

Board of Supervisors

March 7, 2023

Appeal of Legal Non-Conforming Use Determination

17448 River Lane, Guerneville

ORD19-0011

Marina Herrera



Today's Hearing

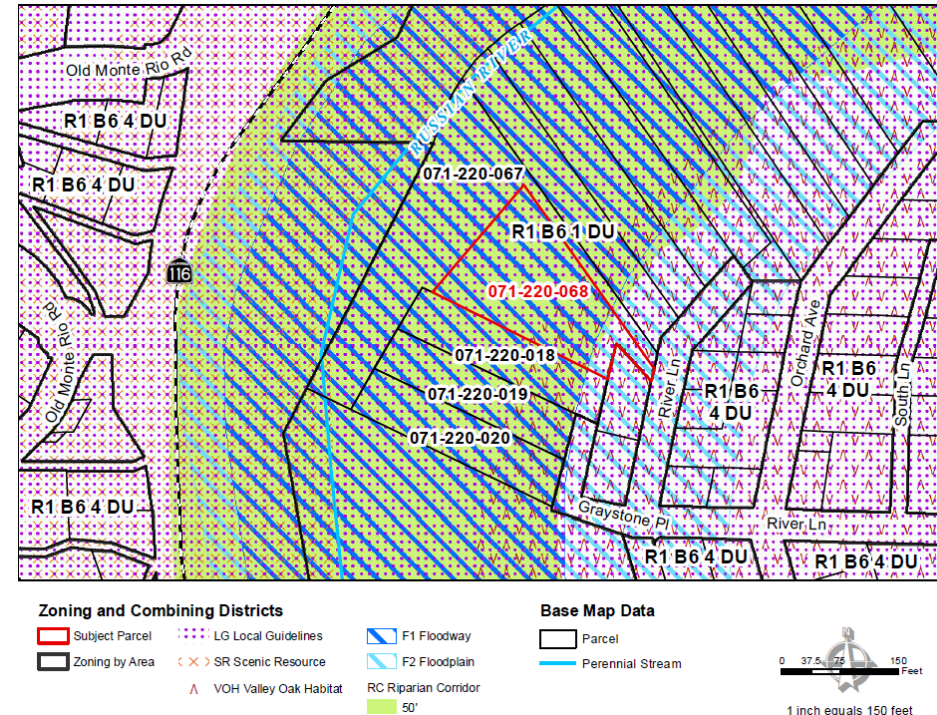
- Historic Zoning / Background
- Legal Non-Conforming Use Determination
- Appeal
- CEQA
- Public Comment
- Staff Recommendation

Location / Zoning



Location:

2 miles southwest of Guerneville
Vacation Beach Subdivision



Zoning:

Single Family Residential (R1)
1-acre density
Floodway & Floodplain (F1, F2)
Local Guidelines 116 Corridor (LG/116)
Riparian Corridor (RC)
Valley Oak Habitat (VOH)

Aerial Map



Historic Zoning

- **1945 – 1961:** Ordinance 230 zones property as
“**U** – *Unclassified District*”

*U district allowed uses permitted within any A District,
which included public uses*

- **1961 – Current:** Ordinance 698 zones property as
“**R1** – Single Family Residential District”
(now “*Low Density Residential*”)

Legal Non-Conforming Use Determination

LNC Use Determination issued December 3, 2021:

- County Code Chapter 26, Article 94 (Nonconforming uses)
 - ▣ Recognizes land uses that do not conform with current zoning but were lawful uses when they commenced
 - ▣ 1945 – 1961 “U” District allowed public uses; no use permit required
 - ▣ Does not result in a change of use
- Historic public access point to Russian River since 1950’s
- 16 Public Affidavits submitted to Permit Sonoma

Response to Appeal

- LNC Use Determination based on **historical zoning records and the public affidavits**
 - ▣ Application documents substantiate the historic & continuous use
- **16 Public Affidavits**, primarily current and previous Vacation Beach subdivision residents
- **Historic Zoning records**, property zoned “U” 1945-1961, public uses did not require use permit
- **Riparian Corridor permit not required**, no new structures/land use
- **No Biotic Habitat Zoning**

Response to Appeal

- ❑ **Local & State Agency approval not required**, no new structures/land use
- ❑ **Plan Amendment not Required**
- ❑ **Russian River Fire Protection District** will continue to serve the parcel
- ❑ **No other uses authorized**
- ❑ **No expansion to existing uses**

Environmental Review

- LNC Determination is not subject to CEQA, pursuant to Section 15060(c) because:
 - ▣ Determination did not involve the exercise of discretionary powers as no conditions can be applied
 - ▣ Determination will not result in a direct or foreseeable indirect physical change in the environment

Public Comment

- 16 Affidavits (ATTCH 6)
- Public Comment (ATTCH 7)
 - ▣ ±25 Letters of Support
 - ▣ Petition from residents of Vacation Beach subdivision containing ±152 signatures

Staff Recommendation

- Deny the appeal
- Uphold Permit Sonoma's determination that the property contains a legal nonconforming use for a public trail because
 1. 1945-1961 "U" District allowed public uses
 2. 16 Public Affidavits substantiate the use
 3. Current use of property substantially unchanged
 4. Determination meets the intent of Article 94

End of Presentation: Extra Reference Slides



Environmental Review

□ LNC Determination is not subject to CEQA, pursuant to Section 15060(c):

(1) The activity does not involve the exercise of discretionary powers by a public agency;

(2) The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment;
or

(3) The activity is not a project as defined in Section 15378.

Environmental Review

- Section 15301, Existing Facilities
 - ▣ Involving negligible or no expansion of use
- Section 15061(b)(3), Common Sense exemption
 - ▣ Determination recognizes an existing land use

Issues Raised in Appeal

- Incomplete & Incorrect Source Documents
- Inadequate Noticing
- General Plan & Russian River Development Plan
- Clean Water Act
- Misrepresentation of waterways
- RC & BH Combining Zones
- Fire, Density, Parking, Access
- Affidavits & Letters of Support
- Prior Zoning Prohibits Public Uses
- Regulatory Taking
- Information Regarding Expansion
- Ordinances Cited & Noncompliance with Current Ordinances

Article 94 Non-Conforming Uses

Section 26-94-010. Continuance.

The lawful use of land existing on the effective date of the ordinance codified in this chapter although such use does not conform to the regulations specified by this chapter for the district in which such land is located, may be continued but shall not be enlarged or increased, nor be extended to occupy a greater area than that occupied by such use at the time of the adoption of said ordinance and that if any use ceases, the subsequent use of such land shall be in conformance with the regulations specified by this chapter for the district in which such land is located provided that:

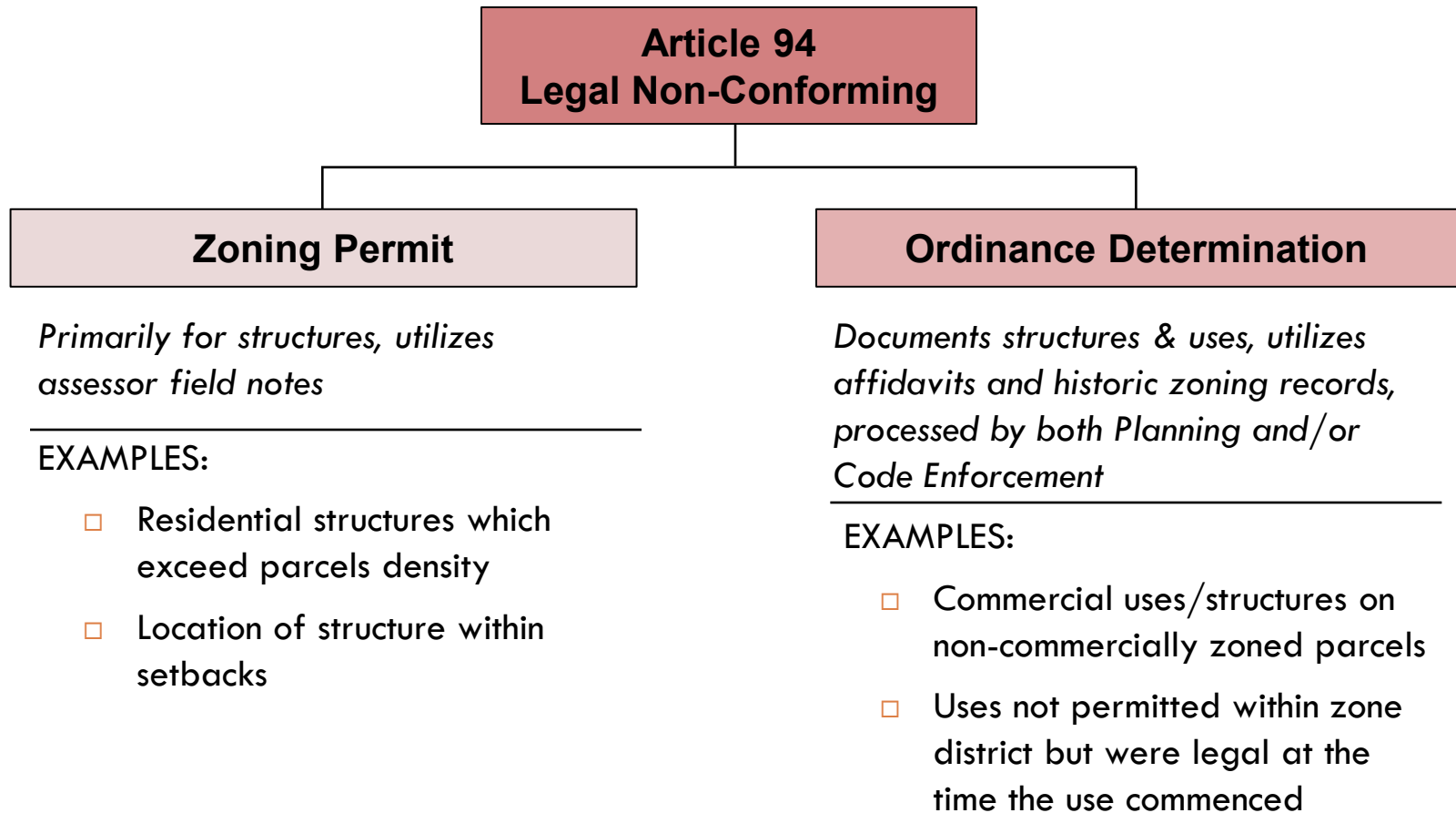
- a) A legal nonconforming use may be replaced by a use of the same or less intensity upon obtaining a use permit or a use permit waiver;
- b) Pursuant to policy LU-1f of the general plan, a legal nonconforming use may be expanded one time not to exceed ten percent (10%) of the total existing floor area for any structures subject to lot coverage and setback requirements and to all other applicable requirements of the this code, and provided that such structures are not located within a designated redevelopment project area;
- c) A legal nonconforming use consisting of a mobile home may be replaced with a newer and larger mobile home in the same location, subject to Article 82.

Article 94 Non-Conforming Uses

Section 26-94-030. Termination of Use.

If the actual operation of a legal nonconforming use ceases for a continuous period of one (1) year, unless the legal owner can establish valid proof to the contrary, such cessation of the legal nonconforming use shall be considered termination; then without further action by the planning commission the use of the land shall be subject to all the regulations specified by this chapter for the district in which such land is located.

ARTICLE 94 IN PRACTICE

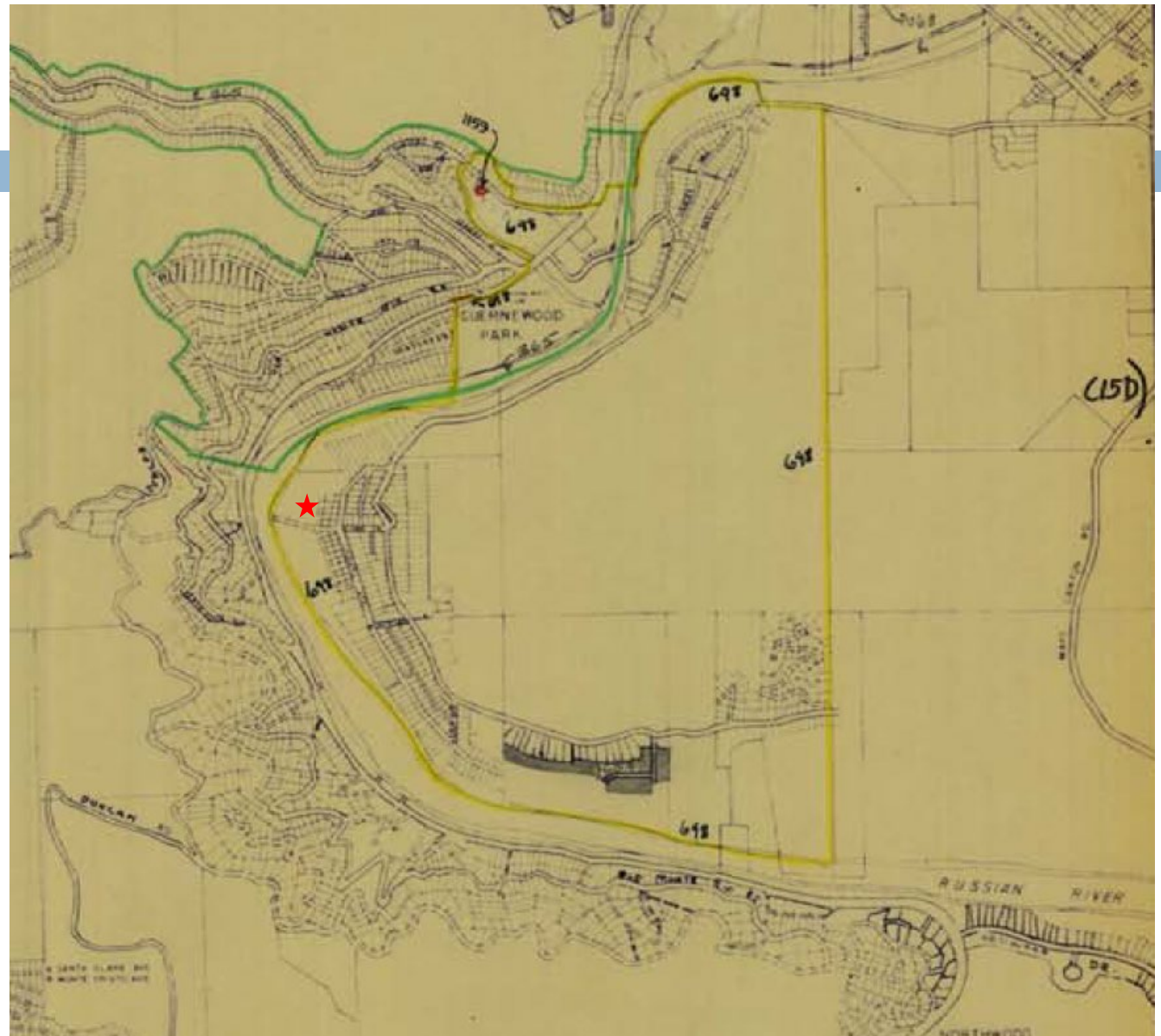


Record of Survey

- ROS17-0065
- ROS21-0031
- Record of Survey had no bearing on the Determination
- Record of Survey is a Surveyor's opinion of the survey at that period of time. Conflicts are resolved between the two Surveyors or a Judge.

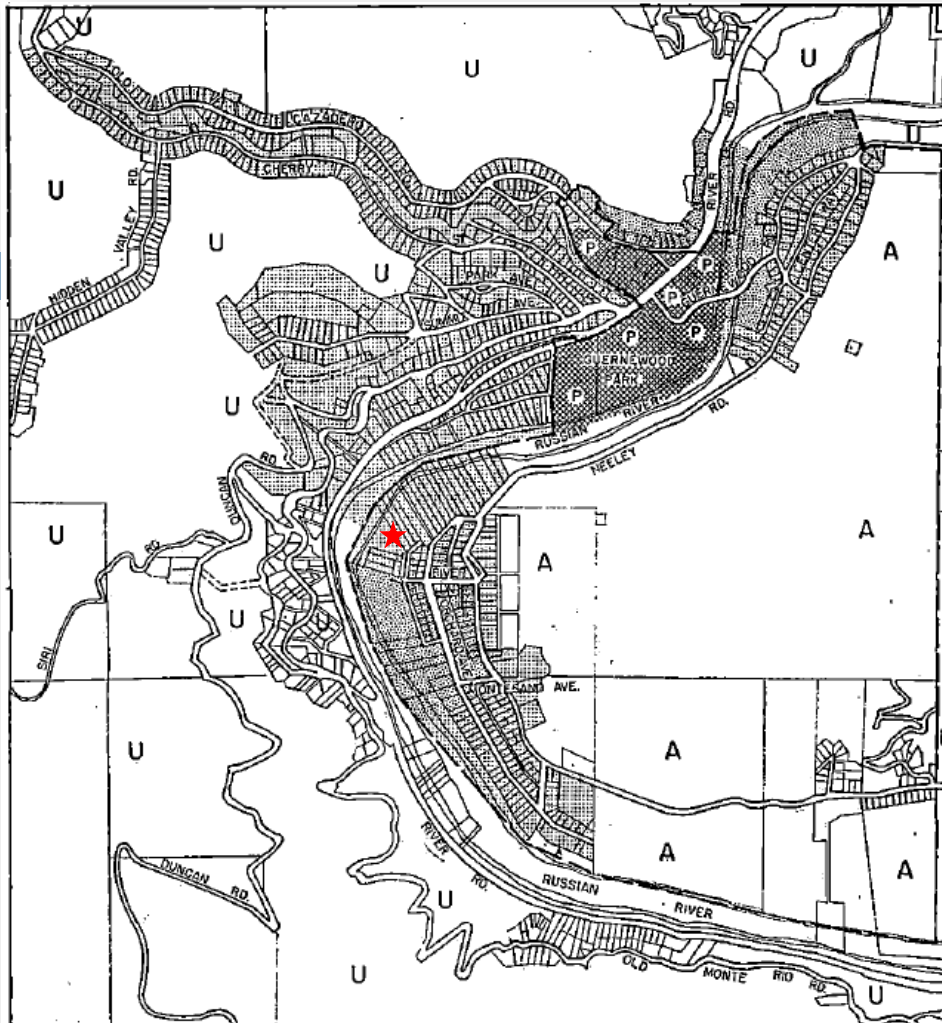
ORD 230

1945



ORD 698

1961



ORDINANCE N° 698

AN ORDINANCE OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, AMENDING ORDINANCE N° 230 OF SAID COUNTY BY ADDING SECTION 9.134 THERETO FOR RECLASSIFYING CERTAIN DISTRICTS AS PROVIDED FOR IN SAID ORDINANCE N° 230.

The Board of Supervisors of the County of Sonoma, State of California, do ordain as follows:

SECTION 1. Section 9 of Ordinance N° 230 is hereby amended by adding Section 9.134 thereto for the purpose of reclassifying certain districts as shown on the map accompanying and being Section 2 of this ordinance.

SECTION 2. Map.

SECTION 3. This map constitutes portions of the unincorporated area shown on the Sectional District Map D-B-C-6 as adopted by Ordinance N° 243 on the 23rd day of December, 1946, and being a part of the Zoning Plan of the County of Sonoma, State of California.

SECTION 4. The regulations, definitions and enforcement, and all other provisions of Ordinance N° 230 shall be deemed to be a part of this ordinance.

SECTION 5. This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with names of the supervisors voting for or against the same, in the Seb. Times a newspaper of general circulation, published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma, State of California, finally passed this 12th day of Sept., 1961 in regular roll call of the members of the said Board by the following vote:

Supervisor Mitchell	Aye	Ayes 5
Supervisor Shoemaker	Aye	Noes 0
Supervisor King	Aye	
Supervisor Lomson	Aye	Absent or not voting 0
Supervisor Guidotti	Aye	

WHEREUPON, the chairman declared the above and foregoing ordinance duly adopted, and SO ORDERED

Seal
Chairman of the Board of Supervisors of the County of Sonoma, State of California,

ATTEST: *Eugene D. Williams*
County Clerk of the County of Sonoma, and ex-officio Clerk of the Board of Supervisors of said County



LEGEND

— — — BOUNDARY OF ZONING DISTRICT CHANGE

U — U—Unclassified District
A — A—Agricultural District
R-1 — R-1—Single Family Residential District

P — C-2-P—Retail Business (Parking) District
K — K—Recreational District

WE HEREBY CERTIFY that this map was adopted in this form by a resolution of the Sonoma County Planning Commission at a regular meeting thereof held on the 3rd day of August, 1961 by a roll call of members of said Commission.

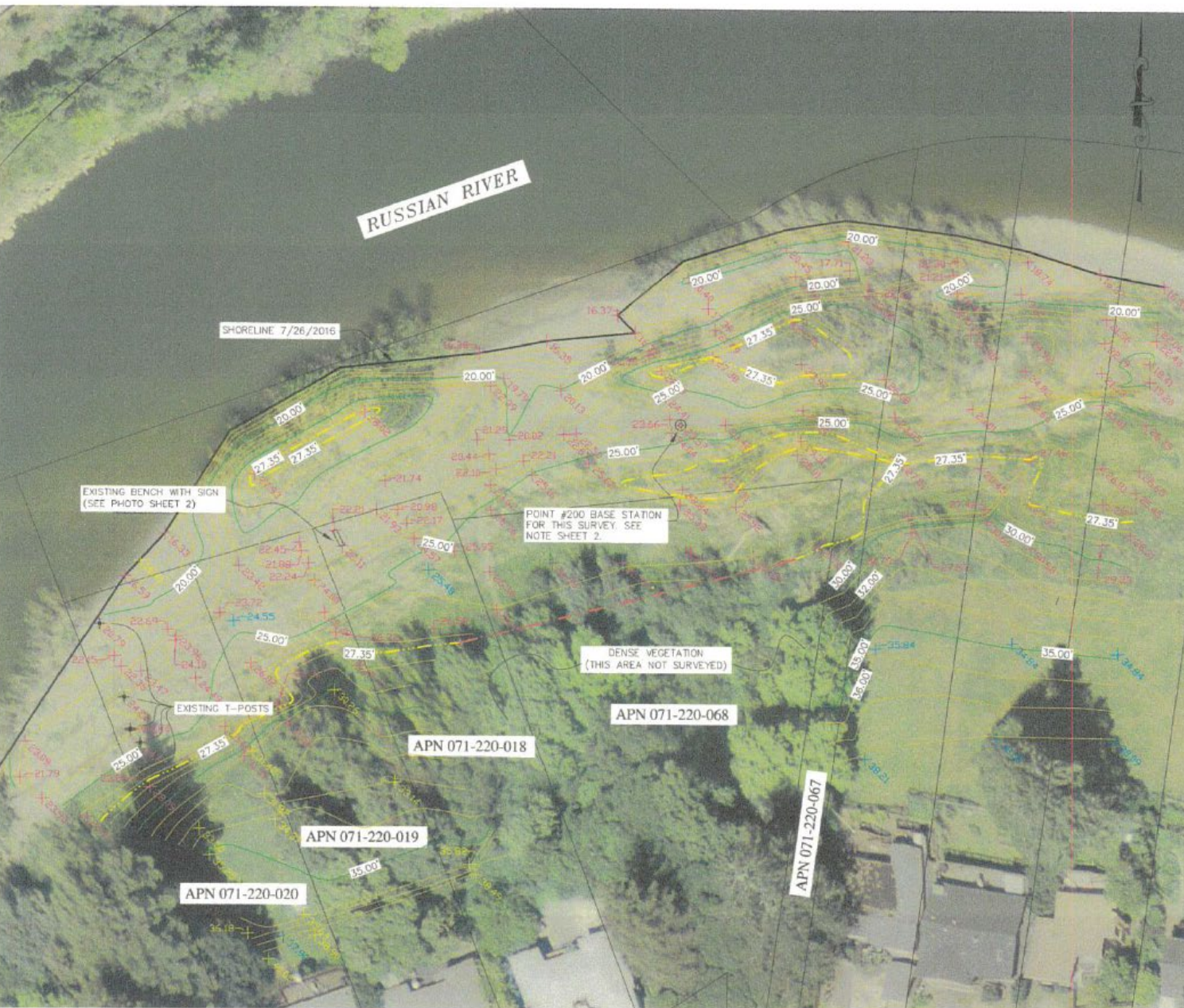
Thomas Anderson
Chairman
Jack Prather
Secretary

CA State Lands Commission

- March 7, 2017
 - ▣ OHWM, Elevation 27.35, NAVD 88

- September 25, 2020
 - ▣ OHWM, Elevation of 17.8 and 20.7 feet, NAVD88

Information by the State Lands Commission was not a basis of findings for approval of this Ordinance Determination.



THE HORIZONTAL COORDINATES SHOWN HEREON WERE DERIVED FROM POST PROCESSING GPS MEASUREMENTS AGAINST THE TWO SHOWN CONTINUOUSLY OPERATING REFERENCE STATIONS (C1, C2) AS PUBLISHED BY THE CALIFORNIA SPATIAL REFERENCE CENTER (CSRC). THE TWO CSRC STATIONS USED HAVE A PUBLISHED ACCURACY CLASSIFICATION OF LESS THAN OR EQUAL TO .01" (2 cm) PER THE 1988 FEDERAL GEOGRAPHIC DATA COMMITTEE "GEOSPATIAL POSITIONING ACCURACY STANDARDS".

5/17/21

PREPARED BY:
DANIEL J. FRINK L.S. 8864

1/25/2017
DATED



VERTICAL BENCHMARK

THE VERTICAL BENCHMARK FOR THIS SURVEY IS NATIONAL GEODETIC SURVEY STATION HPGN D CA 04 RS (PID J19634). THE ELEVATION OF THIS POINT IS TAKEN TO BE 61.72' NAVD 88. THIS ELEVATION IS BASED ON THE ORTHOMETRIC HEIGHT ADJUSTMENT (NAVD88) ELEVATION PUBLISHED IN THE CENTRAL COAST HEIGHT MODERNIZATION PROJECT 2007.

BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE CALIFORNIA COORDINATE SYSTEM, CCS83, ZONE 2 (EPOCH 2011.00) AS DETERMINED LOCALLY BY A LINE BETWEEN CONTINUOUS GLOBAL POSITIONING SYSTEMS (CGPS) STATIONS REFERENCE STATIONS (CORS) P196 AND P197 BEING N 8° 01' 13" W AS DERIVED FROM GEODETIC VALUES PUBLISHED BY THE CALIFORNIA SPATIAL REFERENCE CENTER (CSRC). DIVIDE GRID DISTANCES BY .99996610 TO OBTAIN GROUND DISTANCES. DISTANCES ARE GRID UNLESS OTHERWISE NOTED.

LEGEND

- DEFINED ELEVATION CONTOUR (ELEVATION LISTED ON PLAN)
- - - ESTIMATED CONTOUR (ELEVATION LISTED ON PLAN)
- CONTOUR MAJOR (5' INTERVAL)
- CONTOUR MINOR (1' INTERVAL)
- ASSESSOR PARCEL LINEWORK (LOCATION APPROXIMATE)
- SHORELINE 7/26/2016 (16.3' NAVD88)
- + XX.XX FIELD SURVEY POINTS (NAVD88 ELEVATIONS)
- + FOUND T-POST

TOPOGRAPHIC SURVEY VACATION BEACH, RUSSIAN RIVER GUERNEVILLE - SONOMA COUNTY

CALIFORNIA STATE
LANDS COMMISSION

DRAWING NAME:
VACBEACH-TOPO.DWG

DRAWN BY: D. FRINK, PLS 8864 FILE NO:
CHECKED BY: J. KOSMKE, PLS 8487 SD2014-08-13.7

DATE: 12/20/2016 SCALE: 1"=30'

SHEET

1

1 OF 2