



County of Sonoma

State of California

Date: March 7, 2022

Item Number: _____

Resolution Number: _____

☐ 4/5 Vote Required

**Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California,
Denying the Appeal and Upholding the Planning Commission's decision to Deny the Appeal of
Permit Sonoma's Legal Non-Conforming Use of the Property as a Public Trail for the Property
Located at 17448 River Lane, Guerneville, APN: 071-220-068**

Section 1. Legal Non-Conforming Use Determination and Procedural History

- 1.1 On November 25, 2019, the Russian River Recreation and Park District filed an application for a legal non-conforming use determination for the historic use of a public trail located at 17448 River Lane, Guerneville; APN: 071-220-068 ("the Subject Property").
- 1.2 On December 3, 2021, Permit Sonoma found that credible evidence substantiated the public's use of the Subject Property as a public access point to the Russian River has existed since at least the 1950s and was a permitted use by the zoning regulations in place at the time the use began and issued a Legal Non-Conforming Use Determination of the historic use of the Subject Property as a public trail.
- 1.3 On December 13, 2021, Rita O'Flynn filed an appeal of the Legal Non-Conforming Use Determination to the Planning Commission, pursuant to County Code ("Appeal"), raising issues related to Sonoma County Code consistency, use of faulty source documents, non-compliance with CEQA, and inadequate public noticing and neighborhood compatibility issues.
- 1.4 Subsequent amendments to the appeal were submitted by Rita O'Flynn on July 28, 2022, September 13, 2022, October 26, 2022, and November 14, 2022, raising additional concerns about the accuracy of a record of survey, the scope of the nonconforming use determination, consistency with the County's General Plan, and historic zoning of the Subject Property.
- 1.5 On December 1, 2022, the Planning Commission ("PC") held a duly noticed public hearing on appeal at which time the PC heard and received all relevant testimony and evidence presented orally or in writing regarding appeal and Legal Non-Conforming Use Determination and all interested persons were given an opportunity to hear and be heard regarding the appeal and Legal Non-Conforming Use Determination.

- 1.6 On December 1, 2022, the PC voted 5-0-0 to deny the appeal and uphold staffs Legal Non-Conforming Use Determination
- 1.7 On December 12, 2022, Rita O’Flynn filed an appeal of the Planning Commissions decision to deny the appeal to the Board of Supervisors, pursuant to County Code (“Appeal”), raising issues related to Sonoma County Code consistency, incorrect interpretation of historic zoning records, use of faulty source documents and the historic use of the subject property has not been established by application source documents.
- 1.8 On March 7, 2023, the Board conducted a duly noticed public hearing on the appeal of the Legal Non-Conforming Use Determination. The Board received all relevant oral and written testimony and evidence filed or presented at or before the close of the hearing. All interested persons were given the opportunity to hear and be heard. At the conclusion of public testimony, the Board closed the hearing, considered and discussed the appeal and the Legal Non-Conforming Use Determination, and by a ____ vote, found the Legal Non-Conforming Use Determination in compliance with Article 94 of the Sonoma County Code, and denied the appeal of the Planning Commissions decision to deny the appeal and uphold the Legal Non-Conforming Use Determination.
- 1.9 The Board has had an adequate opportunity to review this Resolution and the findings and determinations contained herein and finds that this Resolution accurately sets forth the Board’s intentions regarding the appeal and the Legal Non-Conforming Use Determination. The Board’s decisions herein are based upon the testimony and evidence presented to the County orally or in writing prior to the close of the Board’s hearing, including the full record of proceedings. By Board Rule, information submitted after the close of the Board hearing is deemed late and not considered by the Board.

Section 2. CEQA Compliance

The denial of the appeal and upholding the Legal Non-Conforming Use Determination as modified, is not a “project” under the definition set forth in CEQA Guidelines section 15060(c), and is therefore not subject to CEQA. This determination is not a project because it does not involve any discretionary approvals and will not cause any reasonably foreseeable impacts on the environment because no development or new uses are authorized.

Even if the determination were a “project”, it would be categorically exempt under CEQA Guidelines section 15301 because the determination involves “negligible or no expansion of use” of an existing public trail. The determination would also be exempt from CEQA pursuant to Guidelines section 15061(b)(3), as it can be seen with certainty that the determination will have no significant impact on the environment, because the determination does not authorize any development or new uses.

Section 3. Legal Non-Conforming Use Findings

- 3.1 Credible evidence in the form of 16 public affidavits were submitted with the application and oral testimony on record from the Planning Commission regarding the historic use of the property for a public trail commencing on the public right-of-way and continuing through the boundary of the property since at least the 1950’s, which pre-dates 1961 zoning. Therefore, this

historic use, which was lawful at the time the use began is considered a legal non-conforming use, as provided by Sonoma County Code Chapter 26, Article 94, Nonconforming Uses.

- 3.2 The first zoning designation of the property was R1-Single-Family Residential in 1961 per Sonoma County Ordinance 698, which would have required a Use Permit for the creation of a public trail. Before adoption of Ordinance 698 in 1961, Ordinance 230, adopted in 1945, controlled. Under Ordinance 230, Section 7.1 classified unincorporated areas of the County, other than those that were specifically zoned by Ordinance 230, as "U"-Unclassified District. Per Section 12.2(a) of Ordinance 230 the U district allowed uses permitted within any A, K, R, R-R, C or H-1 districts. Per Section 14.1(b) of Ordinance 230, public uses were allowed as permitted uses within the A-Agriculture District. In general, public uses would include for example, parks, bikeways, open space areas, picnic areas and public trails, among other uses. Therefore, prior to 1961 and at least as of 1945, the use of the subject parcel as a 'passive recreation area' would not have required a Use Permit.
- 3.3 The legal nonconforming use of the property has not been enlarged or extended and has not ceased in operation for a continuous period of one year.
- 3.4 The use of the property is subject to Sonoma County Code Chapter 26 Article 94. – Nonconforming uses.

Now, Therefore, Be It Resolved the based on the foregoing findings and determination and the full record of these proceedings, the Board hereby declares and orders as follows:

1. The foregoing findings and determination are true and correct, are supported by substantial evidence in the record and are adopted as hereinabove set forth.
2. The appeal of the Planning Commissions denial of the appeal of the Legal Non-Conforming Use Determination is denied and the Board affirms that a legal non-conforming use exists on the property.
3. The December 3, 2021, Legal Non-Conforming Use Determination is modified to delete references to beach access because the issue of property boundaries and whether this property extends to the river has no bearing on whether a nonconforming use exists on the property and is an issue outside the purview of the Board. Therefore, the Board affirms a legal nonconforming use of a public trail commencing on the public right-of-way and continuing through the northwest boundary of the property exists.
4. The Board has reviewed the appeal, subsequent appeal amendments, and all related documents submitted by the appellant, in addition to all submissions made by the applicant. After consideration of all documents and evidence submitted in writing and orally during the public

hearing, the Board finds that the appellant's arguments are not persuasive for the following reasons: a nonconforming use does not have to conform to existing zoning regulations; the determination of a legal nonconforming use is not subject to CEQA and if it were, the determination would be exempt from CEQA; permits/approvals from other agencies are not required; public noticing complied with the requirements in the County Code; the issue of high-water mark is irrelevant; the evidence submitted supports the public's legal nonconforming use of this property as a public trail; and no development or new uses are authorized by this determination.

Be It Further Resolved that the Board of Supervisors designates the Clerk of the Board as the custodian of the documents and other material which constitute the record of proceedings upon which the decision herein is based. These documents may be found at the office of the Clerk of the Board, 575 Administration Drive, Room 100-A, Santa Rosa, California 95403.

Supervisors:

Gorin:

Rabbitt:

Coursey:

Hopkins:

Gore:

Ayes:

Noes:

Absent:

Abstain:

So Ordered.