

Resolution Number

County of Sonoma  
Santa Rosa, California

December 1, 2022  
ORD19-0011 Marina Herrera

RESOLUTION OF THE PLANNING COMMISSION, COUNTY OF SONOMA, STATE OF CALIFORNIA, DENYING THE APPEAL AND UPHOLDING PERMIT SONOMA'S LEGAL NON-CONFORMING USE DETERMINATION FOR THE USE OF THE PROPERTY AS A PUBLIC TRAIL, FOR THE PROPERTY LOCATED AT 17448 RIVER LANE, GUERNEVILLE, APN 071-220-068.

WHEREAS, the applicant, Russian River Recreation and Park District, filed a legal nonconforming use application with the Sonoma County Permit and Resource Management Department for a legal non-conforming determination for the use of the property as a public access point to the Russian River, Vacation Beach located at 17448 River Lane, Guerneville; APN 071-220-068; Zoned R1 (Low Density Residential) B6 1 (1 dwelling unit per acre) F1 (Floodway), F2 (Floodplain), LG/116 (Local Guidelines 116 Corridor), RC50/50 (Riparian Corridor 50 foot structural setbacks, 50 foot agricultural setbacks), VOH (Valley Oak Habitat); Supervisorial District No 5; and

WHEREAS, Permit Sonoma found that credible evidence substantiated the public's use of the 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 therefore issued a nonconforming use determination on December 3, 2021; and

WHEREAS, on December 13, 2021, Rita O'Flynn appealed the nonconforming use determination pursuant to County Code Sec. 26-92-040 ("Appeal"), raising concerns related to Sonoma County Code consistency, use of faulty source documents, non-compliance with CEQA, and inadequate public noticing and neighborhood compatibility issues; and

WHEREAS, Rita O'Flynn submitted appeal amendments 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 property; and

WHEREAS, in accordance with the provisions of law, the Planning Commission held a duly noticed public hearing on December 1, 2022, at which time all interested persons were given an opportunity to speak and be heard;

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission makes the following findings:

1. Credible evidence in the form of 16 public affidavits were submitted with the application 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.

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. 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.
4. The use of the property is subject to Sonoma County Code Chapter 26 Article 94. – Nonconforming uses.

The Planning Commission 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 Commission 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 appeal is denied, and the Commission affirms that a legal nonconforming use exists on the property.

BE IT FURTHER RESOLVED that 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 Commission. 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.

BE IT FURTHER RESOLVED that the Commission finds that 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.

BE IT FURTHER RESOLVED that the Planning Commission designates the Secretary as the custodian of the documents and other material which constitute the record of proceedings upon which the Board’s decision herein is based. These documents may be found at the office of the Sonoma County Permit and Resource Management Department, 2550 Ventura Avenue, Santa Rosa, CA 95403.

BE IT FURTHER RESOLVED that the Planning Commission’s action shall be final on the 11<sup>th</sup> day after the date of the Resolution unless an appeal is taken.

THE FOREGOING RESOLUTION was introduced by Commissioner \_\_\_\_\_, who moved its adoption, seconded by Commissioner \_\_\_\_\_, and adopted on roll call by the following vote:

Commissioner  
Commissioner  
Commissioner  
Commissioner  
Commissioner

Ayes:      Noes:      Absent:      Abstain:

WHEREUPON, the Chair declared the above and foregoing Resolution duly adopted; and

SO ORDERED.