

## REFERENCES

- R1 CORPORATION QUITCLAIM DEED; DN 1992-0041217  
R2 VACATION BEACH SUBDIVISION NO. 3; 50 MAPS 38-40 S.C.R.  
R3 PARCEL MAP 4959; 247 MAPS 29 S.C.R.  
R4 TRUST TRANSFER DEED; DN 2009-070986  
R5 RECORD OF SURVEY; 803 MAPS 1-2 S.C.R.  
R6 QUITCLAIM DEED; DN 87-046755  
R7 GRANT DEED; BOOK 1287 PAGE 300  
R8 GRANT DEED; DN 1999-119311

ORDINARY LOW WATER  
LINE AS SURVEYED BY  
HOGAN LAND SERVICES  
MARCH 3, 2017  
(R5)

LOW WATER LINE AS  
SHOWN ON THE MAP OF  
VACATION BEACH NO. 3,  
FILED JUNE 1936  
(R2)

SEE SURVEYORS NOTES  
LOCATION OF LOW WATER  
LINE CALLED TO IN DEED AS  
JULY 23, 1885 HELD AS  
BEST EVIDENCE  
(R1)

LANDS OF  
SWEETWATER SPRINGS  
071-220-068  
DN 1992-0041217  
PARCEL 50  
(R1)

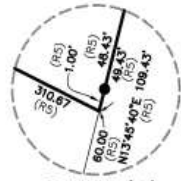
RECORD OF SURVEY  
803 MAPS 1-2  
(R5)

LANDS OF  
KALINOVSKY  
071-220-018  
DN 87-046755

LANDS OF  
O'FLYNN  
071-220-019  
DN 2003-196101

LANDS OF  
BARRESE  
071-220-020  
DN 2010-109196

Deeds document ownership to  
the current low water mark



DETAIL 'A'  
NOT TO SCALE

- ② SCALED LOCATION OF LOW WATER LINE SHOWN  
ON MAP OF VACATION BEACH NO. 3 JUNE 1936 (R2).  
③ LOCATION OF LOW WATER LINE CALLS IN  
IN DEED OF BARRESE (DN 2010-109196), DOES NOT HAVE  
ANY DISTANCES TO LOW WATER LINE

## SURVEYORS NOTES

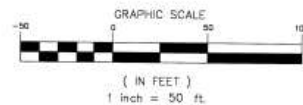
THE PURPOSE OF THIS SURVEY IS TO SHOW THE DIFFERENCE BETWEEN THE LOW WATER LINE ESTABLISHED BY HOGAN LAND SERVICES RECORD OF SURVEY (R5) AND THE CALL TO THE LOW WATER LINE OF THE RUSSIAN RIVER AS IT EXISTED ON JULY 23, 1885 AS DESCRIBED IN (R1).

THE AREA BETWEEN THE LOW WATER LINE OF JULY 23, 1885 AND THE CURRENT LOW WATER LINE SHOULD NOT BE CONSIDERED THE OWNERSHIP OF SWEETWATER SPRINGS WATER DISTRICT DUE TO THE CALL IN (R1) TO THE LOW WATER LINE OF THE RUSSIAN RIVER AS IT EXISTED ON JULY 23, 1885. THE LINE SHOULD BE HELD FIXED TO THE DATE AS CALLED OUT IN (R1).


WATER LINE FROM 1885 WAS ESTABLISHED BY USING HISTORICAL DISTANCES IN DEEDS AS SHOWN.

17444 River Lane  
Storm Water Culvert

17448 River Lane



# Substantial Evidence Supporting a Fair Argument

1. Project is **“Discretionary”**
  2. Project is a **“Project”** Under CEQA
  3. **Not Exempt** under **“Existing Facilities”**
    - Expansion of Use (**size and density**)
    - Trail
      - **Approved trail to the NW doesn’t exist on 17448 River Lane**
      - **Existing trail is post 1961, closed via “No Trespassing” for over 1 year**
  4. **Not Exempt** under **“Common Sense”**
    - Unusual Circumstance: Location
    - Special Environmental Resources Exception
  5. Project **“as a Whole”**: **must include 17444 River Lane** to create a river access
  6. Other: **Permanence** + Case Law, **BOS Grant Approval** + Gen Plan, **Lack of Due Process**
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# Project is Discretionary

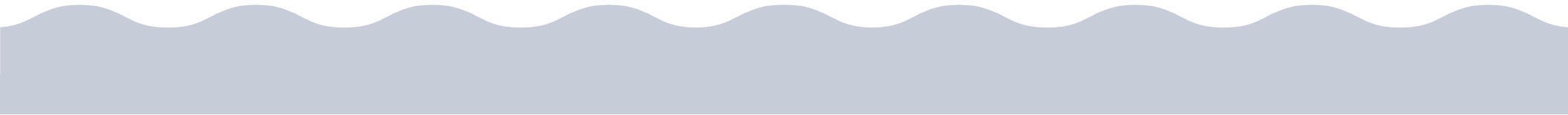
# Permit Sonoma's Approval of Non-Conforming Use is DISCRETIONARY

CEQA 15357 DISCRETIONARY PROJECT

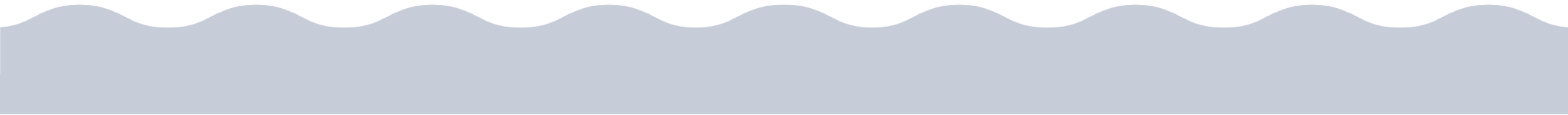
*“Discretionary project means a project which **requires the exercise of judgment or deliberation** when the public agency or body decides to approve or disapprove a particular activity...”*



## Substantial Evidence of DISCRETION: Documentation

1. **Notice of Exemption is marked categorical**, not ministerial.
  2. Planning Application is for “Ordinance **Determination**” and “**Determination of Legal, Non-Conforming Use**”.
  3. Permit Sonoma email indicates **consultation with upper management and county council** regarding the Planning Application.
  4. Permit Sonoma **consulted other government regulatory agencies** regarding the Planning Application.
  5. Permit Sonoma initially advised RRRPD that a **zoning change was necessary**.
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## Substantial Evidence of DISCRETION: Documentation (cont.)

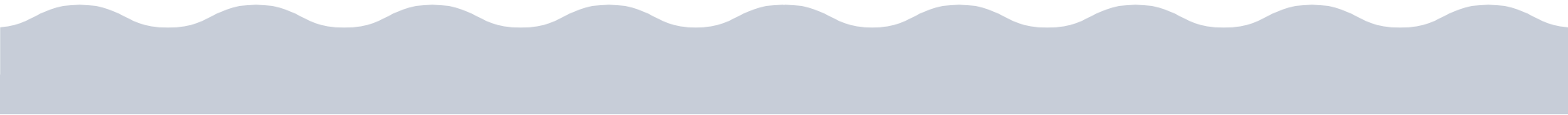
6. Permit Sonoma issued **Orders of Determination (OOD) versus signing off on the Planning Application**
  7. Permit Sonoma **repealed its original OOD.**
  8. Each **OOD modified the scope** of the Planning Application.
  9. Permit Sonoma's **Staff Report and the Planning Commission's Resolution further modified the scope** of the Planning Application.
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## Substantial Evidence of DISCRETION: Ordinance Interpretation

*Permit Sonoma OOD:*

- *Zoned R1 since 1961. Prior zoning was “U” unclassified.*
- ***Sonoma County Ordinance 230 ... U district allowed uses permitted within any A, K, R, R-R, C or H-1 districts.”***

10. To justify the “**LAWFUL**” element of **29-94-010**, Permit Sonoma chose **A (agricultural) zoning rather than the more appropriate K (recreational) zoning which required a use permit prior to 1961** (see 230, 15.2).



Project is a “Project” Under  
CEQA



# 17448 River Lane Is a “PROJECT” Under 15738

*“As defined by CEQA, a “project” has 2 essential elements:*

- It is an activity **directly undertaken by a public agency**, an activity **supported** in whole or in part **by a public agency**, or an activity involving the **issuance by a public agency** of some forms of **entitlement, permit, or other authorization**.*
- It is an activity that **may cause** a direct (or reasonably foreseeable indirect) **physical environment change**.”*

Practice under the California Environmental Quality Act, Chapter 4, III, 4.5

- 17448 River Lane meets this definition.**
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Existing Facilities Exemption  
is not applicable

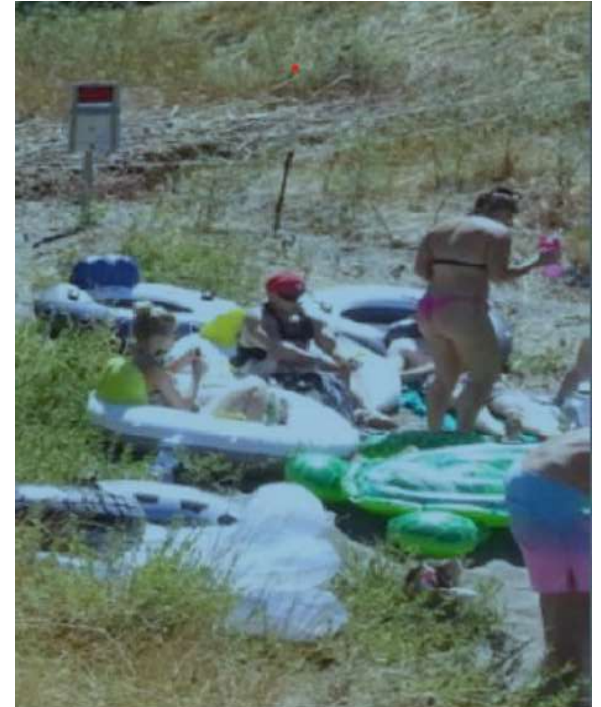
Expanded Use  
New Trail

## Exemption 15301 AKA “EXISTING FACILITIES” is Not Applicable

*The key consideration under this statute is whether the project involves **negligible or no expansion of use**.*

***Project Site and Context of Permit Sonoma’s Staff Report for the Planning Commission Appeal Hearing : “The subject parcel provides unimproved pedestrian **trail access to and includes a portion of a beach** located on the Russian River, commonly known as **Vacation Beach**. Vacation Beach encompasses the following neighboring parcels, APN: 071-220-067, 071-220-018, 071-220-019, and 071-220-020.”***

- This is a clear expansion by over 300% of the Planning Application (**discretionary act**).



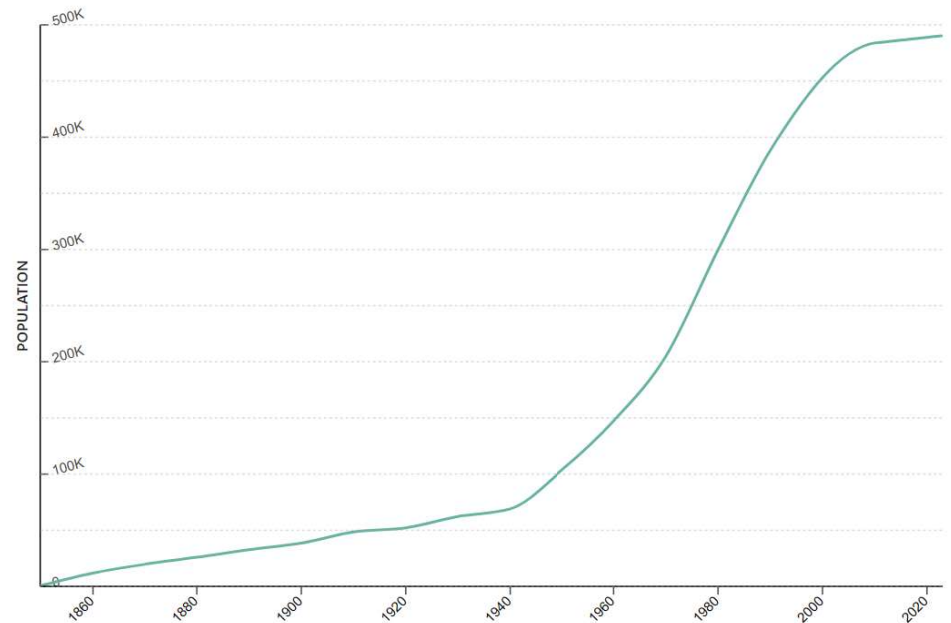
Overflow from 17448 River Lane onto APN-071-220-018; destruction of riparian vegetation

## Exemption 15301 AKA “EXISTING FACILITIES” is Not Applicable (cont.)

- The grant to purchase of 17448 River Lane is for the creation of permanent, “**LOW-DENSITY**”, **PUBLIC** access to the Russian River.
- **Promotion of this location as a public access** is a condition of the grant.
- Notice of Exemption states that there will **be no change in density; this is not supported by fact.**
  - **Density/Use has substantially increased.**
  - There is **no Management Plan** regarding density monitoring, caps on use, etc.

*The key consideration under this statute is whether the project involves negligible or **no expansion of use.***

• Sonoma County, California Population 2023



## Exemption 15301 AKA “EXISTING FACILITIES” is Not Applicable (cont.)

*“Therefore, the Commission 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.”*

- There is **no trail to the northwest boundary** of the property. **This would be a new access/development.**
- The current trail runs to the southwest boundary of the property.  
(See separate documentation for cessation of use.)



## Exemption 15301 AKA “Existing Facilities” is Not Applicable (cont.)

*“Credible evidence in the form of **16 public affidavits** were included in the application submittal regarding the **historic use** of the Property for **a public trail** on the Property since the 1950’s, which pre-dates 1961 zoning.”*

- **Only 2 statements** document a trail prior to 1961:
  - Use is of an **adjacent parcel**.
  - Use was **abandoned after 1961**.


“Statement” from Xenia Zabelin, a property owner in Vacation Beach since **1951**, provided the following statement:

*“**We always used the easement along the water company property not realizing it was private property**. In older day there was a water pumping tower but it did not deter us from using that easement. In **those days there was no actual trail**, we were using the cascading rocks of the brook which in the summer was dry. It was only comparatively recently that a trail has appeared...”*

“Statement” from Laura Gilfeather, generational homeowner since the 1930s.

*“In the **1970’s and 1980’s** the access **was wider, full of boulders and to the right of the current, safer path.**”*

**No documentation of the existing trail (the SW of 17448 River Lane) prior to prohibitive zoning of 1961.**

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Exemption 15301 AKA “EXISTING FACILITIES” is Not Applicable (cont.)

Storm water drainage  
located on 17444 River  
Lane (immediately  
north of 17448 River  
Lane).





## Exemption 15301 AKA “EXISTING FACILITIES” is Not Applicable (cont.)

**Current Trail: Private Property, No Trespassing** signage posted, and Parking Lot closed for at least 4 years.



Access trail is officially closed. **Ongoing use is not lawful.**

Property owner has not maintained the property/trail.

*Sec. 26-94-010. - Continuance. ...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.*

***“No vested right to violate an ordinance may be acquired by continued violations.” (Acker v Baldwin) 18 Cal.2d 341***



“Common Sense”

Exemption is not applicable


## Exemption 15061(b) (3) AKA “COMMON SENSE” is Not Applicable

### ***Section 15061 - Review for Exemption***

***(b) A project is exempt from CEQA if: (3) “Where it can be seen **with certainty** that there is **no possibility** that the activity in question **may have a significant effect on the environment**, the activity is not subject to CEQA”.***

However, item (b) (2) of **this same statute** states:


***(2) The project is exempt pursuant to a categorical exemption and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2 (UNUSUAL CIRCUMSTANCE).***

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## Exemption 15061(b) (3) AKA “COMMON SENSE” is Not Applicable


*Section 15300.2 – Exceptions (c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a **significant effect on the environment due to unusual circumstances**.*

Special Environmental Resources Exception: Certain categorical exemptions do not apply if a project **may have an “impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.”** Guidelines, §15300.2(a).

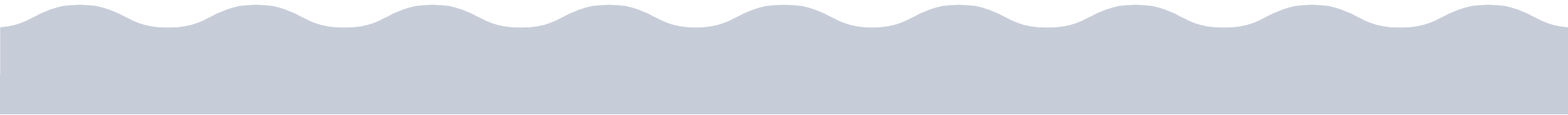
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## **SUBSTANTIAL EVIDENCE OF UNUSUAL CIRCUMSTANCES: Location**

The **evidence** on the **next set of slides supports** a finding of **unusual circumstances**, and it also supports the application of the **impact to a critical concern resource exception**.


1. **Impaired River** per EPA under the **Federal Clean Water Act**.
  2. **Mandatory mitigation of coliform bacteria** via a **Total Daily Maximum Load (TDML)** plan from **NCRWQB**.
  3. **Critical Habitat** per the US Department of Fish and Wildlife.
  4. **Coho salmon** of the Russian River **classified as “endangered”** by the US Department of Fish and Wildlife.
  5. **CalFire** has designated **the area as a “high” risk for wildfire**.
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## SUBSTANTIAL EVIDENCE OF UNUSUAL CIRCUMSTANCES: Location

6. Zoned R1 since 1961.
  7. Open Space and Resource Element Map of the Sonoma County General Plan of Guerneville designates the area as a **“Special Status Species Habitat”**.
  8. **No planned parks** per Sonoma County General Plan (no “unmet need”).
  9. Sonoma County General Plan Designates the area as a **“Riparian Corridor”** (appellants have a permitted plan to restore the riparian corridor).
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## SUBSTANTIAL EVIDENCE OF UNUSUAL CIRCUMSTANCES: Non-Conforming Use

Permit Sonoma's approval of non-conforming use is contingent on there being no changes to the "existing facilities".

- **There are no latrines** at 17448 River Lane
    - Introduction of **human waste into the river and its watershed** is an ongoing issue. Increase in use will worsen this.
  - There are **no trash cans**.
  - There have been **open fires**.
  - **Parking/traffic/and noise are unaddressed.**
  - **Removal of native riparian vegetation to create river access for public use.**
- 

## SUBSTANTIAL EVIDENCE OF UNUSUAL CIRCUMSTANCES: Underground Well

Existence of **underground well with open destruction permit** at Permit Sonoma since 2000.

Well drainage pipe present in 2015.

***“Abandoned wells can be pathways for pollutants to enter groundwater. They also pose a threat to public health and safety.... It is the responsibility of the well owner to destroy abandoned wells per the Public Health and Safety Code, Part 9.5, [Section 115700](#). [Wells \(ca.gov\)](#)***



# Substantial Evidence of UNUSUAL CIRCUMSTANCES

- **Fire evacuation/access concerns:** All streets are “dead end”; Summer Crossing is only available 3 months of the year.







# **SUBSTANTIAL EVIDENCE OF UNUSUAL CIRCUMSTANCES: Adjacent Riparian Restoration Project**



## SUBSTANTIAL EVIDENCE OF UNUSUAL CIRCUMSTANCES: Adjacent Riparian Restoration Project

Potential significant impacts:

- **Trespass (including armed trespassers)**
- **Human waste** and trash in the riparian corridor
- Repeated **removal of permitted**, seasonal fencing
- **Repeated** removal/destruction of **native riparian vegetation**
- **Dragging** of chairs/coolers/kayaks/rakes, etc. across the riparian corridor **to create trails** on private property
- **Destruction of new willow wattles** (part of private Riparian Restoration Project)
- Glass bottles and drug paraphernalia (including needles) left behind





# Evidence of SIGNIFICANT ENVIRONMENTAL IMPACT

River Front below 17448 River Lane




- **Continuing erosion of native riparian vegetation**
- **Existing riverfront** will most likely **not accommodate public use without encroachment onto native species** in the riparian corridor.
- **Nearest permanent public lavatories** are located at Guerneville River Park which is **over 1.6 miles** away from 17448 River Lane.
- Based on the recorded survey by CPI (slide 1), **this area isn't part of 17448 or 17444 River Lane.**

# CEQA: Project “As a Whole”

## CEQA: Project “As Whole”

The State CEQA Guidelines define a **project under CEQA** as “**the whole of the action**” that may result either directly or indirectly in physical changes to the environment. This broad definition is intended to provide the maximum protection of the environment. **Piecemealing or segmenting dividing a project into two or more pieces and evaluating each piece in a separate environmental document**, rather than evaluating the whole of the project in one environmental document. **This is explicitly forbidden by CEQA...**

- The **grant purchase 17448 River Lane** is to create a **public access to the Russian River in perpetuity**.
  - **17448 River Lane** is **not a riverfront** property.
  - **RRRPD recently purchased 17444 River Lane**, with the **same zoning**, unusual circumstances, special **conditions, etc. as 17448 River Lane**, to get river access.
  - If permanent river access is the goal, then **17444 River Lane must be taken into consideration with 17448 River Lane as a single project under CEQA**.
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# Other Issues

Permanence

BOS Grant Approval

Lack of Due Process

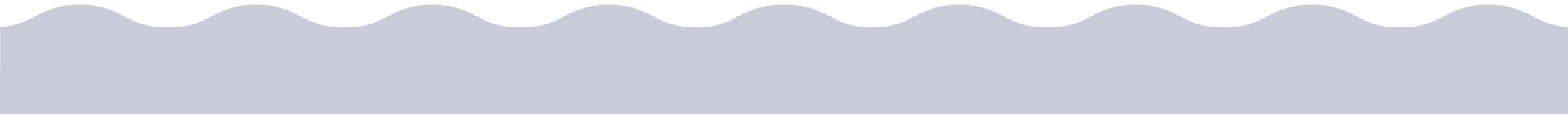
## Case Law Prohibits PERMANENCE of Non-Conforming Use

- The grant conditions for the purchase of 17448 River Lane are to provide a public access, “in perpetuity”.
- Case law supports the elimination of non-conforming uses.

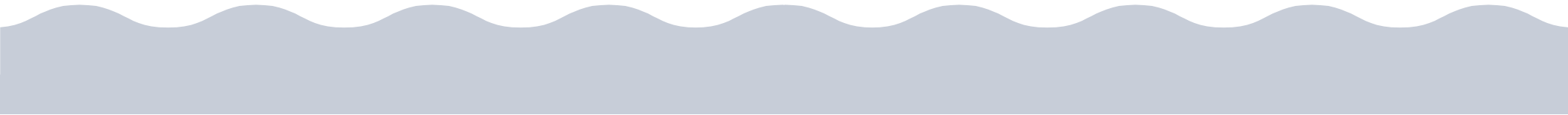


# BOS Requires Compliance with the General Plan

Sep 11, 2018 BOS approval of the Sonoma County Open Space and Agricultural District Grant to purchase 17448 River Lane requires:

- **Compliance with the Sonoma County General Plan.**
  - Evidence of **compliance with CEQA** prior to disbursing funds.
  - **Compliance with ADA.**
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# LACK OF DUE PROCESS

- **No proper notice to nearby property owners** of the filing of the **Planning Application** for Ordinance Determination and Determination of Legal Non-Conforming Use.
  - Conflict of Interest at the Planning Commission Hearing, Commissioner Eric Koeingshoffer:
    - **failed to disclose** that he was on the **Board of the Sonoma Agricultural and Open Space District** when the **grant** for purchasing 17448 River Lane was approved
    - **had an ex-parte** meeting with John Harreld, a proponent of this project prior to the Appeal.
    - **Submitted a motion to deny** the appeal **precluding discussion by the Planning Commission.**
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# Discussion/Conclusion


# Substantial Evidence Supporting A Fair Argument

Cal. Code Regs. tit. 14 § 15384

Current through Register 2023 Notice Reg. No. 6, February 10, 2023

“Section 15384 - Substantial Evidence(a) "***Substantial evidence***" as used in these guidelines ***means enough relevant information and reasonable inferences*** from this information ***that a fair argument can be made to support a conclusion...***”

**Appellants** believe that, with their submitted documents, and evidence presented today, they **have more than sufficient evidence to establish a fair argument that the agencies have abused their discretion in the interpretation of CEQA statutes as well as Ordinance 29-94-010 – Continuance and Ordinance 230.**

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# BOS Should Overrule the Planning Commission Resolution

Whether there should be a public access at this location is not the issue.

**It's how this project comes to fruition that is the issue.**

This is an **environmentally vulnerable location**. The BOS should put **that first and foremost** when making a decision regarding how to proceed with this project.

