



SUMMARY REPORT

Agenda Date: 1/28/2025

To: Sonoma County Board of Supervisors
Department or Agency Name(s): Permit Sonoma
Staff Name and Phone Number: Cecily Condon (707) 565-1958
Vote Requirement: Majority
Supervisorial District(s): Fourth

Title:

10:15 A.M. - Appeal of Revocation for UPE07-0112 located at 3660 Copperhill Lane, Santa Rosa

Recommended Action:

Permit Sonoma recommends that the Board of Supervisors hold a public hearing and adopt a Resolution upholding the Board of Zoning Adjustments revocation of UPE07-0112.

Executive Summary:

On March 28, 2024, the Board of Zoning Adjustments adopted a resolution to revoke use permit UPE07-0112 located at 3660 Copperhill Lane. The Board of Zoning Adjustments held a public hearing to revoke UPE07-0112 for non-compliance with the Conditions of Approval and violations of the Sonoma County Code; including Chapter 7, Building Code, and Chapter 26, Zoning Code. The Use Permit, UPE07-0112, was conditionally approved on April 22, 2008, with approval extended to June 29, 2011, for a concrete manufacturing plant on a 1.2-acre portion of a 6.78-acre parcel including a batch plant, 250 sq ft mobile office, and on-site truck storage for up to 8 trucks. Hours of operation are from 5 a.m. until 5 p.m. with up to 5 employees and 45 estimated truck trips per day. Though a concrete batch plant was installed and started operations the preoperational conditions on the Permit were never fully satisfied and no use permit certificate was issued on the subject parcel. A timely appeal of the revocation was filed by the project applicants on April 05, 2024. Complaints related to unpermitted construction and violation of the Conditions of Approval for this project were initially reported in March of 2011. Violations were verified by site visit, conducted by Code Enforcement Staff in April of 2011. Despite several efforts and multiple applications to achieve compliance with the subject permit, violations remain unresolved. As several years have passed without resolution of outstanding code enforcement violations, nor with full compliance with applicable codes and conditions of approval, Permit Sonoma recommended revocation of the permit, UPE07-0112 to the Board of Zoning Adjustments.

Following the Board of Zoning Adjustments' review of staff's recommendation and subsequent decision to revoke the permit, the applicants took action to comply with the original permit's outstanding conditions of approval, including but not limited to securing the avigation easement, sewer and water connections, payment of mitigation fees, applications for additional permits, and requesting demolition permits for unpermitted site improvements. At the time this staff report was drafted, full compliance had not occurred because while applications for additional needed permits have been submitted, required work to come into code compliance pursuant to those permits has not yet occurred. If work under the currently applied for permits is satisfactorily completed, it appears that all known building code violations from 2011 would be resolved. If the applicant demonstrates compliance with conditions of approval, including a site plan

confirming the operation is consistent with the approved 1.2-acre project footprint, it appears that all know use permit compliance violations from 2011 would be resolved.

If the Board decides not to revoke the permit, it could in the alternative direct staff to pursue other remedies for code compliance in lieu of revocation. Final permit approval of Occupancy, or Final on all pending permits or successor permits of, BLD24-2332 and BLD24-3307, DEM24-0034, DEM24-0249, SEW23-0141, SEW16-0050, and payment of all outstanding permit fees, will abate violations VBU11-0102 and VBU11-0102. If the violations are abated and costs paid, then the violations will be closed. Failure to complete abatement of these violations would result in continued encumbrance of this property by notice of abatement or liens. However, if the property owner desires to sell or refinance the property, it is the Department's practice to work with the property owner to effectuate these goals. If the property owner intends to sell the property, the Department will negotiate a signed abatement agreement with the buyer to allow release of these liens to allow such transaction to move forward. If the property owner intends to seek refinancing, the county will negotiate a signed abatement agreement with the property owner to temporarily remove the liens to allow such financing to occur.

Discussion:

The project is within the boundaries of the *Airport Industrial Area Specific Plan* and is located approximately one mile west of Highway 101 and half a mile south of the Town of Windsor. Surrounding uses are developed with various industrial and office uses. The *Charles M. Schultz Sonoma County Airport* is half a mile east of the project site. Mark West Creek runs east to west approximately 2,000 feet south of the subject parcel. The nearest residence to the project site is located on Airport Boulevard on an industrially zoned parcel.

The subject Use Permit allows a concrete manufacturing facility on a 1.2-acre portion of a 6.78-acre parcel and includes a ready-mix batch plant, 250 sq ft mobile office, and on-site truck storage for up to 8 trucks subject to the Conditions of Approval (Attachment 7). The site is located on the east side of Copperhill Lane, a private road located between Brickway Boulevard and Copperhill Parkway.

The batch plant and associated equipment and materials storage are located in the central portion of the site on an existing paved area. The batch plant replaced a ready-mix operation previously located in the Town of Windsor. The Use Permit authorizes operation from 5:00 a.m. to 5:00 p.m. Monday through Friday, and from 5:00 a.m. to 3:00 p.m. on Saturday, with occasional operations at other times to meet customer needs. The facility has 5 employees and includes a 250 square foot modular office, eight customer parking spaces and parking for seven concrete trucks and one gravel truck. Access is provided by a driveway from Copperhill Lane, a private road, with primary access being from Copperhill Parkway, a public roadway.

Project History

The table below summarizes key project milestones and enforcement events.

Date	Project Event/Milestone
10/02/2007	Application for Conditional Use Permit UPE07-0112 initiated
04/22/2008	Conditional Use Permit UPE07-0112 was Approved via Hearing Waiver
06/29/2010	One Year Extension Granted, Citing Additional Time Required for Condition Compliance

03/2011	Violation Complaint (VCM11-0185)
04/26/2011	Code Enforcement Site Inspection
05/10/2011	Notice of Violation (VPL11-0051) Issued for Non-Compliance with UPE07-0112
05/11/2011	Notice and Order (VBU11-0102) Issued for Construction Without Permit
12/02/2011	Notice of Abatement
09/21/2016	Use Permit Application to Legalize Modifications (UPE16-0076)
12/7/2016	Demolition Permits Issued to Remove Unpermitted Improvements
01/25/2018	UPE16-0076 Application Withdrawn
12/27/2018	Authorization for Farrow Ready Mix to Operate Subject to Conditions of UPE07-0112
12/30/2019	Recordation Reminder Letter
01/01/2020	Demolition Permits to clear VBU11-0102 and VPL11-0051 Expire
09/02/2021	Additional Code Enforcement Site Visit Failed to Close Outstanding Violations
08/28/2023	Letter of Intent to Revoke Conditional Use Permit UPE07-0112 Issued
09/15/2023	Deadline Provided for Compliance as Verified by Site Inspection
10/16/2023	Public Notice of Revocation Hearing and Applicant's Additional Request for Continuance
10/26/2023	Board of Zoning Adjustments Continuance to Date Uncertain
11/28/2023	BLD23-7519 Started for ADA improvements to resolve Violations(VBU11-0102, VPL11-0051)
11/29/2023	SEW23-0141 Started for Condition compliance
02/08/2024	Condition Compliance Table submitted by Applicant
02/29/2024	Condition Compliance submittal package
03/18/2024	Public Notice of Continued Board of Zoning Adjustments Hearing
03/28/2024	Board of Zoning Adjustments Hearing on Revocation.
04/05/2024	Appeal of Board of Zoning Adjustments Revocation Submitted
04/05/2024	Demolition Permit for 5,000-gallon tanks issued (DEM24-0034)
05/13/2024	Permit to Legalize Batch Plant (BLD24-2332) submitted and paid
06/04/2024	Demolition Permit for Dispatch building issued (DEM24-0249)
06/10/2024	Permit for Commercial Coach (BLD24-3307) submitted and paid
07/19/2024	Multiple plan check comments/resubmittal requests from County staff have occurred for BLD24-2332 (batch plant) since 5/13/2024; the most recent resubmittal request was from Planning on 7/19/2024; the request was for a revised Site Plan to demonstrate the coach and the outdoor materials storage area and overall size of the operation are consistent with the approved 1.2-acre project footprint
08/02/2024	Sewer Permit Issued (SEW23-0141)

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08/02/2024 Sewer Permit Issued (SEW23-0141)

08/25/2024	Multiple plan check comments/resubmittal requests from County staff have occurred for BLD24-2332 (Batch Plant) since 5/13/2024; the most recent resubmittal from the applicant was received 8/25/2024 and is still under review
11/07/2024	Payment of California Tiger Salamander Mitigation Fees for a 1.2-acre project footprint
11/18/2024	Multiple plan check comments/resubmittal requests have occurred for BLD24-3307 (commercial coach) since 6/10/2024; the most recent resubmittal from the applicant was received 11/18/2024
11/25/2024	Multiple plan check comments/resubmittal requests have occurred for BLD24-3307 (commercial coach) since 6/10/2024; the most recent resubmittal request from Planning was 11/25/2024; the request was for a revised Site Plan to document that the coach is located within the approved 1.2-acre project footprint

Condition Compliance

The Permit, UPE07-0112, was approved subject to 56 Conditions of Approval (COA), including operational conditions, which are in effect for the life of the project. To date, the Town of Windsor Water Permit, Bay Area Air Quality Management District (BAAQMD) Permit, State Water Resource Control Board (SWRCB) Permit, proof of Tiger Salamander Mitigation fee payment, and Recorded Sewer Easement have been provided to staff. In addition, since the filing of the appeal, the applicant has made additional progress on condition compliance. Additional building permits for the commercial coach and to legalize the batch plant have been filed and received review comments from Permit Sonoma Divisions. Additionally, the Sewer Permit SEW23-0141 has been issued. The required Avigation Easement has been prepared to satisfy Condition 33.

Prior to the current permitting activity, a previous site operator applied for and was issued permits to clear the outstanding violations but then allowed those permits to expire and the work was never completed. Demolition permits (DEM16-0401, DEM16-0402, and DEM16-0403) for unpermitted cargo containers, concrete batch plant, and commercial coach expired prior to completion of the work. Permit request BLD20-5830 to legalize the structures was withdrawn and is now superseded by the current active building permits (BLD24-3307 & BLD24-2332).

As of the drafting of this staff report the following condition compliance items remained outstanding: verification of design review standards and berm installation (COA's 46 - 50), Building Permit issuance, and final inspection.

Building Permit Status

As of the drafting of this staff report the outstanding Building Permits for the commercial coach (BLD24-3307) and concrete batch plant (BLD24-2332) have not been issued. The site plan for the project allows for the development of the concrete batch plant, commercial coach, and parking within a 1.2-acre portion of the 6.78-acre parcel. Approved access to the project area was from the north driveway from Copperhill Lane and the commercial coach is sited at the north end of the property (Attachment E). The current site plan for the pending building permits includes use of both south and north driveways to comply with current Fire Safe

Standards and was amended as such to respond to Plan Check comments from the Fire Prevention Division on the Building Permit. Additionally, the proposed site plan, which conforms to the current site development relocated the commercial coach to the eastern portion of the project area and does not include verification of the total project area, consistent with the 1.2-acre approval.

Revocations Generally

Sonoma County Code Section 26-92-120 states:

Whenever in the opinion of the planning director or of the board of zoning adjustments a condition of any permit issued pursuant to this chapter has been violated, or that the use constitutes a nuisance, the planning director shall cause a hearing to be held before the board of zoning adjustments on the matter of the revocation or modification of such permit. The hearing shall be noticed in accordance with this chapter and shall require the owner to appear at the noticed time and place and show cause why such permit should not be revoked or modified.

If, after the hearing, the board of zoning adjustments finds that there has been or will be a substantial failure to fulfill one or more of the conditions of the permit or that exercise of the use constitutes a nuisance, the board may either revoke the permit or modify it in such a manner as to secure the goals of Section 26-92-080.

The Project History above demonstrates the non-compliance with the conditions of the Use Permit including outstanding Building violations have been well documented; and the failure to comply with the terms of the issued permit were found to constitute a nuisance by the Board of Zoning Adjustments.

Condition 32 of the permit provides explicit authority to consider revocation for failure to comply with the Building Code:

"This use shall be constructed, maintained, and operated in conformance with all applicable county, state, and federal statutes, ordinances, rules, and regulations. A violation of any applicable statute, ordinance, rule or regulation shall be a violation of the Use Permit, subject to revocation."

Environmental Analysis

On April 18, 2008, a Notice of Determination was filed for the approval of UPE07-0112 for a Mitigated Negative Declaration (Attachment G).

Revocation of the Use Permit (UPE07-0112) is Categorically Exempt from the California Environmental Quality Act (CEQA) under Section 15321 of the CEQA Guidelines as it is an enforcement action by the County on condition compliance and for compliance with the California and local Building Code, Chapter 7 of the Sonoma County Code.

Board of Zoning Adjustment Action

On March 28, 2024, the Board of Zoning Adjustments voted, by a 3-1-1 vote, to revoke the use permit for a concrete batch plant and associated mobile office and truck storage located at 3660 Copperhill Lane, Permit Sonoma file number UPE07-0112. The Resolution of the Board of Zoning Adjustments to revoke the Use Permit originally approved on April 8, 2008, includes the following findings:

1. There exist ongoing building violations at the subject property for unpermitted structures violates condition number 32 of the Use Permit *"This use shall be constructed, maintained, and operated in conformance with all applicable county, state, and federal statutes, ordinances, rules, and regulations. A violation of any applicable statute, ordinance, rule, or regulation shall be a violation of the Use Permit,*

subject to revocation.”

2. The ongoing violations are well documented, including recordation of a Notice of Abatement Proceedings recorded December 2, 2011, and a reminder letter of the proceedings was sent in 2019.
3. Failure to abate the violations constitutes a public nuisance based on non-compliance with the County Code.
4. The ongoing violations have lasted 12 years.
5. Continued operation of the use with unpermitted structures constitutes a substantial failure to fulfill the conditions of approval.

Appeal

The current operator of the use, John Farrow on behalf of Farrow Ready Mix, submitted a timely appeal dated April 05, 2024. The appeal letter (Attachment 8) focuses on several key issues summarized below.

1. The appeal asserts that there is a substantial litigation record that substantiates efforts made by the current operators to come into compliance with the original approval and complete the conditions of approval.

Staff Comment: Staff is aware of the Court materials for the litigation, and they were within the record before the Board of Zoning Adjustments. The first point of the appeal also refers to the Use Permit as a Vested Use Permit, however, no determination of the vesting status of this permit has been made by the County of Sonoma.

2. The appeal alleges inadequate findings on the part of the Board of Zoning Adjustments, particularly for the nuisance findings stating that the adoption of the resolution was arbitrary due to the lack of specific findings for each unsatisfied condition is a nuisance.

Staff Comment: Sonoma County Code Article 92 identifies that the Board of Zoning adjustments has the authority to revoke a permit for substantial failure to fulfill one or more of the conditions of the permit. Additionally, Condition 32 of the subject permit authorizes consideration of revocation for non-compliance. Finally, the Board of Zoning Adjustments found that the continued operation of the use in violation of the Conditions of Approval was a nuisance.

3. The appeal identifies a period during which the application was unable to move forward for compliance because of pending or ongoing litigation.

Staff Comment: Enforcement on the permit conditions started in earnest prior to the dates cited in the appeal, and prior to the operation of the current tenant with violations dating back to 2011.

4. The appeal states the current operators have attempted with continued diligence to bring the site into compliance.

Staff Comment: While applications for additional permits have been submitted and reviewed for initial comment some conditions are still unmet. The avigation easement and requirement for obtaining a sewer permit have been met since the March 28, 2024, hearing; the avigation easement was recorded March 9, 2024 (Document No 2024040225).

5. The appeal asserts an illegal amendment to the conditions of approval stating that no specific timeline was provided for compliance.

Staff Comment: Condition 32 of the permit provides explicit authority to consider revocation for failure to comply with the Building Code:

“This use shall be constructed, maintained, and operated in conformance with all applicable county, state, and federal statutes, ordinances, rules, and regulations. A violation of any applicable statute, ordinance, rule, or regulation shall be a violation of the Use Permit, subject to revocation.”

The County Zoning Code specifically provides for Permit Revocation in Article 92. Additionally, specific extension requests were already exhausted for this permit granting an additional time to 2011 to exercise the approval through permit.

6. The appeal poses the position that the revocation substantiates a taking due to the substantial investment required to attempt to bring the permit into compliance and that this investment substantiates a Vested Right.

Staff Comment: The code enforcement action against this property was initiated in 2011. At no time since the permit was issued has vesting been established for this permit. The substantial investment, referenced in the appeal, is needed to comply with initial regulations and does not guarantee a vested right as the property remains noncompliant with building code and the conditions of approval.

Public Comment

The appellant and current project operator, John Farrow and corresponding legal representatives, and the property owners and those representing CMS Properties LLC, have each submitted letters to the file regarding this proceeding. The operators’ team has provided a statement confirming the intent to comply with regulations.

The property owners and representative provided correspondence supporting revocation of the permit.

No other public comments have been received.

Recommendation

Permit Sonoma recommends that the Board of Supervisors hold a public hearing and adopt a Resolution upholding the Board of Zoning Adjustments revocation of UPE07-0112.

Alternatively, the Board may find that there is sufficient evidence of attempted compliance since the beginning of the revocation proceedings, and since the filing of the timely appeal, which no longer supports the revocation action of the Board of Zoning Adjustments. Should the Board of Supervisors find that the remaining permits are in substantial compliance with the original approval for UPE07-0112, and compliance with the Conditions of Approval to date are sufficient to avoid revocation then the Board could take action to uphold the appeal, denying the Board of Zoning Adjustments Revocation of UPE07-0112, and find the project, as proposed on the current BLD24-2332 and BLD24-3307, site plans substantially conforming to the approval of UPE07-0112 and within the scope of the adopted mitigated negative declaration filed with the Notice of

Determination April 18, 2008.

If the Board decides not to revoke the permit, it could in the alternative direct staff to pursue other remedies for code compliance in lieu of revocation. Final permit approval of Occupancy, or Final on all pending permits or successor permits of, BLD24-2332 and BLD24-3307, DEM24-0034, DEM24-0249, SEW23-0141, SEW16-0050, and payment of all outstanding permit fees, will abate violations VBU11-0102 and VBU11-0102. If the violations are abated and costs paid, then the violations will be closed. Failure to complete abatement of these violations would result in continued encumbrance of this property by notice of abatement or liens. However, if the property owner desires to sell or refinance the property, it is the Department's practice to work with the property owner to effectuate these goals. If the property owner intends to sell the property, the Department will negotiate a signed abatement agreement with the buyer to allow release of these liens to allow such transaction to move forward. If the property owner intends to seek refinancing, the county will negotiate a signed abatement agreement with the property owner to temporarily remove the liens to allow such financing to occur.

Strategic Plan:

Not Applicable

Racial Equity:

Was this item identified as an opportunity to apply the Racial Equity Toolkit?

No

Prior Board Actions:

None

FISCAL SUMMARY

Not Applicable

Narrative Explanation of Fiscal Impacts:

None

Narrative Explanation of Staffing Impacts (If Required):

None

Attachments:

- Attachment A. Draft Resolution of the Board of Supervisors
- Attachment B. Board of Zoning Adjustments Resolution, March 28, 2024 (Resolution No 24-03)
- Attachment C. Board of Zoning Adjustments Hearing Package
- Attachment D. Condition Compliance Checklist
- Attachment E. Site Plans
- Attachment F. Public Comment, Correspondence
- Attachment G. UPE07-0112 Approval and Environmental Review
- Attachment H. UPE07-0112 BZA Appeal Letter April 5, 2024
- Staff Presentation

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Related Items “On File” with the Clerk of the Board:

None