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Agenda Date: 8/18/2021

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: Pamela Arifian, PLANNER III - 7072595934

SUBJECT: Burhenne Residence Use Permit Exception to Conservation Regulations

RECOMMENDATION

BURHENNE RESIDENCE / USE PERMIT NO. P19-00203-UP

CEQA Status: Consideration and possible adoption of Categorical Exemptions pursuant to California Environmental Quality Act Guidelines at 14 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.

Request: A. Components Necessary to Remedy Existing Violations: 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) 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, dry draft fire hydrant; 4) well appurtenances, two (2) mechanical pads and sheds attached to the western exterior of the house and Barn; and 5) two (2) equipment sheds, backyard patio, pizza oven and firepit with gas line. B. Expansion Beyond Existing Improvements: The Use Permit Exception request also includes the following proposed improvements within the stream setback: 6) development of a gravel fire truck turnout in the Greenfield Road right-of-way; 7) relocation of generator pad; and 8) reconfiguration of stormwater catchment and conveyance and installation of erosion control measures to stabilize the stream bank. The project is located at 1080 Greenfield Road, approximately 1.5 miles from its intersection with Conn Valley Road in St. Helena, within the Agriculture, Watershed and Open Space (AWOS) General Plan designation and Agricultural Watershed (AW) zoning district. APN 025-390-006

Staff Recommendation: Find the project categorically exempt from CEQA and approve a modified version of the Use Permit Exception request.

Staff Contact: Pam Arifian, Planner III; phone (707) 259-5934; email: pamela.arifian@countyofnapa.org

Applicant: Roseann and Mark Burhenne

Representative: Paul N. Bartelt, Bartelt Engineering, 1303 Jefferson Street, 200B, Napa, CA 94559, 707-258-1301

EXECUTIVE SUMMARY

Proposed Actions:

That the Planning Commission:

- I Find that the project qualifies as Categorical Exempt under the provisions of the California Environmental Quality Act based on Finding 1 of Attachment A; and
- I Approve an Exception to the Conservation Regulations in the form of a Use Permit (#P19-00203-UP), based on Findings 2-13 of Attachment A, and subject to the Conditions of Approval listed in Attachment B.

Discussion:

The application is a request for an Exception to the Napa County Conservation Regulations (County Code Chapter 18.108), in the form of a Use Permit, in order to allow existing site improvements (Improvements 1 through 5, above) that encroach into the required stream setback to be recognized and maintained in their current configurations. The required stream setback is 55 feet as measured from the top of bank pursuant to Napa County Code (NCC) Section 18.108.025 (General provisions – Intermittent perennial streams). This application was submitted to address code violations identified in the Notice of Violation dated June 19, 2018 (#CE17-00363). Staff from the California Department of Fish and Wildlife have visited the site, have reviewed the project Notification of Lake or Streambed Alteration (Fish and Game Code Section 1602 – refer to Attachment H) and provided input for the erosion control measures conditions.

The application also includes modifications to existing conditions through Improvements 6, 7 and 8 as follows: a 100 square-foot gravel fire truck turnout would be installed within the County right-of-way (ROW) along Greenfield Road within the setback (Improvement 6); the existing generator pad would remain within the stream setback, but would be relocated from the southern property line to a location adjacent to the north wall of the “Barn” (Improvement 7); and the existing stormwater catchment and conveyance system within the stream setback would be reconfigured within the existing developed area with no expansion of capacity and the erosion control measures would be installed to address existing scour beneath the storm drain outfall near the existing accessory structure (“cave”) (Improvement 8).

Staff is recommending a modified version of the Use Permit Exception, wherein the accessory structure (“cave”), stairs and patio (Improvement 1) would be removed, Improvements 2 through 5 would remain as requested, and the proposed Improvements 6 through 8 would be implemented as conditioned, provided that restoration of the bank and replanting with native riparian vegetation occurs. In evaluating this request, Staff evaluated the request from the perspective of what could be supported had the improvements not yet been installed. Staff believes that the property would have qualified for grant of a use permit exception (or variance) for all of the improvements except for Improvement 1, based on its small (0.4-acre) size, irregular shape, and the extent of the property that lies within stream, road and property setbacks.

Therefore, Staff believes the required findings can be made to approve this staff-modified version because: A) as conditioned, the project would remove the cave and restore the bank with native riparian vegetation; B) Improvements 2 through 5 located within the stream setback are existing and would remain unchanged with no expansion of use; C) the proposed work within the toe-of-bank and bank of the stream (Improvement 8) would improve bank stability and reduce scour due to stormwater runoff; D) the project would not result in substantial effects to mapped or designated environmentally sensitive areas or resources; and E) no native trees or native vegetation would be removed to maintain the site improvements or to implement the proposed Improvements. Based on these reasons, Staff recommends approval of the modified project within the required stream setbacks subject to the 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 the physical environmental conditions present when an application is submitted and the environmental analysis is commenced. In this case, site improvements 1-6 listed above subject to this Use Permit Exception application are existing; Improvements 7-9 would modify existing improvements to improve stream setback conditions.

Consideration and possible adoption of Categorical Exemptions pursuant to California Environmental Quality Act Guidelines at 14 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.

BACKGROUND AND DISCUSSION

Owner: Roseann and Mark Burhenne, 1080 Greenfield Road, St. Helena 94574; 408-205-3168

Applicant: Roseann and Mark Burhenne

Representative: Paul N. Bartelt, Bartelt Engineering, 1303 Jefferson Street, 200B, Napa, CA 94559

Location: The project is located at 1080 Greenfield Road, approximately 1.5 miles from its intersection with Conn Valley Road in St. Helena.

Zoning: Agricultural Watershed (AW) District

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

Parcel Size: 0.40 acres

Application Filed: April 19, 2019; Resubmittal: May 27, 2020 Application Complete: April 22, 2021.

Existing Development: In addition to the existing improvements or portions thereof that are the subject of this application, the property contains a single family residence, a Wisconsin mound type sanitary wastewater treatment system in the side yard, a water storage tank, well, landscaping, a parking space and two driveways.

Setback (Required): 55 feet from top of bank of the unnamed intermittent stream

Setback (Proposed): 0 feet from top of bank of the intermittent stream

Adjacent General Plan Designations, Zoning Districts and Land Uses:

The property is surrounded by AWOS-designated lands within an AW Zoning District. Land uses within the immediate vicinity (i.e. within approximately 0.5 to 1 mile) of the subject property predominantly consist of semirural residential, scattered agricultural uses (grazing land, vineyards and wineries) and undeveloped woodlands and shrub-lands. Lake Hennessey is located approximately 1 mile to the south of the property. The closest residences to the project site are located between approximately 400 feet to the north, 1000 feet to the northwest, 1300 feet to the south and over 1200 feet to the northeast.

Property History:

The 0.4-acre triangular parcel that was originally part of a larger parcel created in the 1880s, was designated as Separated for Assessment Purposes (SFAP) in or about 1983. On or about August 8, 1992, the property was sold at public auction by the Napa County Treasurer/Tax Collector to recover delinquent and unpaid property taxes, which established the property as a legally created parcel. On or about May 11, 1995, Tim Bower and Susan Achtman purchased the property.

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 upheld by the Board of Supervisors with the adoption of Resolution No. 98-7 on January 20, 1998.

On March 4, 2008, a building permit #B0-00206 was issued for a Storage Shed (referred to herein as the "Barn") located on the top of bank.

Subsequent to 2008, property ownership changed twice before it was sold to Roseann and Mark Burhenne on or about July 27, 2017. The existing site improvements that were developed since current ownership include the concrete accessory structure ("cave"), stairs and patio at the top of bank (Improvement 1), a mechanical pad on the wall of the Barn (a component of Improvement 5), and backyard patio and hardscape (Improvement 6).

On May 22, 2020, an encroachment permit #W19-00420 was issued for the removal of oleander bushes in the Greenfield Road ROW, installation of gravel turnout, bollards for the dry draft fire hydrant, reflectors in the road, and allowance of approximately 13 lineal feet of existing concrete retaining wall and approximately 150 square feet of existing concrete driveway within the Greenfield Road ROW.

Compliance History:

On June 19, 2018, a Notice of Violation was issued #CE17-00363 for the Improvements included in this Use Permit Application (listed above), as well as some alterations not included in this application, including interior improvements to the house (i.e., alteration to bathroom, kitchen and electrical lighting on first floor and front steps) and Barn (i.e. addition of a second story loft, electrical lighting) that were made without the benefit of a permit, as well as additional solar panels on the roof of the two structures that were not permitted, a stone entry structure, and the outdoor kitchen components outside of the setback area. The unpermitted improvements not included in this Use Permit have not been addressed.

Discussion Points

There are ostensibly two options for the code violations on this property to be resolved. One option is for all unauthorized improvements to be removed. Under this approach, Improvements 1-5 would be removed and the County could require that habitat in these areas be restored. The other option is for the Planning Commission to grant a Use Permit Exception, which the applicants have a right to request. In evaluating such requests, staff considers the extent of proposed improvements within a stream setback within a context of whether the improvements could be found to meet required findings had they not already been constructed.

In this case, staff believes some of the improvements in the stream setback would have been supportable had they not already been constructed due to the constrained lot size, configuration and existing development, the low quality habitat of the pre-existing stream setback corridor on site and in the vicinity, and the potential for the project to improve stream habitat conditions through improved stormwater conveyance and erosion control measures. Clearly, a number of the improvements, (e.g., the “cave,” stairs and patio) are beyond what could have been supported, and therefore are recommended for removal as part of this action. Ultimately, in meeting the required findings, the objective to both reconcile this code case as well as protect and enhance the stream corridor can be met by grant of a use permit exception that permits the property owner to retain some of the improvements, remove others, and in turn improve stream habitat beyond that which could be required by code enforcement actions alone.

Exception to the Conservation Regulations – NCC Section 18.108.040 allows landowners or leaseholders to request exceptions to the requirements of the County’s Conservation Regulations. Such requests are made in the form of a use permit application, which is subject to decision by the Planning Commission. Pursuant to NCC Section 18.124.070, the Commission’s decision to grant or deny a use permit must be based on findings that the granting of the use permit would not adversely affect public health, safety, or welfare of the county, and that the request is consistent with the policies and standards of the County’s General Plan. Among the purposes of the Conservation Regulations (County Code Section 18.108.010) are to: 1) minimize the effects of cut, fill, earthmoving, grading operations and similar activities on the natural terrain; 2) minimize soil erosion caused by human modifications to the natural terrain; 3) maintain and improve water quality by regulating stormwater quality and quantity; 4) preserve riparian areas and other natural habitat near streams; and 5) encourage development that minimizes impacts to existing land forms, avoids steep slopes and preserves existing vegetation and unique geologic features. Each are discussed in more detail below.

- 1) Minimize cut, fill, earthmoving, grading operations, etc. – The project would retain in place a majority of the existing improvements to minimize earth disturbance associated with their removal, and would restore habitat and stabilize the stream bank following removal of an accessory structure that was built without benefit of a permit.
- 2) Minimize soil erosion - Earth disturbance work would be performed during dry season when the stream is dry,

and would be subject to State Regional Water Quality Control Board Stormwater Pollution Prevention Program (SWPPP) requirements administered through the County's Engineering Division, which imposes construction and post-construction pollution prevention requirements that minimizes soil erosion loss. Soil erosion potential from a project of this small scale is negligible.

3) Maintain / Improve Water Quality - The small scale of the project and the timing in the dry season, in addition to BMPs, means that this project has effectively no potential to alter water quality.

4) Preserve riparian areas - The project, as modified, would result in removal of an accessory structure constructed without benefit of permits within the bank of the stream, in addition to the restoration of part of the riparian corridor on the parcel, resulting in a net benefit to the riparian area.

5) Minimize impacts to land forms - The project, as modified, would restore and stabilize the stream bank, and would enhance existing native vegetation. There are no unique geologic features within or near the project site.

The requested Use Permit would grant an Exception to the Conservation Regulations to allow some of the existing site improvements that encroach into required stream setbacks to be maintained in their existing conditions, and would include bank stabilization and restoration in the area of the storm drain outfall. While these site improvements encroach into the stream setback, the project is generally consistent with the intent of the Conservation Regulations and would not result in substantial effects to mapped or designated environmentally sensitive areas or resources. Several mature native trees bound the locations of these improvements, however no trees would be disturbed by the proposed improvements. The proposed erosion control improvements would be performed within the bank of the stream under a Lake and Streambed Alteration Agreement from CDFW, and no other work would be performed within the defined bed and bank of the stream or the stream setback through the continued maintenance of existing improvements. With implementation of the proposed erosion control improvements, the proposed request for continued maintenance of these site improvements, as conditioned, would not result in anticipated threats to water quality.

Staff believes that the necessary findings can be made to approve the requested exception to the Conservation Regulations in this case, as conditioned, because the retention and maintenance of these existing site improvements, reconstruction/minor relocation of generator pad and storm drain facilities and installation of the fire truck turnout and proposed erosion control measures, as conditioned, would not result in substantial effects to environmentally sensitive areas or resources in that the existing bank scour would be mitigated without any further disturbance to riparian habitat or individual trees, or without anticipated threats to water quality (see also Attachment C). While development of the components was not consistent with existing entitlements or the Conservation Regulations at the time, their retention is supported by the unique site conditions that severely constrain developable area on this parcel, and the relative avoidance of potential short-term environmental impacts associated with removing structures that may result from denial of the request and subsequent removal of the unpermitted components within the setback and bank.

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.

As modified, 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 storm drain outfall erosion control measures at and above the toe-of-bank (Improvement 8). 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. Further, the work would be scheduled during the dry season, which reduces potential impacts to the riparian woodland and would 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 approved by the County and CDFW, and would ensure that the bank is restored in a manner that ensures long-term bank stability and supports native riparian habitat.

Pursuant to NCC Section 18.108.025(E)(9) (Uses Permitted Within Required Stream Setbacks) construction activities undertaken by or under the auspices of a federal, state or local agency to preserve or restore existing habitat areas, are permitted within the required stream setbacks. Further, the implementation of the final Stormwater Control Plan, accessory structure demolition and habitat restoration plan would be subject to Lake and Streambed Alteration Agreement from CDFW.

Compliance with Other Regulations –The proposed Improvements within the stream bank and setback (Improvements 1 and 8) would be implemented pursuant to a restoration plan that would be required as a condition of approval for this Use Permit Exception, and under the jurisdiction of the CDFW through the Section 1602 LSAA Notification process. The Regional Water Quality Control Board's SWPPP is implemented by the County's Engineering Division through the building permit process. The applicants would be required to apply for PBES permits, including demolition permit, building and electrical permits for interior improvements and solar equipment, to implement the proposed project and to resolve the remaining items listed in the Notice of Violation within 60 days of approval.

Public Comments – On June 24th, 2019, the County received a Letter of Support for the proposed Use Permit request from neighbor Ms. Deanna Roth of 5 Greenfield Way, St. Helena.

Decision-Making Options:

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

Option 1: Approve Applicant's Proposal

Discussion – This option would allow the requested existing and proposed site improvements that encroach into the County's minimum 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. This option has been analyzed for its environmental impacts and was found to be Categorical Exempt from CEQA. The recommended Findings and Conditions of Approval would need to be modified for this option.

Option 2: Modified Project (Staff Recommendation)

Discussion - This option would require removal of the "cave," stairs and patio (Improvement 1), and would allow the requested existing site improvements to be retained (Improvements 2 through 5) and proposed site improvements (Improvements 6 through 8).

Staff recognizes that the severe constraints of the parcel size and configuration, as well as the history of the parcel with respect to timing of development vis a vis ownership, makes reconciling this code case while strictly upholding the requirements of the Conservation Regulations to protect the stream and riparian habitat complex at best. The owners live "off-grid" (i.e., supplying their own power and treating their wastewater on site), and some of the infrastructure required to support that power generation, water supply, and fire protection are necessarily located in the setback and the existing residence and wastewater treatment infrastructure leaves little, if any, room to relocate improvements.

Leaving all structures in place as requested may be considered a more environmentally beneficial option, as it would limit earth-disturbing work within the stream bank to the erosion control measures in Improvement 8. However, the accessory structure ("cave") with stairs and patio (Improvement 1) within the bank would have required thorough review by multiple County divisions and CDFW to ensure the design and engineering of the structure is technically adequate and environmentally sound prior to approval regardless of its placement within the stream setback or bank, which would have required a use permit exception. Stream hydraulics suggest that the potential remains for conditions that could result in continued changes to the banks, which could compromise the erosion control potential or bank stability in the project area in the long-term.

This Option, which would require the removal of the cave structure with stairs and patio (Improvement 1) and restoration of the bank, would result in greater long-term benefits to the stream, which functions as headwater to an unnamed blue line stream approximately 330' south of the parcel, and would result in greater alignment with the intent of the Conservation Regulations. Further, it would allow the continued use of the remaining existing Improvements that would be difficult, if not impossible, to relocate outside of the constraints of the parcel.

Action Required – Follow the proposed action listed in the Executive Summary. This option has been analyzed for its environmental impacts and was found to be Categorical Exempt from CEQA.

Option 3: Deny the Requested Use Permit

Denial of the requested use permit would require all site improvements encroaching into the stream setback to be removed and underlying areas restored. The original improvements that were approved as part of Variance #96503-VAR would remain within the 55-foot setback, including the residence, one water storage tank, the well, and the front yard parking spaces. The generator, Barn, sheds, cave and backyard patio would be removed, along with the subdrain, which would be reinstalled according to the approved Variance, and the fire protection water supply tank, dry draft hydrant would need to be relocated.

This option would result in earthmoving activities within the bank and setback area to remove the existing structures and storm drain infrastructure, which could potentially result in greater environmental impacts to the stream and riparian corridor. Additionally, with the exception of the backyard and cave structure, all of these improvements existed prior to the current owners' acquisition of the property. Further, given the unique site constraints listed above, the available space to move accessory structures and infrastructure outside of the setback is severely limited at best. For these reasons, Staff does not recommend this option.

In the event the Commission determines that the project with conditions does not or cannot meet the required findings for granting of a use permit exception, the Commissioners should articulate what aspect or aspects of the project are in conflict with the required findings. State law requires the Commission to adopt findings, based on the General Plan and County Code, setting forth why the proposed use permit exception is not being approved.

Action Required – Commission would adopt a tentative motion to deny the project and remand the matter to staff for preparation of required findings to return to the Commission at a future hearing date.

Option 4: Continuance Option

The Commission may continue an item to a future hearing date, at its discretion.

SUPPORTING DOCUMENTS

A . Recommended Findings

- B . Recommended Conditions of Approval
- C . CEQA Memo
- D . Use Permit Plans
- E . Stormwater Control Plan
- F . Storm Drain Outfall Exhibit
- G . Application Submittal Materials
- H . CDFW LSAA Outfalls

Napa County Planning Commission: Approve

Reviewed By: Brian Bordona