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Agenda Date: 9/3/2008

Agenda Placement: 9A

## Napa County Planning Commission Board Agenda Letter

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**TO:** Napa County Planning Commission

**FROM:** John McDowell for Hillary Gitelman - Director  
Conservation, Development & Planning

**REPORT BY:** KIRSTY SHELTON, PLANNER III - 707 253 4417

**SUBJECT:** Burke Residence Variance and Conservation Regulation Use Permit Exception

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### **RECOMMENDATION**

#### **BURKE RESIDENCE / BRIAN BURKE, MANALIRI INC. / SETBACK VARIANCE, FILE # P07-00793-VAR, AND CONSERVATION REGULATIONS USE PERMIT EXCEPTION, FILE #P07-00792-UP**

**Ceqa Status:** Negative Declaration Prepared. This project site is not on one of the lists of hazardous waste sites enumerated under Government code section 65962.5.

**Request:** Approval of a building setback Variance and Use Permit Exception to the County Conservation Regulations to allow the construction of an approximately 2,500 sq. ft. single family residence with attached garage on a vacant wooded hillside property west of the Napa Valley floor. The setback Variance will allow the residence to encroach six (6) feet into the required twelve (12) foot northern side yard setback and twenty-four (24) feet into the required combined forty-eight (48) foot road and front yard setback. The Conservation Regulations Use Permit Exception will allow the residence on slopes averaging 42% and to encroach 70 feet into the required 150 foot Stream Setback for an unnamed intermittent creek located on the northern portion of the site. The scope of this project also includes the execution of a septic easement on the adjacent parcel to the east, and the grant of an Exception to the County's Road Standards to reduce required road widths in order to preserve existing mature trees. The project is located on a .38-acre parcel on the north side of Tucker Road where it intersects with Summit Drive and is approximately 1/4 mile west of Tucker Road's intersection with State Route 29 with an (AW) Agricultural Watershed Zoning Designation. APN: 020-262-015 (project site)(formerly 020-262-010); 020-262-016 (septic) (formerly 020-262-011).

**Staff Recommendation:** Adopt the negative declaration and approve the project with attached conditions of approval.

**Staff Contact:** Kirsty Shelton 299-1377; John McDowell 299-1354

## **EXECUTIVE SUMMARY**

### **STAFF RECOMMENDATION**

#### **Proposed Action:**

1. That the Planning Commission adopts the Negative Declaration for the Burke residence Use Permit and Variance application, based on findings 1-6 of Exhibit A (attached); and,
2. That the Planning Commission approves an Exception to the Conservation Regulations in the form of Use Permit P07-00792-UP based on finding 7-18 of Exhibit A and subject to the attached conditions of approval of Exhibit B.
3. That the Planning Commission approves Variance P07-00793 based on findings 19-22 of Exhibit A.

**Discussion:** This project consists of a request to construct a single family home on an existing hillside property constrained by slopes, thick vegetation, and stream setbacks. Construction of a single family home is allowed by right (ministerial permit) on any legal lot in Napa County provided that the applicant can demonstrate provision of adequate water, waste water and access. However, on highly constrained properties such as this, County regulations often trigger additional discretionary review such as a variance and/or Conservation Regulation use permit exception. In these cases, the Commission is not obligated to approve the specific development proposed, but must allow reasonable use of the land, and at a minimum a single family home of some type (provided that basic health and safety provision are made - i.e. - water, septic and access).

Specific property constraints consist of: 1) a 12 ft. side yard setback along the northeastern property line; 2) a road easement and a 48 ft. front yard setback along the southern portion of the property, 3) a 125 ft. to 150 ft. stream setback (based on slopes) from an intermittent stream running through the northern portion of the property; and 4) greater than 50% slopes occupying the western two-thirds of the property. These constraints result in overlapping setbacks wherein it is not possible to develop on the property without grant of some form of relief to at least two of the setbacks. The applicant has proposed the residence in the eastern corner of the property outside the 50% slopes, and as far as possible from the 150 ft. creek setback, which results in substantial reductions to the front and side yard building setbacks. Since the setbacks overlap, Staff is compelled to prioritize which setbacks are of greater importance. As a result, Staff is recommending approval of the project in the location proposed with conditions of approval on the basis that reduced side and front building setbacks are of less overall importance than allowing construction within areas of 50% slopes and further encroaching on a stream setback.

## **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

## **ENVIRONMENTAL IMPACT**

**ENVIRONMENTAL DETERMINATION:** Negative Declaration prepared and attached. According to the proposed Negative Declaration, the proposed project would have no potentially significant environmental impacts. This project site is not on any of the lists of hazardous waste sites enumerated under Government Code section 65962.5.

**BACKGROUND AND DISCUSSION**

**Owner:** Manalari Inc.

**Applicant/Representative:** Brian Burke

**Zoning:** AW - Agricultural Watershed

**General Plan Designation:** AWOS - Agricultural Watershed and Open Space

**Filed:** November 6, 2007

**Declared Complete:** August 8, 2008

**Adjacent Land Uses**

**Northwest** 1.0 acre parcel owned by the applicant, vacant; and northeast of the homesite is a third parcel owned by the applicant and designated as the location for the proposed residence's septic disposal area.

**South** 0.46 acre vacant parcel, located across Tucker Road right-of-way and up the hill.

**Northeast** 0.64 acre parcel, developed with a single family dwelling located approximately 50 ft. from the shared side property line and approximately 20 ft. lower in elevation.

**West** 1.06 acre vacant parcel located across Summit Drive

**Property History**

1948 - Tucker Acres Subdivision map recorded. Single family home development has occurred sporadically over the last 60 years. Approximately half of the lots have developed. Most properties are steeply sloped, have limited access, and are heavily wooded.

1953 - Napa County abandoned undeveloped portions of Tucker Road as well as other rights-of-way throughout the subdivision. All roads within the subdivision are privately maintained.

December 2007 - The County approved a lot line adjustment for the three properties owned by the applicant. The purpose of the lot line adjustment was to enable the proposed home's septic system to be located on the adjacent lot. As a result, the Assessor has assigned new parcel numbers to the three lots. The proposed residence is located on 020-262-015 which was formerly 020-262-010, and the proposed septic field is located on 020-0262-016 which was formerly 020-262-011.

**Discussion Points**

1. Setbacks - Four overlapping Zoning Code setbacks apply to the property triggering the need for a Variance and Conservation Regulation Use Permit Exception as follows:

A. Stream Setback: A watercourse meeting the County's definition of a stream runs through the northwest portion of the site. Since slopes adjoining the stream are 50% or greater, the Conservation Regulations require a 125 ft. to 150 ft. setback from the top of bank of the watercourse. As a result, the entire property is located within the stream setback and development cannot occur without grant a reduction to stream setback requirements. It should be noted that that the subdivision was platted in 1948, and the County's Conservation Regulations were adopted in 1991. At the time the lot was created, no stream setback applied to the property. The applicant is proposing an 80 ft. setback from the top of bank for the stream, reducing the setback by 70 feet.

B. Slopes: Conservation Regulations prohibit development of slopes greater than 50% (unless a variance is granted), and require grant of a Use Permit Exception for development on slopes averaging greater than 30%. The western two-thirds of the property exceed 50% slopes, and the remaining eastern third where the home is

proposed averages greater than 30% slopes. Therefore, it is not possible to develop on the site unless a Use Permit Exception is approved or a Variance is granted. As with the stream setbacks, it should be noted that the slope requirements did not exist at the time the lot was created. The applicant is proposing to limit construction to areas less than 50% in slope.

C. Side Yard Setback: The standard side yard building setback for this lot is 6 ft. for single stories, with 3 ft. added for each story above the first. The proposed home is three stories in height along the side property line as a result of the property sloping downward. Therefore, the standard setback would be 12 feet. The applicant is requesting a reduction to 6 feet.

D. Front Yard Setback: A 40 ft. wide right-of-way for Tucker Road crosses the southern portion of the lot. County regulations apply two setbacks, a road setback of 28 ft. from the centerline of the right-of-way, and an additional 20 foot building setback. The applicant is proposing to reduce the combined setback by 24 ft. such that the closest corner of the garage will sit 4 ft. from the right-of-way easement. Portions of the driveway and front walkway will be located within the easement.

2. Property Rights - State and Federal law mandate that local zoning regulations cannot deny a property owner of basic reasonable use of their property. As a result, County regulations have been crafted to allow a single family home (of undetermined size) to be constructed, by-right, on a legal parcel in the County as a means of achieving consistency with that mandate. This project is a somewhat unusual case because the combined setbacks leave no portion available for development. To develop the site, so form of variance, exception or relief to standards must be granted so as not to deny reasonable use of the property. So, although the Commission is not in any way obligated to approve the proposed project, the Commission is obligated to approve a single family home of some type on this property. Grounds for denying a single family home would only exist if water, sewer/septic or access could not be provided, which is not the case on this project.

3. Balancing County, Applicant and Neighborhood Objectives - Given the overlapping setbacks, and the County's obligation to approve a single family home, the Commission's primary decision is to determine the appropriate size and placement of the home that best balances overall County goals with applicant objectives and neighborhood compatibility. Clearly, County goals, applicant objectives and neighbor concerns conflict to some degree and consequently will result in the need for some form of compromise. Staff's findings on the situation are as follows:

A. Applicant Objectives: The property owner wishes to construct a residence of adequate size to meet personal needs. The proposed house is approximately 2,500 sq. ft. in area and has a stepped foundation that will appear as a single-story house from the street and a three-story house from the side property line. A 2,500 sq. ft. home is neither a small home or a large home. Although the County has the ability to dictate the size of the home in this case, the County does not typically regulate the size and design of homes. Staff has concluded that the home's overall size is reasonable, and given the County's established practice of not dictating home size, Staff is reluctant to suggest that a smaller home be considered.

B. Neighborhood Objectives: Staff has been in contact with both the adjoining property owner to the northeast, and the primary representative of the Tucker Acres Mutual Water Company who effectively acts as the representatives of the subdivision. It appears that both the immediate neighbor and the neighborhood representatives are primarily concerned about: The proximity of the home to the front and side property lines; property values; geologic stability; the extent of improvements that may occur within the Tucker Road right-of-way; septic system adequacy and off-site placement; tree removal; and project potential to impact the intermittent drainage. Some of these concerns may be addressed if the applicant is able to discuss his plans with neighbors prior to the hearing.

C. Staff Objectives: In applying County regulations, Staff was essentially forced to prioritize which setbacks were of higher importance. As a result, Staff concluded that stream and slope setbacks took priority over property line setbacks, because stream and slope setbacks serve to maintain and enhance overall water quality, health of the Napa River water system, regional biotic community diversity. Property line setbacks, although quite important for preserving neighborhood quality of life, were felt by Staff to be of less overall importance. Certainly, coming to this conclusion was not easy and Staff cannot say with confidence that our recommendation achieves any sort of

compromise between competing interests.

4. Geologic Stability - Attached to this report is a preliminary geotechnical study which indicates that the site is developable. The applicant will be required as part of final building permit plans to demonstrate compliance with all geotechnical requirements of the Building Code (IBC) and the recommendations of a final geotechnical study prepared by a license professional.

5. Septic System - The project's septic system will be located on an adjoining property owned by the applicant and located down the hill near Highway 29. Attached is the septic feasibility study that has been reviewed and endorsed by County Environmental Mangement, which indicates that a septic system is feasible and can be designed to comply with County standards. Neighbors have expressed concerns that the system may potentially impact the creek. The design will feature a overland sewer line (or alternatively a shallow buried line) from the residence that will go down the hill following the property line and all within the stream setbacks until it reaches the lowest portion of the adjoining lot nearest Highway 29. The septic leach field will be located in an area outside the stream setback in compliance with County standards. As mentioned earlier, a lot line adjustment was executed by the applicant in December 2007 that adjusted the lot containing the residence so as to adjoin the lot where the septic system would be located. This was necessary to comply with an Environmental Management requirement that the septic system be no further from a residence than on an adjoining lot.

6. Project Access / Road Exception - The subject property fronts on the semi-improved right-of-way for Tucker Road. Currently Tucker Road is a dirt jeep road. To meet Fire Department access needs, the applicant is required to improve the existing dirt road by widening it and installing an all weather surface capable of handling County Fire aparatus. As proposed, this improvement will complete extension of Tucker Road so that it connects to Summit Drive. Neighbors have commented that any improvements to this road need to be coordinated with them so as not to conflict with their overall planned circulation improvement within the subdivision. Neighbors have also expressed concerned that the project's driveway and walkways located within the right-of-way could conflict with planned circulation improvements. It is hoped that the applicant can rectify these potential conflicts prior to the meeting. The applicant is also requesting an Exception to the County Road Standards to reduce the amount of required road width for the portion of Tucker Road that will be extended. This request has been reviewed by both Fire and Public Works and is recommended for approval primarily because the width is not need for County purposes and will result in the preservation of existing mature trees.

7. Fire Safety - The property currently includes dense vegetation with a high fuel content. The applicant has worked with County Fire, and has enlisted the aid of a qualified Fire Safety Consultant to develop a Firewise landscape management plan. The plan complies with requirements to reduce fuel load while perserving a maximum amount of mature vegetation. The Firewise landscape plan will decrease the potential fire danger to this property and adjoining lots.

8. Tree Removal - The entire project site is covered with existing mature trees, and cannot be developed without trees being removed. As proposed, the new dwelling will require the removal of eleven (11) Blue Oak trees with a diameter range of 8-14", two (2) Fir trees with a diameter range of 12-14", and one (1) Madrone tree with an 8" diameter. The proposed conditions of approval will require the applicant to plant replacement trees at a 1:1 ratio for the 11 Oak trees in compliance with Conservation Regulations and the County General Plan.

5. Viewshed Applicability - Although the project could potentially be seen over brief portions of Highway 29, the Viewshde Ordinance exempts all properties within the Tucker Acres subdivision from the ordinance requirements. Viewshed design requirements do not apply.

#### **Consistency With Standards:**

Zoning - The project has AW - Agricultural Watershed zoning which allows construction of a single family home by

right as an allowed use. Given the slopes and building setbacks, the project requires grant of a variance and use permit exception to the conservation regulations to allow construction within stream setbacks and on slopes exceeding 30%. There is no location on the property to construct a home without grant of either a variance, use permit exception, or combination thereof.

Building Division Requirements - As conditioned this application complies with the requirements.

Fire Department Requirements - As conditioned the Fire Department have approved this request based on the memorandum of June 11, 2008. Extension vegetation management and fire-resistive construction materials are necessary to comply with Firewise design mandates. The project also necessitates the improvement of Tucker Road along the entire frontage of the property so as to tie into Summit Drive.

Public Works Department Requirements - As conditioned this project complies with the Public Works comments of the memorandum of July 29, 2008 and of May 13, 2008

Environmental Management Department Requirements As conditioned this project complies with the minimum requirements of the memorandum dated April 8, 2008.

### **SUPPORTING DOCUMENTS**

- A . Exhibit A - Required Findings
- B . Exhibit B - Conditions of Approval
- C . County Departments and Agency Comments
- D . Negative Declaration / Initial Study
- E . Attachment 1 - Biological Study
- F . Base Application Submittal Materials
- G . Project Narrative
- H . Tucker Road Abandonment Resolution
- I . Tucker Road Surveyor's Letter
- J . Attorney General Opinion on Road Abandonments
- K . Project Engineer's Slope Methodology Calculation
- L . Project Water Will Serve Letter and Septic Feasibility Study
- M . Septic Easement Document
- N . Firewise Vegetation Management Plan
- O . Project Geotechnical and Soils Study
- P . Tucker Acres Neighborhood Letter
- Q . Project Graphics
- R . Project Final Site Plan
- S . Lot Line Adjustment Plat

Napa County Planning Commission: Approve

Reviewed By: John McDowell