criteria for eligibility as Categorical Exempt from CEQA for Classes 1, 2, 4, 8 and 33.