

Planning Commission Hearing – AUGUST 18, 2021  
RECOMMENDED FINDINGS

Burhenne Residence  
Use Permit Exception to the Conservation Regulations  
Application Number P20-00203-UP  
1080 Greenfield Road, St. Helena, California  
APN 025-390-006

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 the project:

1. Categorically Exempt pursuant to Article 19 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA Guidelines). This project qualifies as an exempt activity under five sections of Article 19: CCR §15301 (Class 1, Existing Facilities), CCR §15302 (Class 2, Replacement or Reconstruction), CCR §15304 (Class 4, Minor Alterations to Land), CCR §15308, (Class 8, Actions by Regulatory Agencies for Protection of the Environment), and CCR §15333 (Class 33, Small Habitat Restoration Project). 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. The project is not on any lists of hazardous waste sites enumerated under Government Code Section 65962.5.

USE PERMIT:

The Commission has reviewed the use permit request in accordance with the requirements of the Napa County Code §18.124.070 and makes the following findings:

2. 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 Planning Commission (Napa County Code [NCC] 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 existing site improvements and accessory structures, and the proposed additional improvements, as conditioned, are intended for residential uses and are permitted in the AW District. The project, as conditioned, complies with the requirements of the Zoning Code as applicable. There is no companion action necessary for the requested Use Permit that would require action by the Board of Supervisors.

3. The procedural requirements for a Use Permit set forth in Chapter 18.124 of the NCC (zoning regulations) have been met.

Analysis: The application for a Conservation Regulations Use Permit Exception has been appropriately filed, and noticed and public hearing requirements of the NCC Section 18.136.040 have been met. On August 6, 2021, notice of public hearing and intent to adopt Categorical Exemptions 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 for electronic mail to the applicant, property owner, and other interested parties who had previously requested such notice.

4. 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 Regulations Use Permit Exception for the project, as conditioned, will not adversely affect the health, safety or welfare of the County. The project includes the recognition, retention and maintenance of existing site improvements that serve the site's existing residential uses, in addition to additional improvements to address PBES staff concerns regarding bank stability, erosion control and code compliance. The additional improvements include a gravel fire truck turnout within the County right-of-way, relocation of a generator pad from the property line, reconfiguration of the storm drain infrastructure within the developed area within the setback, erosion control measures to address scour beneath the storm drain outfall in the stream bank and, as conditioned, the removal of an unpermitted accessory structure from within the bank of the stream, followed by a restoration plan that supports riparian habitat. The unpermitted accessory structure to be removed as a condition of this Use Permit Exception was constructed by an unlicensed contractor within the bank of a stream that is a headwater to an unnamed blue line stream identified approximately 330 feet south of the project site, and which is a tributary to Lake Hennessey. No new construction or grading would occur outside of the proposed Improvements, including bank stabilization and restoration, as part of this Permit. As conditioned, the proposed project would result in improved riparian habitat and reduced potential for sedimentation in the stream, and increased protection of public health and welfare. Additionally, the Use Permit Exception is conditioned to ensure that all improvements are designed to comply with Napa County stormwater pollution prevention requirements, which provide adequate safety and service in the interest of protecting public health and welfare.

5. 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 the existing site improvements to be retained and maintained and proposed additional improvements that encroach into the stream setback required pursuant to NCC Section 18.108.025. The project site is located in the Agricultural Watershed (AW) zoning district, which allows residential uses. The parcel was designated Separated For Assessment Purposes in 1983, became a legal parcel when it was sold in 1992 by the Napa County Treasurer/Tax Collector. The parcel is subject to Variance #96503-VAR, which granted,

among other items, a reduction of the stream setback to allow some of the existing uses on the triangular-shaped 0.40-acre parcel with unique site constraints. Recognizing, retaining and maintaining the existing residential site improvements and allowing proposed additional improvements, as conditioned, including the habitat restoration would not be inconsistent with the site's 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, impair the vital ecological functions of the stream, and includes a habitat restoration plan to improve the riparian consistent with General Plan Policy CON-28. All improvements would be designed to comply with County stormwater quality control regulations intended to minimize sediment and pollutant discharge into the County's streams and waterways.

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.

6. The proposed use would not require a new water system or improvement causing significant adverse effects, either individually or cumulatively, on an affected groundwater basin in Napa County, unless that use would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Sections 13.15.070 or 13.15.080 of the NCC.

Analysis: The project recognizes existing physical improvements and would not result an increase in water use associated with property, or result in improvements to the water system that would result in impacts to the groundwater supply.

#### **EXCEPTION TO CONSERVATION REGULATIONS:**

7. Roads, driveways, building 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 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 for Improvements 2-5. The proposed Improvements 1 (as conditioned) and 7 would result in long term benefits to the stream habitat through bank stabilization and vegetation restoration. Several of the site improvements subject to this Permit are primarily a result of minor alterations that have been done in a manner to complement pre-existing development (such as the sheds, backyard patio and kitchen improvements) and are limited to areas immediately adjacent thereto, which minimized grading necessary for these improvements. Further, as conditioned, the project would result in a bank that is more aligned with its natural state, stabilized with biodegradable and natural materials and restored with riparian vegetation. The work within the stream bank would

be installed without heavy machinery, using hand tools only to reduce potential impacts to sensitive riparian woodland habitat and to avoid downstream sedimentation (Attachment D of the Napa County Planning Commission August 18, 2021 staff report).

8. 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 #7, this Permit is to recognize and maintain existing site improvements located within required stream setbacks in their current configurations and use limitations. The proposed fire truck turnout proposed for construction within the County ROW and stream setback 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. The proposed erosion control measures that would be installed in the toe of bank and bank of the stream would not result in removal of mature native trees or native vegetation, would not involve heavy machinery within the bank, and the proposed work within the bank would be authorized under jurisdiction of the California Department of Fish and Wildlife. No new construction or grading, or new use or use modifications are included or considered with outside of those listed Improvements in this Use Permit Exception. Additionally, several of the site improvements subject to this Permit are primarily a result of minor alterations of past/historic site development and use that have been done in a manner to complement the character of pre-existing development, and are generally limited to the past development envelope or areas immediately adjacent thereto, that minimized grading (Attachment D of the Napa County Planning Commission August 18, 2021 staff report).

9. 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: The proposed additional improvements (Improvements 6 and 7) would be installed in existing developed area within the setback, and in the public ROW of Greenfield Road in the case of the fire truck turnout. The proposed erosion control measures that would be installed in the toe of bank and bank of the stream (Improvement 7) and the removal of the "cave" (Improvement 1, as conditioned) would not result in removal of mature native trees or native vegetation. No new grading or vegetation removal is included or considered outside of those listed in this Permit and the existing vegetation and site conditions would 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 Burhennes acquired the property in 2017. Additionally, the Exception Request, as conditioned, would include a riparian vegetation restoration plan within the bank near the project area. Therefore, the request avoids additional vegetation removal and includes replacement vegetation to offset any past encroachments.

10. Adequate fire safety measures have been incorporated into the design of the proposed development.

Analysis: This Permit includes development of a fire truck turnout within the stream setback and Greenfield Road ROW near the existing dry draft hydrant. These improvements were required by CalFire in a letter dated May 30, 2019. Due to the site constraints, providing 100-feet of defensible space around all structures was deemed not to be feasible, given that it would require removal of nearly all of the vegetation on site, including in the riparian woodland within the setback, which would be a violation of the Conservation Regulations. Defensible space has been provided to the maximum extent possible. With the exception of one (1) tree that is located in the ROW, 10-feet of defensible space fire hazard reduction on both sides of all onsite driveways and roadways serving the residence has been provided.

Because this Permit is limited to the recognition and maintenance of existing site improvements located within required stream setbacks in their current configurations and use limitations, as well as the removal of an unpermitted accessory structure from the bank and installation of bank stabilization, erosion control measures and riparian vegetation restoration plan, and because no new construction or uses outside of these improvements 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.

11. Disturbance to streams and watercourses shall be minimized, and the encroachment, if any, is the minimum necessary to implement the project.

Analysis: The project, as conditioned, would remove an unpermitted accessory structure from within the stream bank and would address existing scour resulting from past improvements to the site, as well as the restoration of the bank with riparian vegetation. The project improvements would not involve heavy machinery in the bank, and the proposed work within the bank would be authorized by the California Department of Fish and Wildlife. No new stream encroachments are proposed or considered under this Permit: Improvements within the stream setback that are subject to this Permit, as conditioned, are existing and will remain unchanged. Furthermore, the existing retaining wall and improvements built within the stream channel and setbacks (with the exception of the stormwater conveyance and outfall system which this Use Permit seeks to address) have not significantly changed the natural watercourse, and improvements built within the stream corridor have not significantly changed the nature state of the stream, and there is no impairment of the vital ecological functions of the stream. No new construction or grading, new or modified uses, or disturbance of the stream outside of the proposed turnout and erosion control measures are included or considered with this Permit. See also Findings 5 and 7 incorporated here by reference.

12. 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: County Geographic Information System does not indicate presence of special species or habitat that would support special species in the project area or within the vicinity of the project. Additionally, all of the improvements that involve proposed earth work would occur in the dry season when the stream is dry, and partially within previously developed areas, and would not remove existing trees or vegetation. The project would result in restoration of riparian habitat, and reduced potential for sedimentation downstream, which would benefit downstream habitat and water quality.

13. An erosion control plan, or equivalent NPDES stormwater management plan, has been prepared in accordance with NCC Section 18.108.080 and has been approved by the Director or designee.

Analysis: The proposed project, including draft Stormwater Control Plan, has been reviewed by the Engineering Division and found to comply with the requirements of the County's NPDES stormwater management program approved by Napa County Engineering Division July 13, 2021. The project, as conditioned, would require a demolition and restoration plan that would be subject to review and approval by the Engineering and Planning Divisions. The project would result in a net reduction of impervious surfaces and increase in vegetation and erosion control.