

**From:** [Rita August O'Flynn](#)  
**To:** [Marina Herrera](#)  
**Cc:** [Mark O'Flynn](#)  
**Subject:** Appeal of the Order of Determination  
**Date:** Monday, December 13, 2021 3:30:59 PM

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## EXTERNAL

Dear Ms. Herrera,

This serves as our notice to appeal the approval of application ORD19-0011 for legal non-conforming use. The basis of our appeal are as follows.

### **ORDER OF DETERMINATION**

1. **USE OF FAULTY/INCORRECT SOURCE DOCUMENTS:** Applicant submitted a faulty/incorrect documents including, but not limited to, a survey showing an incorrect Ordinary High Water Mark and incorrect parcel measurements. This material error has been carried over to the Order of Determination (hereinafter referred to as OOD); see item 2.
2. **INCOMPLETE REFERENCES FROM SOURCE DOCUMENTS:** Including, but not limited to, Paragraph 8 of the OOD states, *"The legal description for the subject parcel conveyed in Quitclaim Deed, Document Number 1992- 0041217 (which references the subject parcel as Parcel 50), indicates the subject parcel's boundary extends to the low-water mark."* This document shows that the statement in the OOD is incomplete. The boundaries for the subject property are based on the low water mark of the Russian River, **at it existed on July 23, 1885, and includes linear measurements for the legal description.** According to its legal description, **the subject property does not reach to the current low watermark of the Russian.**

### **APPLICATION**

3. **INADEQUATE NOTIFICATION OF/APPROVAL BY KEY, REGULATORY STAKEHOLDERS:** The Russian River Recreation and Parks District and Sweetwater Springs Water District (herein after to be referred to as "Applicants") should have engaged the following agencies prior to submitting a request for a non-conforming use. Approval from these agencies should precede any approval by PRMD.
  - **Army Corps of Engineers:** The Army Corps of Engineers (ACE) has jurisdiction of non-tidal, navigable waters as authorized under Section 404 of the Clean Water Act. A permit or finding of "no adverse effect" from ACE is required before the Applicants pursue a change in land use that is compliant with Federal law.
  - **Native American Heritage Commission:** Because ACE is a federal agency, it must act in accordance with Section 106 of the National Historic Preservation Act (NHPA) and the NHPA's implementing regulations, 36 CFR 800.4. The Applicants need to consult with the Native American Heritage Commission. Consultation may result in the Applicant's need to secure a cultural report or cultural inventory in order to secure a permit or finding of "no adverse effect" from ACE.
  - **California Fish and Wildlife:** California Fish and Wildlife (CFW) is also a regulatory stake holder. The subject property is in an area classified as a "Critical Habitat Zone" by the US Fish and Wildlife Department and a permit may be required for recreational use at this location.

At a minimum, a finding of “no adverse effect” may be necessary in order to proceed with the application for legalizing a non-conforming use.

- **The North Coast Regional Water Quality Board:** The North Coast Regional Water Quality Board (NCRWQB) has jurisdiction over the subject property under Section 401 of the Clean Water Act. The Russian River at the subject property is an “Impaired Water” due to pathogen indicators bacteria concentrations exceeding water quality standards. NCRWQB has identified recreational use as a source of bacterial contamination. The Applicants must apply to the NCRWQB for a permit to change the use from residential to recreational before proceeding with the application for legalizing a non-conforming use.

#### 4. **INADEQUATE NOTIFICATION OF ADJACENT PROPERTY OWNERS**

The Applicants and Permit Sonoma have failed to notify adjacent neighbors and property owners of the Application for Legal Non-Conforming Use and the applicant has not presented objections to its plans.. Objections to grant funding for the purchase of the subject property were raised by multiple, riverfront property owners (available upon request) and will most likely be raised again should proper notice be provided regarding the application for recreational use at the subject property.

#### 5. **LAND USE CHANGE UNDER HISTORIC USE IS INCOMPATIBLE WITH THE SONOMA COUNTY GENERAL PLAN AND THE RUSSIAN RIVER DEVELOPMENT PLAN**

- Zoning ordinances prevents the granting of the application under any claims of historic use. Per the Russian River Development Plan, PRMD must use current zoning ordinances when considering the Applicants’ application for non-conforming use. *“This plan defines zoning ordinance as “the **Zoning Ordinance of the County of Sonoma, California, as it now exists** or may hereafter be amended.”*
- Per plan maps, the subject property is in a riparian corridor and biotic habitat zone, and it is designated as an “urban residential” only area.

Amendments to both plans would be required in order to change the land use at the subject property.

#### 6) **NON-COMPLIANCE WITH CEQA**

#### 7) **DISPOSAL OF HUMAN WASTE IN ACCORDANCE WITH THE CLEAN WATER ACT IS NOT ADDRESSED BY THE APPLICANTS**

In response to the application query: “Sewage disposal”, the Applicants replied, “None”. As noted above, the Russian River is classified as an impaired river under the Clean Water Act. To address this, the NCRWQB has sewage management requirements under its Total Daily Maximum Load (TDML) Plan that must be adhered to. Sonoma county, as part of its Letter of Understanding with the NCRWQB, enforces the TDML Plan. A sewage disposal system that is in compliance with the TDML Plan will be needed in order for PRMD to consider any application for non-conforming use.

#### 8. **MATERIAL MISREPRESENTATION OF THE PROXIMITY OF THE SUBJECT PROPERTY TO WATERWAYS**

In response to the application query: “proximity to creeks, waterways, and impoundment areas”,

the Applicants replied “100 + ft to Russian River”. The property is subject to setbacks per the Sonoma County General Plan and Sonoma county zoning ordinances regarding riparian corridors and biotic resource zones. Many of these setbacks apply to projects less than 100 ft from the Russian River. Additionally, the applicants have failed to identify a neighborhood storm water culvert traversing the subject property as would be appropriate when responding to this query.

**9) THE APPLICANTS PRESENT A LACK OF KNOWLEDGE OF AND APPRECIATION OF THE SUBJECT PROPERTY AS A RIPARIAN CORRIDOR AND BIOTIC HABITAT ZONE**

In response to the application query: “Vegetation on site”, Applicants replied, “Native & non-native species-dense”. In response to the query, “Vegetation to be removed; Applicants replied, “None at this time” which implies there will be removal of vegetation at a later time.

The classification of the subject property as a riparian corridor and biotic resource zone should require a survey of native and non-native species before proceeding with the application. At a minimum, a vegetation plan must accompany the application for non-conforming use (per telephone conversation with Yolanda Solano on 18 October 2019). A full conservation plan, such as that required of Patterson Point Preserve may be required.

**10) THE APPLICANTS HAVE DISREGARDED THE POTENTIAL FOR CATASTROPHIC FIRE OUTCOMES**

In response to the application query: “Fire safety information (existing/proposed water tanks, hydrants, emergency access and turnaround, building materials, etc.)”; the Applicants replied, “Unknown”.

Considering the county’s recent history with catastrophic fires, forced evacuations from the area adjacent to the subject property, and the single evacuation route from the area (Neeley Road), the response of “unknown” is unacceptable and should be addressed before proceeding with the application.

**11) THE APPLICANTS HAVE NOT DONE THE DUE DILIGENCE REGARDING DENSITY, PARKING, AND ACCESS**

In response to the application query: “Number of vehicles per day: Passenger”, the Applicants replied, “Unknown-Public”. The Forestville access/Mother’s Beach is a prime example of what happens when overuse overwhelms existing resources and, without conducting studies on actual use, the Applicants don’t know what impact of density (including pedestrian) and parking (or lack thereof) may have on fire control and evacuations. An independent survey should be performed before proceeding with the application.

**12) “AFFIDAVITS”:** The OOD refers to affidavits however no verified affidavits have been submitted with the application.

**13) LETTERS IN SUPPORT OF THE APPLICATION:** Subject property is mistaken for historical access to the Russian River.

**14) THE APPLICATION INCLUDES INCORRECT INFORMATION.**

Rita O’Flynn  
415-260-7608

Sent from [Mail](#) for Windows

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## Appeal Amendment

This is an amendment to our timely filed initial appeal of December 13, 2021.

1. **The Order of Determination exceeds the scope of the application for Legal Nonconforming Use:** The Order of Determination exceeded the scope of the application with the inclusion of other parcels in paragraph 5 of said order as follows:
  - a. **Parcel Subject for Non-Conforming Use:** The application for Legal Non-Conforming Use **was specific to 17448 River Lane, parcel number APN: 071-220-068, ONLY** (hereinafter referred to as “subject parcel”). No other parcels were included or referred to in this application. The Order of Determination however, has included references to parcels APN: 071-220-067, 071-220-018, 071-220-019, and 071-220-020. Consideration of, or reference to any other parcel exceeds the scope of the application, is intentionally misleading as to the scope of public access and may constitute Taking under the 5<sup>th</sup> Amendment of the US Constitution as well as other California torts.
  - b. **Application and Authority:** No application for Legal Non-Conforming Use has been made by the legal owners of parcels APN: 071-220-067, 071-220-018, 071-220-019, and 071-220-020. These parcels are not owned by the Russian River Recreation and Parks District (RRRPD) and RRRPD is not authorized to act on behalf of any of the legal property owners of these parcels. The inclusion of these is intentionally misleading as to the scope of public access and may constitute Taking under the 5<sup>th</sup> Amendment of the US Constitution as well as other California state torts.
2. **Order of Determination Illegally Expands the Area of Public Access**
  - a. Paragraph 7 of the Order of Determination states, *“The legal description for the subject parcel conveyed in Quitclaim Deed, Document Number 1992- 0041217 (which references the subject parcel as Parcel 50), indicates the subject parcel’s boundary extends to the low-water mark.”* Examination of Document Number 1992- 0041217 shows that the boundaries for the subject property are based on the low water mark of the Russian River, **at it existed on July 23, 1885, and includes linear measurements for the legal description and provides linear measurement in support of this contingency. The statement in Paragraph 7 of the Order of Determination is incomplete.** Thus, according to its legal description, **the subject property does not reach to the current low watermark of the Russian.** The above statement from the Order of Determination is intentionally misleading as to the scope of public access and may constitute Taking under the 5<sup>th</sup> Amendment of the US Constitution as well as other California state torts.
  - b. Paragraph 5 of the Order of Determination states, *“The subject parcel provides **trail access to and includes a portion of a beach located on the Russian River...**”*. As noted above, the subject parcel does not have direct access to the Russian River. Thus, **the statement in paragraph 5 is false** and is intentionally misleading as to the scope of public access to the Russian River from the subject parcel.
  - c. **Incorrect Description of “Vacation Beach”:** Paragraph 5 of the Order of Determination states, The subject parcel .... includes a portion of a beach located on the Russian River, **widely known as Vacation Beach.** Paragraph 5 further states, **“ Vacation Beach encompasses the following neighboring parcels, APN: 071-220-067, 071-220-018, 071-220-019, and 071-220-020...”** Vacation Beach is a residential subdivision (see

Subdivision No. 3 recorded on June 3, 1936, Sonoma County Records Book 50, Page 38-40, Block A, Lot 1). Attempts to create a specific “Vacation Beach”, with only the inclusion of the aforementioned parcels in association with the subject parcel is intentionally misleading as to the scope of public access and may constitute Taking under the 5<sup>th</sup> Amendment of the US Constitution as well as other California torts.

- d. **No Legal Access to Other Parcels from the Subject Parcel:** The application for Legal Non-Conforming Use includes information regarding the Ordinary Highwater Mark that was incorrect, preliminary, and not intended for public use. A revised Ordinary Highwater Mark designation from the California State Lands Commission which places the Ordinary Highwater Mark no higher than the height of the Russian River when the summer dams are in place has been known to Permit Sonoma since at least September of 2020. There is no rite of passage under the Public Trust Doctrine from the subject parcel across other parcels because the Ordinary Highwater Mark sits well below the boundaries of the subject parcel. Misinformation/misrepresentation in the Order of Determination regarding public access on private property is intentionally misleading as to the scope of public access and may constitute Taking under the 5<sup>th</sup> Amendment of the US Constitution as well as other California torts.

**Note:**

- A prescriptive easement across private property cannot be established by recreational use. TIBURON/BELVEDERE RESIDENTS UNITED TO SUPPORT TRAILS v. MARTHA CO. (56 Cal.App.5th 461 (2020)).
- A survey recorded with Sonoma County and known to the Permit Department of Permit Sonoma is provided as a reference to the parcels referred to in the Order of Determination (Exhibit A).
- A portion of the existing trail on the subject parcel meanders over parcel APN: **071-220-018**. CEQA provisions may trigger if the trail needs to be relocated.
- Russian River Recreation and Parks may be purchasing 17444 River Lane. Per the current Order of Determination, “...in accordance with Sonoma County Code Chapter 26 Article 94, **this legal nonconforming use determination does not allow future expansion of the use.**” Thus, because 17444 River Lane is currently zoned R1, an application for Legal Non-Conforming Use for this parcel would need to be made to Permit Sonoma before the public can legally access the river from this location. The attached survey (Exhibit A) shows no right of public access across APNs 071-220-018, 071-220-019, and 071-220-020 from 17444 River Lane and any new Orders of Determination making such inferences will be the subject of appeal.

As always, we are available to discuss this at your convenience.

With Kind Regards,

Rita O’Flynn  
415-260-7608

# **EXHIBIT A**

## **Cinquini and Passarino Recorded Survey**

Performed at the Behest of Funding Agency: Sonoma Agricultural and Open Space  
District

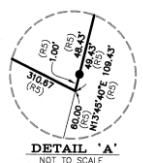
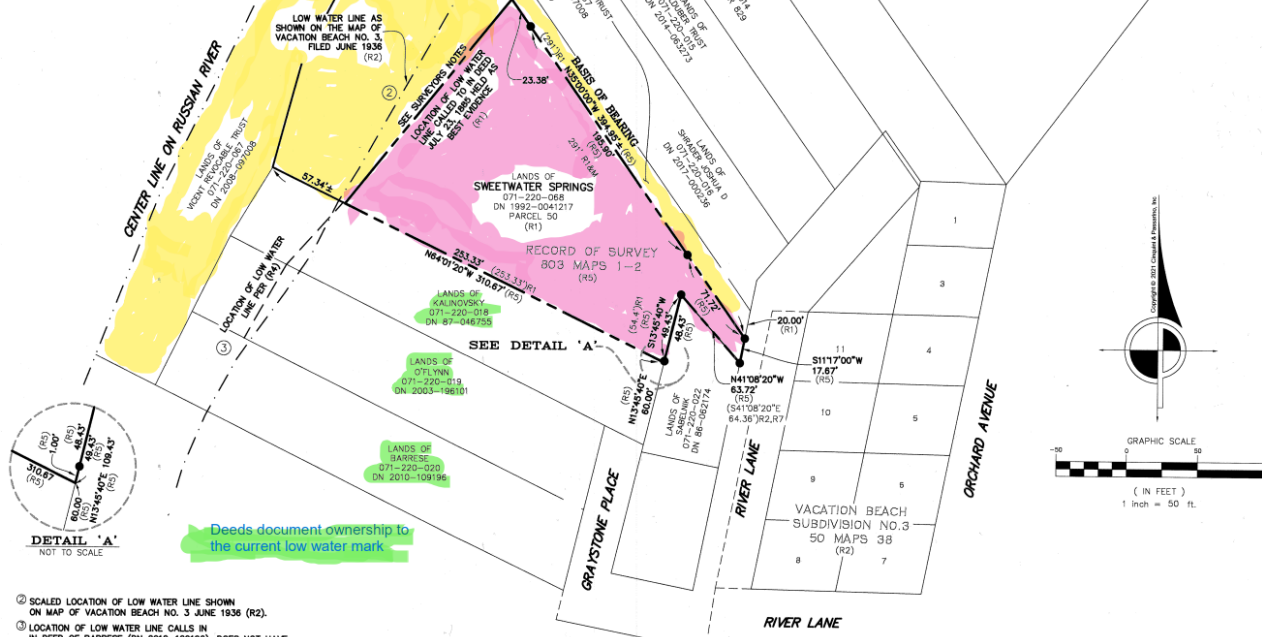




**REFERENCES**

- R1 CORPORATION QUILCLAIM 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 QUILCLAIM 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)



Deeds document ownership to the current low water mark

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

**SURVEYOR'S STATEMENT**  
 THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE PROFESSIONAL LAND SURVEYORS' ACT AT THE REQUEST OF SONOMA COUNTY OPEN AG + SPACE DISTRICT ON JUNE 27, 2021.

James M. Dickey, P.L.S. 7935  
 EXP. DATE 12/31/21  
 DATE: 5/16/2021

**COUNTY SURVEYOR'S STATEMENT**  
 THIS MAP HAS BEEN EXAMINED IN ACCORDANCE WITH SECTION 8766 OF THE PROFESSIONAL LAND SURVEYORS' ACT THIS 9<sup>TH</sup> DAY OF JUNE, 2021.

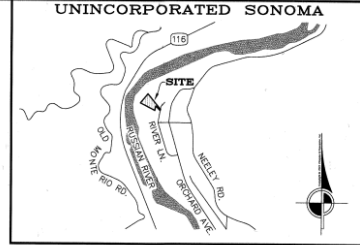
LEONARD H. GABRIELSON, P.L.S. 7886  
 COUNTY SURVEYOR  
 SONOMA COUNTY, CALIFORNIA

DEPUTY COUNTY SURVEYOR

**RECORDER'S STATEMENT**  
 FILED THIS 7<sup>TH</sup> DAY OF JUNE, 2021, AT 4:08 AM IN BOOK 822 OF MAPS AT PAGE(S) 6 AT THE REQUEST OF THE COUNTY SURVEYOR.

DELA MARIE PROTO 2021061946  
 COUNTY RECORDER DOC. NO.  
 BRENDA HERMIER \$9.00  
 DEPUTY COUNTY RECORDER FEES

**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.



- LEGEND**
- SUBJECT PROPERTY BOUNDARY
  - ADJACENT PROPERTY BOUNDARY
  - HOGAN SURVEY FROM MARCH 3, 2017 (R5)
  - LOW WATER LINE PER R2
  - LOW WATER LINE PER R4
  - CENTERLINE OF RUSSIAN RIVER
  - 1/2" IRON PIPE AS SHOWN ON R5
  - DN
  - IP IRON PIPE
  - NT.S. NOT TO SCALE
  - O.R. OFFICIAL RECORDS
  - (R#) RECORD BEARING AND DISTANCE AS NOTED

**BASIS OF BEARINGS**  
 BEING S88°43'00"E BETWEEN FOUND 6"X6" CONCRETE MONUMENT ALONG THE RIVER LANE AS SHOWN ON THE FINAL MAP OF THE VACATION BEACH SUBDIVISION NO.3, FILED IN BOOK 50 OF MAPS PAGES 38-40, SONOMA COUNTY RECORDS.

**NOTES**  
 ALL DISTANCES AND DIMENSIONS ARE IN FEET AND DECIMALS THEREOF. ALL TIES ARE AT RIGHT ANGLES UNLESS OTHERWISE NOTED. ALL MEASUREMENTS AND MONUMENTS ARE IDENTICAL TO THOSE SHOWN ON THE SURVEY FILED IN BOOK 803 ON MAPS PAGES 1-2, SONOMA COUNTY RECORDS. THE PURPOSE OF THIS SURVEY IS TO SHOW THE LOW WATER LINE AS DESCRIBED AND CALLED TO IN (R1) AS OPPOSED TO THE SURVEYED LINE SHOWN ON (R5). NO FIELD WORK WAS PERFORMED FOR THIS SURVEY.  
 EXEMPT FROM \$82 FEE PER §27386.1(A)(2)(D)

**RECORD OF SURVEY**  
 BEING THE LANDS OF SWEETWATER SPRINGS WATER DISTRICT AS DESCRIBED IN DOCUMENT NUMBER 1992-0041217, PARCEL 50 BEING RECORDS OF SONOMA COUNTY, AND LYING WITHIN TOWNSHIP 8 NORTH, RANGE 10 WEST MDM&M.  
 LYING WITHIN SECTION 31 OF TOWNSHIP 8 NORTH, RANGE 10 WEST M.D.B.&M.  
 COUNTY OF SONOMA STATE OF CALIFORNIA  
 MARCH 2021 SCALE: 1"=50'

**CINQUINI & PASSARINO, INC.**  
 LAND SURVEYING

- ▲ BOUNDARY 1360 No. Dutton Ave.
- ▲ TOPOGRAPHIC Santa Rosa, Ca. 95401
- ▲ CONSTRUCTION Phone: (707) 542-6268
- ▲ SUBDIVISIONS Fax: (707) 542-2106

WWW.CINQUINIPASSARINO.COM

# Amendment Appeal #2

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This is the second amendment to our timely filed appeal of December 13, 2021. Appellants reserve the right to file additional amendments upon receipt of requested historical ordinances and zoning regulation.

## **1. REQUIRED HISTORIC USE FOR NON-CONFORMING USE OF 17448 RIVER LANE IS NOT ESTABLISHED**

**SONOMA COUNTY ORDINANCE 29-94-010 requires legal, historic use for non-conforming use permit.** Permit Sonoma's December 2021 Order of Determination (OOD) specifically refers to this ordinance as grounds for approval of non-conforming use at 17448 River Lane. To show compliance with this, Permit Sonoma states, "*Affidavits submitted are significant in staff's determination as they are written statements of facts to be used as evidence,...*" and Item #2 under paragraph 8 states: "*Credible evidence in the form of affidavits... were included in the application submittal regarding the historic use of the property for a publically (sic) accessed 'passive recreation area' since the 1950's, which pre-dates 1961 zoning*".

**The statements provided are not facts or evidence of historic use at 17448 River Lane.** With the exception of the statement and documentation provided by Herbert Genelly, Jr. (descendent of the original property owners), the remaining handful of statements:

1. Document use **after 1961** (prohibitive ordinance) or are hearsay as to prior use.
2. Rarely make specific reference to 17448 River Lane.
3. Include photos of a riverfront or a river that are non-specific as to location; 17448 River Lane is not riverfront property.

The statement of Herbert Genelly, which should be best evidence of use, has a postcard of **RR Heights Beach** which is in **Monte Rio** and not the Vacation Beach Sub-Division (Exhibit A).

Appellants are aware of other public statements provided to Permit Sonoma in support of non-conforming use. These statements are too, not facts or evidence of historic use of 17448 River Lane for the same reasons provided above and also include misrepresentation of the location of 17448 River Lane. Exhibit B is a postcard provided by a member of the public as documentation of legal use of 17448 River Lane. The postcard is marked "Vacation Beach" but shows a path to the river from **17500 River Lane** not 17448 River Lane; there is no evidence of a path from 17448 River Lane to the riverfront on this postcard.

**None of the statements provided are affidavits; statements are not authenticated.** Affidavits are sworn statements, subject to penalties of perjury. Elevating statements to the level of an affidavit does not add any credibility to the statement made in this matter. Furthermore, Permit Sonoma has been aware of the misrepresentations made by Genelly since 2020 (prior to the issuance of 2 OODs) and is also aware that none of the statements provided by the permit applicant, Russian River Recreation and Parks District were authenticated (November 5, 2020 email exchange from Paige MacDonell to Hanna Spencer and Marina Herrera of Permit Sonoma, available upon request).

**Any legal use as a recreational facility prior to 1961 has ceased.** Sonoma County Code Article 94 (Non-Conforming Uses) Section 26-94-010, discusses the limitations on non-conforming uses and states: "*The lawful use of land existing on the effective date of the ordinance... may be continued...*".

postcard of the Vacation Beach sub-division taken prior to Exhibit B. It shows the same Russian River access from **17550 River Lane** as Exhibit B, and another river access further west of 17550 River Lane. This second access leads to an actual public, recreational area, with signage identifying it as “Vacation Beach”. It is unclear as to whether this recreational area included 17448 River Lane, however this is unlikely given the use of 17448 River Lane as a water utility (see below). Regardless, Exhibit D, a satellite image of the location as it currently exists shows the complete abandonment of this public recreational facility with dense native growth to the Ordinary Highwater Mark all along the river.

**Documented historic use of 17448 River Lane is as a Utility.**

*“passive recreation area”*

**The Quit Claim Deed of Citizens Utilities to Sweetwater Springs does not provide for Right of Way or Easement to the Russian River From 17448 River Lane:** Document 1992041217 (cited in the December 2021 OOD) is a Quit Claim deed that contains the legal descriptions of multiples parcels transferred from Citizens Utilities to Sweetwater Springs. Page 1 of this document states, *“Those certain parcels of land, water rights, easements and right of way described in Exhibits “C”, “C-1”, and “C-2” attached hereto and made part hereof (sic).* Parcel #50 of this document is for 17448 River Lane. This description contains **no references to rights of way or easements to the Russian River**, nor is Parcel #50 included in C-1 or C-2 of the document which provide the additional entailments of specific properties included in this Quit Claim Deed. Any statements made by Genelly or others as to a public, right of way are not supported by legal deed.

**The trail on 17448 River Lane is not evidence of legal, historic public use as a recreational facility.** It is unlikely that the public used a path on 17448 River Lane when 2 easier paths, closer to the recreational facility were available. The date of creation of the path currently on 17448 River Lane has not been provided and it should not be assumed that it existed prior to 1961 (prohibitive zoning). If it did exist prior to 1961, it was likely created by Citizens Utilities for their water pumping and well operation and not specifically for public use (a requirement for non-conforming use). Thus, any claims of a legal historic public path at 17448 River Lane as the basis for approval of non-conforming use as a recreational facility are not supported.

## **2. CASE LAW, ORDINANCES, AND THE SONOMA COUNTY GENERAL PLAN EXCLUDE NON-CONFORMING USE OF 17448 RIVER LANE**

**Current use of 17448 River Lane doesn’t make it legal, historic non-conforming use.** *“No vested right to violate an ordinance may be acquired by continued violations (Acker v Baldwin).*

**The expansion of non-conforming use violates Sonoma County Ordinances and Case Law:** In its December 2021 OOD, Permit Sonoma has:

1. Expanded the legal boundaries of 17448 River Lane by almost 100% of its legal footprint (from 0.6 acres to over 1.13 acres) by incorporating the lands of 17444 River Lane (See Exhibit F, survey conducted by Cinquini and Passarino).

2. Included 3 additional privately owned parcels in its approval of non-conforming use at 17448 River Lane, expanding the area by over 300%.

These acts on the part of Permit Sonoma exclude the use of a non-conforming use permit:

1. Paragraph 3, b of Permit Sonoma's December 2021 Order of Determination states: "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...area...**"
2. Sonoma County Code Article 94 (Non-Conforming Uses) Section 26-94-010, which states "*The lawful use of land existing on the effective date of the ordinance codified... may be continued but shall not be enlarged or increased,....*" (see *Sabek Inc v Sonoma County*).
3. "*...municipal authorities ...made express provision that these nonconforming uses may be continued, without the right to enlarge....*" (*Rehfeld v. San Francisco* (1933) 218 Cal. 83, 84-85 [21 P.2d 419].)
4. "***Any change in the premises which...expands the nonconforming use would not be consistent with this purpose.***" (*Dienelt v. County of Monterey* (1952) 113 Cal. App. 2d 128, 131 [247 P.2d 925].)
5. "***... courts throughout the country generally follow a strict policy against their extension or enlargement.***" (*County of San Diego v. McClurken* (1951) 37 Cal. 2d 683, 686-687 [234 P.2d 972].)
6. "***The spirit underlying the ordinance is to restrict rather than to increase the nonconforming use....***" (*Edmonds v. County of Los Angeles* (1953) 40 Cal. 2d 642, 651 [255 P.2d 772]; and see *Livingston Rock etc. Co. v. County of L. A.* (1954) 43 Cal. 2d 121, 127 [272 P.2d 4].)

Note: Expansion includes degree of use or density. Here, a grant from the Sonoma County Open Space District to purchase 17448 River Lane is contingent upon the purchaser, Russian River Recreation and Parks District developing a promoted public access to the Russian River; thus, use of this location will increase under the conditions of the grant. Additionally, petitions have been circulated seeking support for public access at this location. If social media is correct, hundreds are now aware of this location and will most likely use it if it becomes available. Mother's (or Mom's) Beach should serve as an example of what to expect at 17448 River Lane in terms of increased use should it become a public recreational facility ([Holiday looms large for Mom's Beach neighbors \(pressdemocrat.com\)](https://www.pressdemocrat.com/story/news/local/2021/05/14/holiday-looms-large-for-moms-beach-neighbors/7448440002)).

**Permanence of non-conforming use is prohibited by case law:** Approval of non-conforming at 17448 River Lane will create a public access to the Russian River "in perpetuity" (per agreements and covenants between the Sonoma County Open Space District and Russian River Recreation and Parks District noted above). Case law finds permanence an exclusion to non-conforming use:

1. ***Any change in the premises which tends to give permanency to, or expands the nonconforming use would not be consistent with this purpose.***" (*Dienelt v. County of Monterey* (1952) 113 Cal. App. 2d 128, 131 [247 P.2d 925].)
2. And "***a type of business distortive of the zoning plans [which] adds permanency to a nonconforming use which the intent of the ordinance seeks to [190 Cal. App. 3d 168] eliminate" is of course forbidden.***" (*Paramount rock Co. v. County of San Diego, supra*, 180 Cal.App.2d at p. 231.).

**Per Sonoma County Code Article 94, non-conforming use is excluded if prior use has ceased:** Sonoma County Code Article 94 (Non-Conforming Uses) Section 26-94-010, discusses the limitations on non-conforming uses and states: ***“...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...”***

1. As noted above, use of the riverfront previously a public recreational facility has long since been abandoned.
2. Exhibit G shows “No Trespassing Signs” posted by Sweetwater Springs at 17448 River Lane and the blocked driveway access: both in existence for over 1 year. Any presumptive legal use of 17448 River Lane by the public has ceased.

**Legal precedent supports the elimination of non-conforming use:** As noted above, approval of non-conforming use at 17448 River Lane creates permanence. In supporting the County in Sabek Inc. v. Sonoma County, the California Court of Appeals calls for elimination of non-conforming use:

1. ***“The policy of the law is for elimination of nonconforming uses....”*** (City of Los Angeles v. Wolfe (1971) 6 Cal. 3d 326, 337 [99 Cal. Rptr. 21, 491 P.2d 813].) [**190 Cal. App. 3d 167**]
2. ***“The object...is the gradual elimination of the nonconforming...use... and it has been frequently upheld by the courts.”*** (Rehfeld v. San Francisco (1933) 218 Cal. 83, 84-85 [21 P.2d 419].)
3. ***“[I]t is the general purpose to eventually end all nonconforming uses...”*** (Ricciardi v. County of Los Angeles (1953) 115 Cal. App. 2d 569, 576 [252 P.2d 773]
4. ***“Given the objective of zoning to eliminate nonconforming uses, courts throughout the country generally follow a strict policy against their extension or enlargement.”*** (County of San Diego v. McClurken (1951) 37 Cal. 2d 683, 686-687 [234 P.2d 972].)
5. ***“[Z]oning legislation...looks to the future and the eventual liquidation of nonconforming uses.”*** (National Advertising Co. v. County of Monterey (1970) 1 Cal. 3d 875, 880 [83 Cal. Rptr. 577, 464 P.2d 33].)
6. ***“The underlying spirit of a comprehensive zoning plan necessarily implies the restriction, rather than the extension, of a nonconforming use of land...”*** (County of Orange v. Goldring (1953) 121 Cal. App. 2d 442, 446-447.)

**Sonoma County Ordinance 26-20-20 requires a different use permit:** Paragraph 2 of the December 2021 OOD states the following as grounds for approval: *“The Low-Density Residential base zone allows for parks and similar uses with a Use Permit pursuant to Section 26-20- 20(e) of the Zoning Code.”* As noted above, the criteria for non-conforming use have not been met, this ordinance requires the use of other permits to create a recreational facility/public part at 17448 River Lane.

**Sonoma County Ordinance 26-65-040 requires a zoning permit:** This ordinance states: *The following activities and uses may be allowed within a streamside conservation area, if allowed by the base zone and any combining zones, subject to any required permits and the standards specified in this section... Specifically, Section (L) allows for certain activities and uses within the streamside conservation area. Those certain uses include, ‘Bikeways, trails, and parks on publicly owned land or public use easements or on private lands subject to a zoning permit.’*

**Sonoma County General Plan does not support a recreational facility/public park at 17448 River Lane under non-conforming use:** Permit Sonoma’s reference to the Sonoma County General Plan in support

of their December 2021 OOD (paragraph 3, (b)) opens the door to further examination of this pivotal document and its applicability to this matter.

**The General Plan Land Use Map excludes recreational facilities/public parks at 17448 River Lane.**

While the December 2021 OOD makes reference to the use of historic zoning maps in its decision, there no is reference to any Land Use Maps of the Sonoma County General Plan, which states, ***“As required by California law, the General Plan Land Use Map designates the location and intensity of potential new residential, commercial, industrial and other forms of development in the unincorporated County”*** (see Land Use Element of the Sonoma County General Plan).

1. The map of Land Use Map of Guerneville (see Exhibit H), shows **17448 River Lane to be in an area for “urban residential”, only**. While the General Plan does make allowances for parks within areas designated as urban residential, such use would require a change in zoning and an amendment to the General Plan.
2. Open Space and Resource Element Map of Guerneville (Exhibit I) shows **17448 River Lane to be in an area designated as a “Special Status Species Habitat”**. This is in addition to its designation as a riparian corridor, biotic habitat zone, and critical habitat. Also, Russian River at this location is considered “impaired by the EPA”. **There are no planned parks in the Vacation Beach Sub-Division.**
3. **Permitted uses under the Residential Use Policy doesn’t include recreational facilities/public parks at 17448 River Lane.** Land Use Element 2.2 states, *“The primary use shall be detached single family homes. Secondary uses include attached dwellings, farming, small scale animal husbandry, home occupations, small scale home care and group care facilities, second dwelling units, public and private schools and places of religious worship, and other uses incidental to and compatible with the primary use.”* While it could be argued that “other uses incidental to and compatible with the primary use”, might allow for recreational facilities/public parks, the Sonoma County General Plan has specific land criteria for such use which require a change in zoning and an amendment to the Plan for such use.
4. **Land use specific to the Russian River area prioritizes maintenance of natural resources over a recreational facility/public park.**
  - a. **Section 3.4, Russian River Area, of the Land Use Element prioritizes natural resource protection over recreational facilities/public parks.** LU-15.5 requires that Permit Sonoma *“Assure that the number and scale of recreation and visitor serving commercial uses in the resource and agricultural areas is compatible with maintenance of the quality of the natural resource. Consider natural resource production and maintenance as the primary use of the land”*.
  - b. **Land use change from urban residential to recreation and visitor serving commercial prioritizes housing over recreational facilities/public parks.** Policy LU-15m: *“As allowed by the Recreation and Visitor Serving Commercial land use category, allow consideration of a single-family residence as the primary use of a property so designated in this planning area”*.
  - c. **Change of land use is non-compliant with the Sonoma County General Plan. Sec. 26-02-040.** *“No ministerial or discretionary permit, such as, but not limited to, rezonings, use permits, variances, building or zoning permits for any use in any district, shall be issued if such rezoning or permit is inconsistent with the Sonoma County general plan or any duly*

*adopted specific or area plans...". Note: A recreational facility/public park at this location is also non-compliant with the Russian River Development Plan.*

**Case Law Supports Enforcement of the Sonoma County General Plan.** There is ample case law empowering the Planning Commission to enforce the Sonoma County General Plan.

1. *"... there is the consensus of opinion that the regulation of the development of a city under a comprehensive and carefully considered zoning plan, does tend to promote the general welfare of a community and ...that the adoption and enforcement of such a plan is within the scope of police power". (Acker v. Baldwin et al., 1941).*
2. *"...if there is a reasonable basis for the belief that the establishment of a strictly residential district has substantial relation to the **public health, safety, morals, and general welfare, a zoning ordinance to accomplish that purpose will be upheld** (Acker v. Baldwin et al., 1941). The environmentally sensitive nature of 17448 River Lane and the impaired river status should put public health, safety, and general welfare above the need for another recreational facility.*
3. *"**Zoning regulations look to the future and not the past, and cannot be made retroactive**" (Acker v. Baldwin et al., 1941).*
4. *"...Unless a zoning measure is clearly **OPPRESSIVE** (emphasis added), it will be deemed to be within the purview of the police power" (Acker v. Baldwin et al., 1941).*

### 3. DISCUSSION

By its own admission, Permit Sonoma has relied heavily on statements from the public for the approval of non-conforming use of 17448 River Lane as a recreational facility. It has been shown that these statements are not credible or accurate and, thus, cannot serve as the basis for a non-conforming use permit. If such use ever existed at 17448 River Lane, it has long since ceased, effectively eliminating the use of a non-conforming use permit to create a recreational facility/public park at this location. Permit Sonoma has tried to justify its approval of non-conforming use with claims of a "passive recreational area" created by those who cut through 17448 River Lane to reach the river. Simply being on a property doesn't make it a recreational area of any type. *"No vested right to violate an ordinance may be acquired by continued violations (Acker v Baldwin).*

The present setting, Savek Inc. v Sonoma County is important when considering legal, non-conforming use. To the California Court of Appeals, the Sonoma County successfully defended its decision to reject a non-conforming use permit based on, among other things, expansion and permanence. With its OODs Permit Sonoma has both expanded and made permanent a long abandoned recreational facility. Granting a non-conforming use permit under same conditions it successfully appealed will be difficult for Permit Sonoma to defend. If case law is not persuasive, the permanence associated with the granting of a non-conforming use permit is in violation of the County's own ordinances related to non-conforming use.

The use of a non-conforming permit to affect a recreational facility/public facility appears to be a weak attempt to bypass the vital protections of this environmentally significant location under the Sonoma County General Plan. As in Savek Inc. v Sonoma County, the county can offer more appropriate, alternative permit paths to the creation of a recreational facility/public park at 17448 River Lane. Proper permitting and zoning will assure, among other things, that: a) measures to protect the environment



have been taken, b) public restrooms and parking are sufficient to address need, c) a source of fresh water is available, and d) that the location is defensible from fire, with adequate evacuation routes; these are just some of protections offered under the General Plan.

Under the General Plan, the County will need to assess the number and scale of existing recreational facilities in this area when considering the burden of another recreational facility on natural resources. Here, there are already 2 public, recreational facilities within close proximity of 17448 River Lane: The Vacation Beach Dam location is 0.4 miles from 17448 River Lane and Cozy Cove is 0.9 miles from 17448 River Lane; both have riverfront parking. The Lok development, which will include public access, is within 1/2 mile upriver from 17884 River Lane. The new Guernewood River Park is less than 2 miles from 17448 River Lane.

As noted in earlier appeal documents, the location of the Ordinary Highwater Mark at no higher than the level of the Russian River when the summer dams are in place provides no public access across the west from 17448 River Lane (or 17444 River Lane) onto other private properties. The inclusion of these properties in a recreational facility/public park would require the same permitting as that for 17448 River Lane. Applications for such permitting would need to come from the legal property owners of each property to be included; we will not do so. We are restoring the riparian corridor on our property, primarily damaged by those trespassing from 17448 River Lane. This restoration project is a) in support of the goals set forth in the Sonoma County General Plan, b) in compliance with applicable zoning, and c) regulatorily compliant. We intend to complete this project once the claims to our land by Permit Sonoma are voided.

#### **4. CONCLUSIONS**

There are no legal/historic/regulatory grounds for the approval of any form of non-conforming use at 17448 River Lane.

The OOD should be withdrawn and the application for legal non-conforming use should be denied.

## 5. EXHIBITS

## Exhibit A

Postcard Provided by Genelly Documenting  
Historic Use at 17448 River Lane

17448 ←  
River Lane,  
Vacation Beach  
right-away  
to beach.

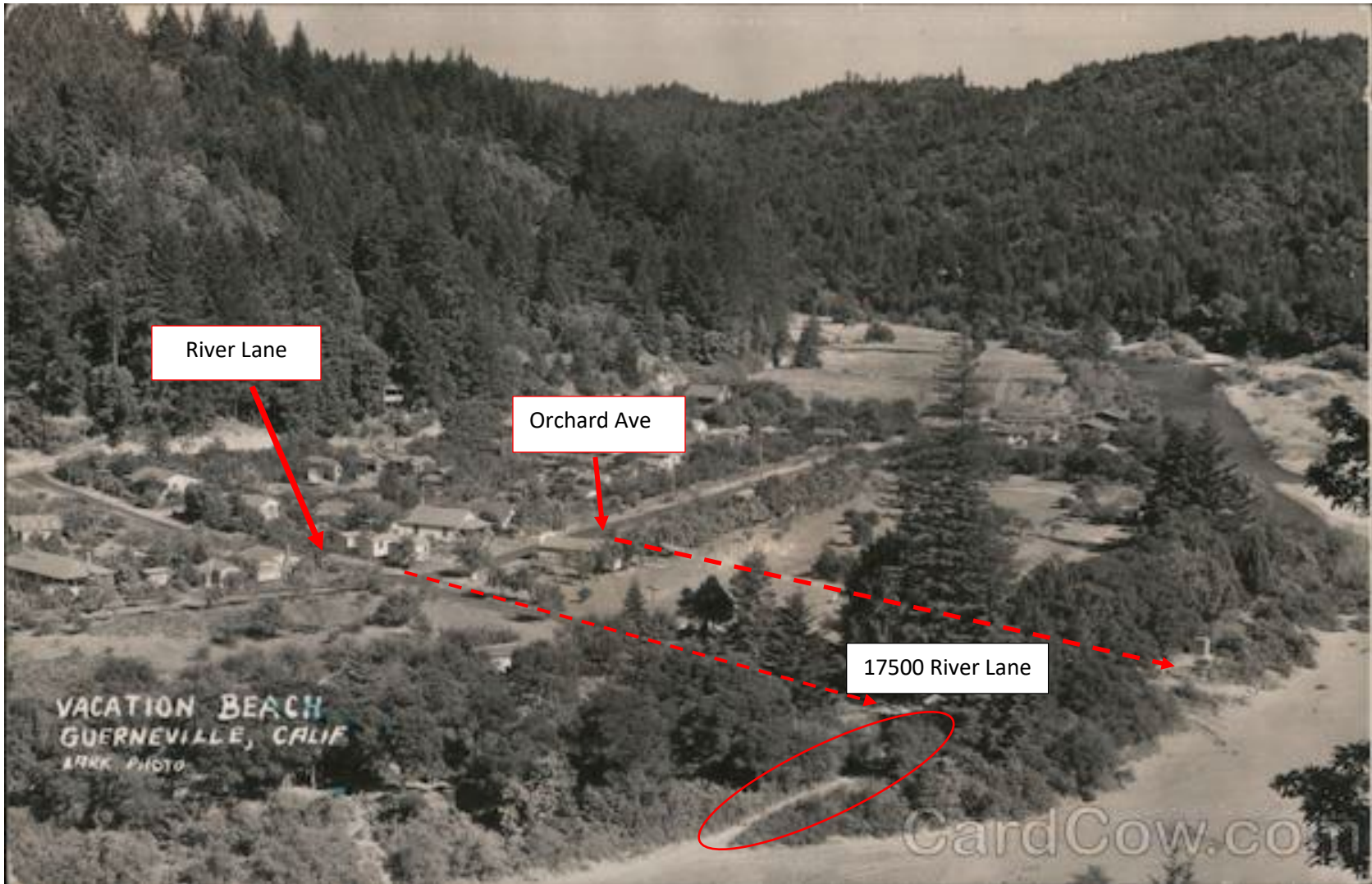


(Front view of vacation beach)  
post card ↑

**R. R. Heights Bathing Beach in Monte Rio**

## Exhibit B

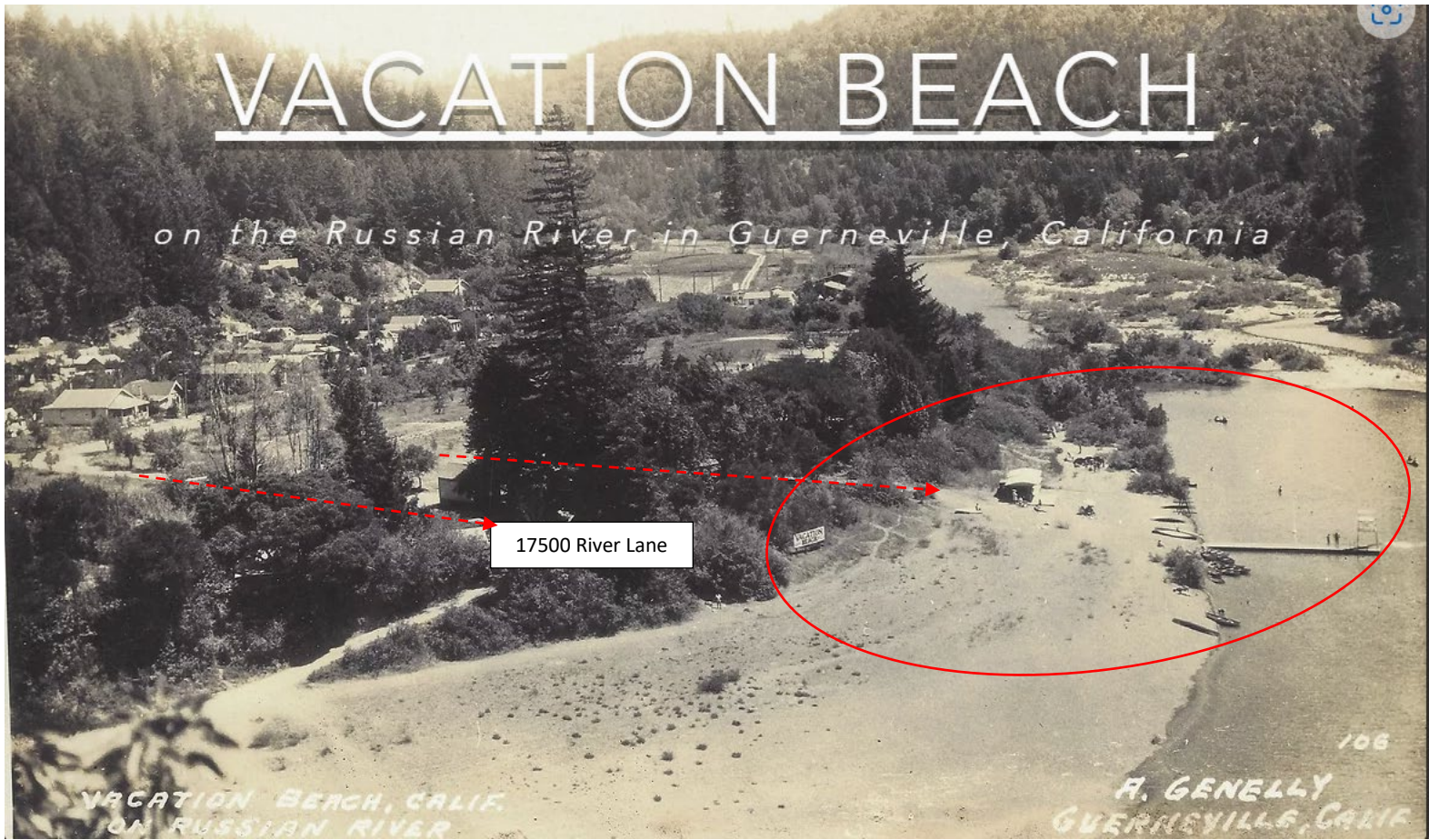
Historic Postcard (1944) of Vacation Beach  
Residential Sub-Division



## Exhibit C

### Historic Postcard of a Vacation Beach Recreational Area West of 17448 River Lane







## Exhibit D

Google Earth Satellite Photo of Present Day

17448 River Lane

Neely Road (one way outlet, only escape route for fire/flood)

River Lane (no outlet road)

Orchard Ave (no outlet road)



17448 River Lane

Former public recreational area.

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## Exhibit E

# Press Democrat Article of March 3, 1955 Regarding the Sale of the Vacation Beach Water Company

## **Vacation Beach Water Co. Sold**

The Public Utilities Commission yesterday approved the sale of the Vacation Beach Water Co. which serves 125 customers in the East Guernewood district to the Citizens Utilities Co. of California, Guerne-wood.

Vacation Beach is owned by Mr. and Mrs. Herbert Genelly who sought permission to sell the utility company for \$6,250.

The Commission ordered that the present rates of the Vacation Beach Co. be refiled within 30 days from the date of actual transfer by the Citizens Utilities Co., or that the company file a notice of adoption of the present rate and rules.

It said no increases in the present rates could be made unless otherwise authorized by the Commission.

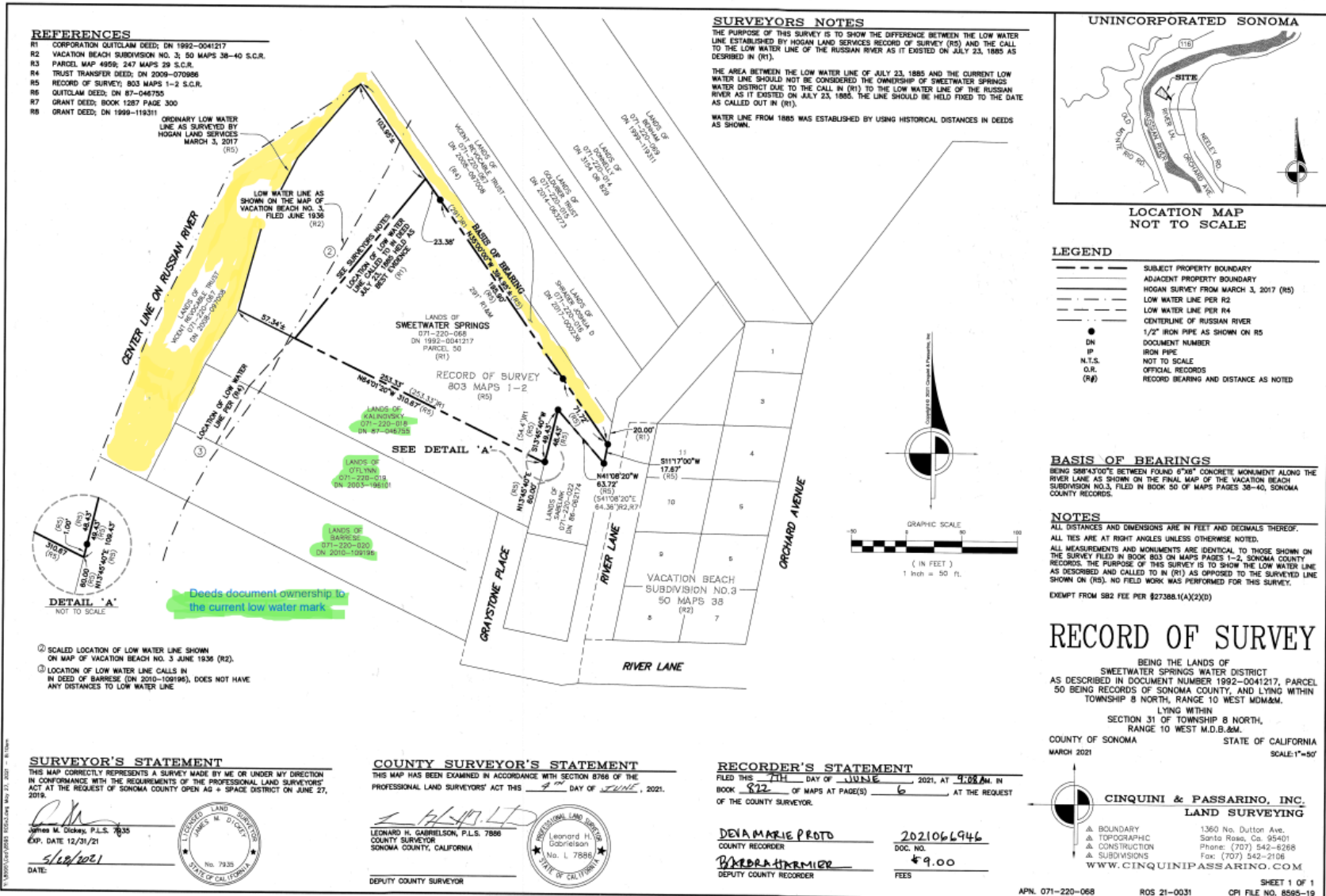
The Press Democrat - Thu - March 3, 1955

# Exhibit F

Cinquini and Passarino Survey

Recorded June 7, 2020

022



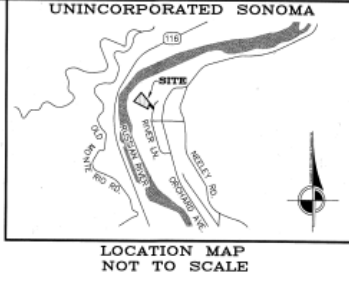
- REFERENCES**
- R1 CORPORATION QUILTAM DEED; DN 1992-0041217
  - R2 VACATION BEACH SUBDIVISION NO. 3, 50 MAPS 38-40 S.C.R.
  - R3 PARCEL MAP 4959; 247 MAPS 29 S.C.R.
  - R4 TRUST TRANSFER DEED; DN 2009-070988
  - R5 RECORD OF SURVEY; 803 MAPS 1-2 S.C.R.
  - R6 QUILTAM DEED; DN 87-046750
  - R7 GRANT DEED; BOOK 1287 PAGE 300
  - R8 GRANT DEED; DN 1999-119311

**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.



- LEGEND**
- SUBJECT PROPERTY BOUNDARY
  - ADJACENT PROPERTY BOUNDARY
  - HOGAN SURVEY FROM MARCH 3, 2017 (R5)
  - LOW WATER LINE PER R2
  - LOW WATER LINE PER R4
  - CENTERLINE OF RUSSIAN RIVER
  - 1/2" IRON PIPE AS SHOWN ON R5
  - DN DOCUMENT NUMBER
  - IP IRON PIPE
  - N.T.S. NOT TO SCALE
  - O.R. OFFICIAL RECORDS
  - (R#) RECORD BEARINGS AND DISTANCE AS NOTED

**BASIS OF BEARINGS**

BEING 389°43'00"E BETWEEN FOUND 6"x6" CONCRETE MONUMENT ALONG THE RIVER LANE AS SHOWN ON THE FINAL MAP OF THE VACATION BEACH SUBDIVISION NO.3, FILED IN BOOK 50 OF MAPS PAGES 38-40, SONOMA COUNTY RECORDS.

**NOTES**

ALL DISTANCES AND DIMENSIONS ARE IN FEET AND DECIMALS THEREOF. ALL TIES ARE AT RIGHT ANGLES UNLESS OTHERWISE NOTED. ALL MEASUREMENTS AND MONUMENTS ARE IDENTICAL TO THOSE SHOWN ON THE SURVEY FILED IN BOOK 803 ON MAPS PAGES 1-2, SONOMA COUNTY RECORDS. THE PURPOSE OF THIS SURVEY IS TO SHOW THE LOW WATER LINE AS DESCRIBED AND CALLED TO IN (R1) AS OPPOSED TO THE SURVEYED LINE SHOWN ON (R5). NO FIELD WORK WAS PERFORMED FOR THIS SURVEY.

EXEMPT FROM SB2 FEE PER §27388.1(A)(2)(D)

**RECORD OF SURVEY**

BEING THE LANDS OF SWEETWATER SPRINGS WATER DISTRICT AS DESCRIBED IN DOCUMENT NUMBER 1992-0041217, PARCEL 50 BEING RECORDS OF SONOMA COUNTY, AND LYING WITHIN TOWNSHIP 8 NORTH, RANGE 10 WEST M.D.B.&M. LYING WITHIN SECTION 31 OF TOWNSHIP 8 NORTH, RANGE 10 WEST M.D.B.&M. COUNTY OF SONOMA STATE OF CALIFORNIA MARCH 2021 SCALE: 1"=50'

**SURVEYOR'S STATEMENT**

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE PROFESSIONAL LAND SURVEYORS' ACT AT THE REQUEST OF SONOMA COUNTY OPEN AS A SPACE DISTRICT ON JUNE 27, 2019.

*[Signature]*  
 James M. Drake, P.L.S. 7935  
 Exp. DATE 12/31/21  
 DATE: 5/19/2021

PROFESSIONAL LAND SURVEYOR  
 JAMES M. DRAKE  
 No. 7935  
 STATE OF CALIFORNIA

**COUNTY SURVEYOR'S STATEMENT**

THIS MAP HAS BEEN EXAMINED IN ACCORDANCE WITH SECTION 8766 OF THE PROFESSIONAL LAND SURVEYORS' ACT THIS 9<sup>th</sup> DAY OF JUNE, 2021.

*[Signature]*  
 LEONARD H. GABRIELSON, P.L.S. 7886  
 COUNTY SURVEYOR  
 SONOMA COUNTY, CALIFORNIA

PROFESSIONAL LAND SURVEYOR  
 No. L 7886  
 STATE OF CALIFORNIA

DEPUTY COUNTY SURVEYOR

**RECORDER'S STATEMENT**

FILED THIS 21<sup>st</sup> DAY OF JUNE, 2021, AT 9:08 AM, IN BOOK 822 OF MAPS AT PAGE(S) 6 AT THE REQUEST OF THE COUNTY SURVEYOR.

DEVA MARIE PROTO  
 COUNTY RECORDER  
 No. 2021066946  
 DOC. NO.  
 \$9.00  
 FEES

DEBRA HARMIER  
 DEPUTY COUNTY RECORDER

**CINQUINI & PASSARINO, INC.**  
 LAND SURVEYING

1360 No. Dutton Ave.  
 Santa Rosa, Ca. 95401  
 Phone: (707) 542-8288  
 Fax: (707) 542-2108  
 WWW.CINQUINIPASSARINO.COM

APN: 071-220-068 ROS 21-0031 SHEET 1 OF 1  
 CFI FILE NO. 8595-19

## Exhibit G

### No Legal Public Access at 17448 River Lane

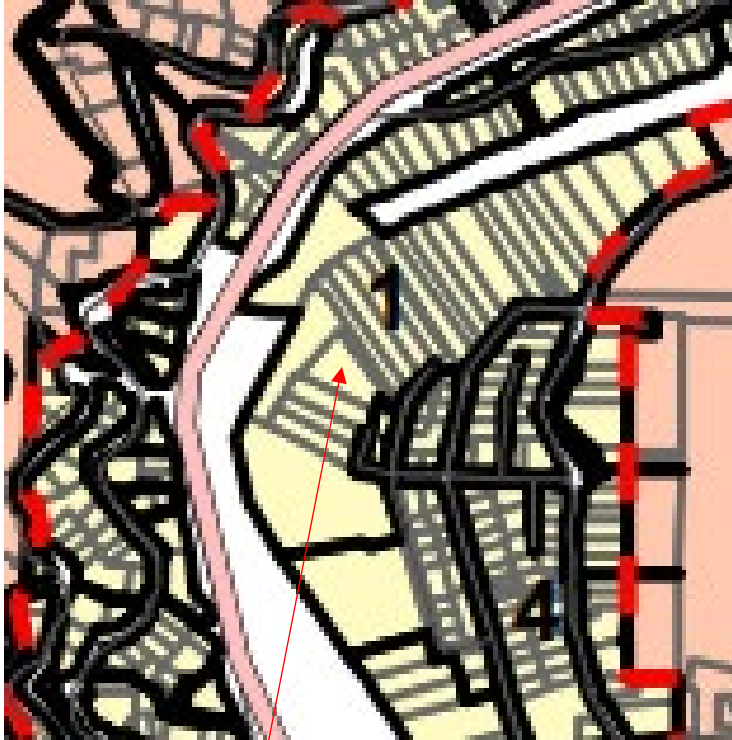




# Exhibit H

## Sonoma County General Plan: Land Use Map

Sonoma County General Plan Land Use Map of Guerneville: Close Up of the Vacation Beach Residential Sub-Division



17448 River Lane

Land Use Designations

Diverse Agriculture	
Land Extensive Agriculture	
Land Intensive Agriculture	
Resources & Rural Development	
Rural Residential	
Urban Residential	
Recreation / Visitor-Serving Commercial	
Public / Quasi-Public	
Limited Commercial	
Limited Industrial	
Urban Service Boundary	
Affordable Housing Combining District	
Planning Area Policy-Applies on Parcel	

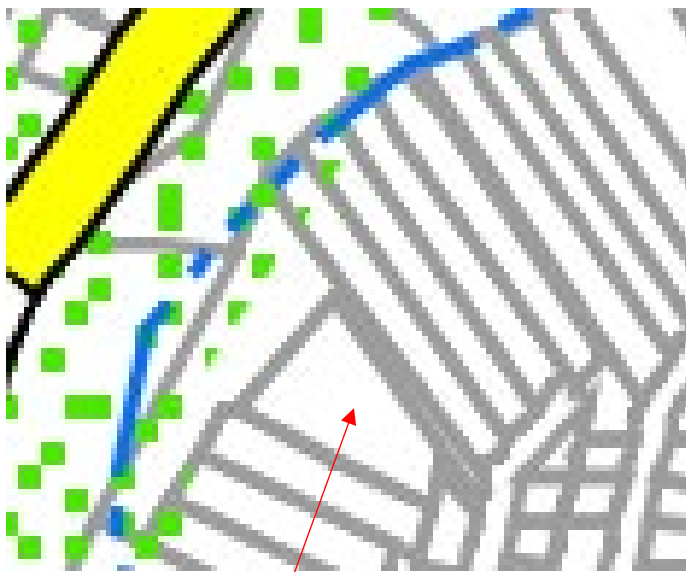
Numbers on Map Indicate Maximum Density in Acres / Unit, except Urban Residential where Numbers Indicate Units / Acre

# Exhibit I

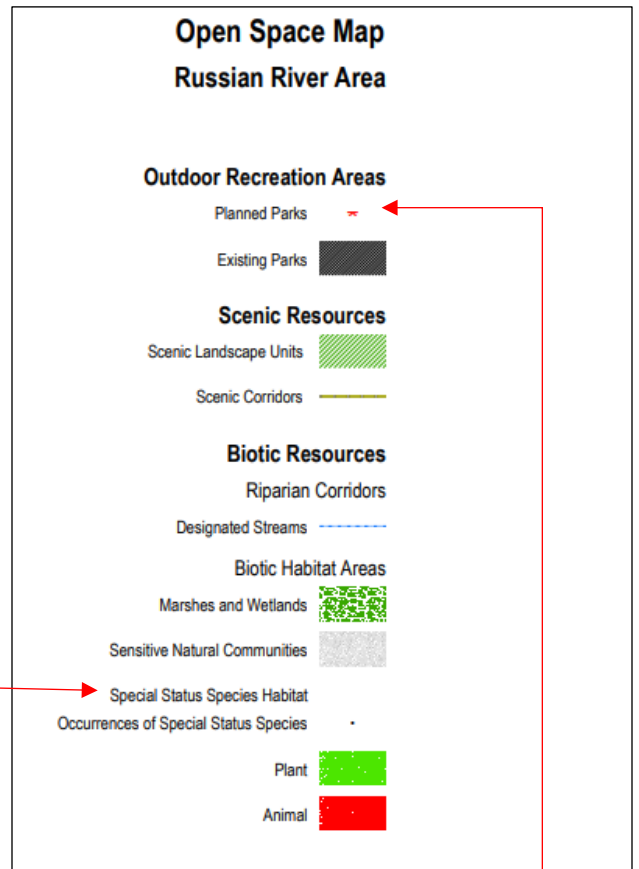
## Sonoma County Land General Plan Open Space and Resource Conservation Element Plan Map

Sonoma County General Plan 2020  
Open Space & Resource Conservation Element

Close Up of the Vacation Beach Residential Sub-Division



17448 River Lane



*Note: There are no planned parks in the Vacation Beach Residential Sub-Division.*

# Amendment Appeal #3

## Contents

- 1. PROHIBITIVE, R1 ZONING PRE-DATES 1961 ..... 2
- 2. US SUPREME COURT CASE LAW DOES NOT SUPPORT THE INCLUSION OF PRIVATE PROPERTY IN THE OOD FOR 17448 RIVER LANE ..... 2
- 3. ADDITIONAL INFORMATION REGARDING LIKELY EXPANSION OF USE/DENSITY ..... 3
- 4. CONCLUSIONS ..... 3
- 5. EXHIBITS ..... 4



This is the third amendment to our timely filed appeal of December 13, 2021. Appellants reserve the right to file additional amendments based on responses to requests for disclosure from relevant government agencies.

## 1. PROHIBITIVE, R1 ZONING PRE-DATES 1961

Paragraph 8, item 1 of the December 2021 OOD states, “*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 access trail. Prior to 1961, Ordinance 230 adopted in 1945, Section 7.1 classified unincorporated areas of the County not included under the terms of Ordinance 230 as UUnclassified 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. Therefore, prior to 1961 the use of the subject parcel as a ‘passive recreation area’ would not have required a Use Permit.*” This section of the OOD contains numerous errors and is not supported by information provided by Permit Sonoma in response to a request for disclosure.

1961 is not the “first designation of the property” as R1. A zoning map from 1928 is provided as Exhibit A was provided by Permit Sonoma. In 1928, 17448 River Lane is clearly identified as being zoned R1. Because of this zoning, Ordinance 230, Section 12.2 (a) (for unclassified districts) and Section 14.1 (b) (for agricultural districts) as cited in the OOD are not applicable.

Furthermore, the zoning map of 1928 shows an area zoned K (recreational) on lands south of River Lane, Thus, the use of 17448 River Lane prior to 1961 as a recreational area or as a public access trail would have required a zoning change in order for such use to be legal prior to 1961.

## 2. US SUPREME COURT CASE LAW DOES NOT SUPPORT THE INCLUSION OF PRIVATE PROPERTY IN THE OOD FOR 17448 RIVER LANE

1. See *Cedar Point Nursery v. Hassid*, No. 20-107 (S. Ct. June 23, 2021). In finding that California’s access regulation [Cal. Code Regs. tit. 8 § 20900(e)(1)(C)] constitutes a *per se* taking, the court found that when the government restricts an owner’s ability to use his own property, that is a taking.
2. *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987) *Nollan v. California Coastal Commission* states:
  - a. “Here, the Commission's imposition of the access easement condition cannot be treated as an exercise of land use regulation power... Of those put forth to justify it -- protecting the public's ability to see the beach, assisting the public in overcoming a perceived "psychological" barrier to using the beach, and preventing beach congestion -- none is plausible.”
  - b. “We have repeatedly held that, as to property reserved by its owner for private use, "the right to exclude [others is] *one of the most essential sticks in the bundle of rights that are commonly characterized as property.*” *Loretto v. Teleprompter Manhattan CATV Corp.*, [458 U. S. 419](#), [458 U. S. 433](#) (1982), quoting *Kaiser Aetna v. United States*, [444 U. S. 164](#), [444 U. S. 176](#) (1979).

- c. *"In Loretto, we observed that, where governmental action results in "[a] permanent physical occupation" of the property, by the government itself or by others, see 458 U.S. at 458 U. S. 432-433, n. 9, "our cases uniformly have found a taking to the extent of the occupation, without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner,"*

### **3. ADDITIONAL INFORMATION REGARDING LIKELY EXPANSION OF USE/DENSITY**

In addition to a large number of email/letters in support of a public river access at 17448 River Lane, there are at least 2 petitions circulating (1 online and 1 wet signature). At least 1 the petitions has in excess of 240 signatures. The impact of publicizing 17448 River Lane as a free, public access to the Russian River needs to be taken into consideration on expanded use/density.

### **4. CONCLUSIONS**

Pre-1961 prohibitive zoning voids any claims of pre-existing legal use.

The inclusion of private properties in its OOD for 17448 River Lane is a form of regulatory taking.

Expanded use/increased density is more than likely due to publicizing 17448 River Lane as free public access; this precludes the use of legal non-conforming use to achieve public access for recreational purposes.



## 5. EXHIBITS

## Exhibit A

### Close Up of Zoning Map of 1928 with Index



		912	A-E	(EXCLUSIVE AGRICULTURAL)
		943	H-1	HIGHWAY
		911	A <sup>AS</sup> (A <sup>2</sup> )	AGRICULTURE
		910	K	RECREATION
		912	R-R	RURAL RES.
		915	R-1	SINGLE FAMILY
		918	R-2	2 FAMILY
	3	946	R-3	GARDEN APTS.
	4	946	R-4	INTENSIVE MULTIPLE RES. AND PROFESSIONAL OFFICE DISTRICTS
		929	C-1	NEIGHBORHOOD BUSINESS DISTRICT RETAIL BUSINESS
		923	C-2	DISTRICT
	P	923	C-2-P	RETAIL BUSINESS DIST. - PARKING
		934	C-3	GENERAL COMMERCIAL
	P	934	C-3-P	GENERAL COMMERCIAL-PARKING
	1	932	M-1	LIGHT INDUSTRY
	2	932	M-2	HEAVY INDUSTRY
		941	P-C	PLANNED COMMUNITY
		942	R-R	WITH NUMBER REQUIRES SPECIAL CONDITIONS
	R-R-B-3 UN-COLORED	926	U <sup>AS</sup>	UNCLASSIFIED DISTRICT
			CR	NOW C-1 (NEIGH. COMM.) RESTRICTED COMMERCIAL

# Amendment Appeal #4

## Contents

- 1. ORDINANCES CITED IN THE OOD DO NOT SUPPORT LEGAL NON-CONFORMING USE ..... 2
- 2. CURRENT ORDINANCES DON'T SUPPORT LEGAL NON-CONFORMING USE..... 2

This is the fourth amendment to our timely filed appeal of December 13, 2021. Appellants reserve the right to file additional amendments based on responses to requests for disclosure from relevant government agencies.

## 1. ORDINANCES CITED IN THE OOD DO NOT SUPPORT LEGAL NON-CONFORMING USE

- a. Paragraph 2, of the December 2021 OOD states, “The Low-Density Residential base zone allows for parks and similar uses with a Use Permit pursuant to Section 26-20- 20(e) of the Zoning Code. “

The exact text of this cited section of the Zoning Code is as follows:

Sec. 26-20-020. - Animal product processing.



- A. Definition. Establishments engaged in the commercial butchering and processing of animals.
  1. Includes: Slaughterhouses; fat rendering; fish processing facilities.
- B. Standards.
  1. Must serve agriculture use in the local area.
  2. LIA, LEA, DA, zones: The size of the facility may not exceed the needs of the on-site animal production operation. (general plan policy AR-5c)
- C. Findings LIA, LEA, DA Zones. To approve an animal product processing facility in the LIA, LEA, or DA zone where animals are raised off-site, the review authority must find that the facility will be consistent with general plan policy AR-5g.

This code is obviously for animal product processing and not a public recreational facility, does not apply to 17448 River Lane based on historic and current zoning, nor does it have an item (e).

- b. Paragraph 2 of the December 2021 OOD states, “Section 26-02-140 of the Zoning Code does define park or trails. The proposed use of a beach access and trail is similar to a ‘park’ use in that trails and access points to a beach and/or the Russian River and/or a park are both reasonably used for recreation and therefore considered similar in nature.”

This ordinance was repealed in February of 2021, 10 months prior to the issuance of the December 2021 OOD.

- c. Paragraph 8, item 1 of the December OOD states, “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 access trail.”

Having established R1 zoning as far back as 1928 (See Appeal Amendment 3), a public trail on 17448 River Lane did/does require a use permit. Note: appellant is unable to locate Ordinance 698 under active Sonoma County Municipal Codes.

## 2. CURRENT ORDINANCES DON'T SUPPORT LEGAL NON-CONFORMING USE

In addition to ordinances referred to in previous amendments to the appeal, Ordinance 6335 which repealed Section 26-02-140 of the Zoning Code (see Item 1b above) and **not** cited in the December 2021 OOD requires a conditional use permit for public parks and playgrounds in an R1 zone (see Table 8.1 of Section 26-8-030 of Ordinance 6335, Allowed Land Uses).

**From:** [Rita August O'Flynn](#)  
**To:** [Marina Herrera](#)  
**Cc:** [Mark O'Flynn](#)  
**Subject:** RE: ORD19-0011; FW: 17448 River Ln-PLEASE ACKNOWLEDGE RECEIPT  
**Date:** Tuesday, March 31, 2020 11:41:07 AM

---

Dear Ms. Herrera,

I bring to your attention, the email below. As you will see, RRRPD has included a preliminary survey from the California State Lands Commission that was not intended for public use in their application. I believe this was done in order to establish access from the land locked, subject property to river fronted, adjacent properties via the Public Trust Doctrine. The preliminary status of the California State Lands Commission's survey has been confirmed by their legal counsel (see below). A request to RRRPD to remove a letter from the California State Lands Commission of 7 March 2017 with all accompanying attachments, from their application has been ignored. With this email, I am asking that the letter of 7 March 2017, accompanying attachments, as well as any and all other references to an Ordinary Highwater Mark or to access under the Public Trust Doctrine be removed from consideration of this application for non-conforming use.

With Kind Regard,

Rita O'Flynn

---

**From:** Rita August O'Flynn  
**Sent:** Monday, December 2, 2019 10:26 AM  
**To:** 'Paige MacDonell' <rec.park@gmail.com>  
**Cc:** 'Yolanda.Solano@sonoma-county.org' <Yolanda.Solano@sonoma-county.org>; 'Dan.Cahill@sonoma-county.org' <Dan.Cahill@sonoma-county.org>; 'Ed Fortner' <efortner@sweetwatersprings.com>; 'Garrett, Jamie@SLC' <Jamie.Garrett@slc.ca.gov>; Mark O'Flynn <markoflynn@msn.com>  
**Subject:** RE: 17448 River Ln

Dear Ms. McDonnell,

Thank you for forwarding the application for non-conforming use of the Sweetwater Springs Property on River Lane, in Guerneville, CA.

The application includes a survey conducted by California State Lands Commission on 26 July 2016. Page 2, paragraph 4 of this survey states: "THIS PLAT HAS NOT BEEN APPROVED BY THE STATE LANDS COMMISSION AND DOES NOT CONSTITUTE AN OFFICIAL PLAT OF SUCH COMMISSION. NOR DOES IT ESTABLISH THE BOUNDARY LINES ON ANY STATE-OWNED LANDS DEPICTED HEREON".



The survey further states, "THIS PLAT CONSTITUTES A PRELIMINARY STAFF-USE-ONLY PLAT NOT INTENDED FOR PUBLIC USE/CONSUPTION AND IS SUBJECT TO CHANGE".

The unapproved and preliminary status of this survey has been confirmed by the CSLC legal representative, Jamie Garrett, in an email (see below), subsequent to the letter of Brian Bugsch dated 7 March 2017 you included in your application.

## RE: OHWM Topographical Survey, Vacation Beach, Russian River, Guerneville ...



Garrett, Jamie@SLC <Jamie.Garrett@slc.ca.gov>  
To: Mark O'Flynn  
Cc: Rita O'Flynn



6/4/2019

Hi Mark,

Apologies for the delay. You are correct that the survey conducted by CSLC staff was not taken to our Commission for approval. It is my understanding that the note you referenced is a standard note for our surveyor's work product. Typically we would remove this note if we were to use the survey as an exhibit to an action to establish a boundary such as a title settlement agreement or quiet title judgment.

Best,  
Jamie

Given the unapproved, preliminary status of the CSLC survey and prohibition on its distribution, you are kindly requested to remove the survey and accompanying Busch letter from your application within the next 10 working days.

Additionally, please cease and desist from making any further claims to our property under the Public Trust Act until such a claim has been legally established.

As always, we are available to discuss,

Rita O'Flynn

CC: Mark O'Flynn

Ed Fortner, Sweetwater Springs  
Dan Cahill, Sonoma County PRMD  
Yolanda Solano, Sonoma County PRMD  
Jamie Garrett, California State Lands Commission

---

**From:** Paige MacDonell <[rec.park@gmail.com](mailto:rec.park@gmail.com)>  
**Sent:** Friday, November 22, 2019 4:28 PM  
**To:** Rita August O'Flynn <[Rita\\_August@msn.com](mailto:Rita_August@msn.com)>  
**Subject:** 17448 River Ln

Our district has submitted an application for a legal non conforming use at 17448 River Ln.

Attached is the application for your records.

Paige MacDonell | Administrator  
Russian River Recreation & Park District  
Office 707.869.9184  
[rec.park@gmail.com](mailto:rec.park@gmail.com)  
[www.russianriverrecrepark.org](http://www.russianriverrecrepark.org)

**Please Note:** The Russian River Recreation & Park District is subject to the California Public Records Act and cannot guarantee the confidentiality of messages submitted through this form.

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**From:** [Marina Herrera](#)  
**To:** ["Rita August O'Flynn"](#)  
**Subject:** RE: ORD19-001: Additional Objections, Non-Conforming Use and CEQA Requirements  
**Date:** Friday, September 4, 2020 11:47:36 AM

---

Hello Rita,

I hope this email finds you well & healthy! I apologize for my delayed response, I work Emergency Response for the County and my inbox was inundated after working the recent fires.

Thank you for your email. This message has been added to the public record for the project.

At this time the project is still in process and PRMD has not made a final determination.

Please feel free to inquire at a later date.

Stay safe & be well,

*Marina Herrera*

Planner II

[www.PermitSonoma.org](http://www.PermitSonoma.org)

County of Sonoma

2550 Ventura Avenue, Santa Rosa, CA 95403

Direct: 707-565-2397 |

Office: 707-565-1900 | Fax: 707-565-1103

**OFFICE HOURS:** *Permit Sonoma's public lobby is open Monday through Friday from 8:00 AM to 4:00 PM, except Wednesday's: open from 10:30 AM to 4:00 PM.*

---

**From:** Rita August O'Flynn <Rita\_August@msn.com>

**Sent:** Friday, August 21, 2020 4:38 PM

**To:** Tennis Wick <Tennis.Wick@sonoma-county.org>; Marina Herrera <Marina.Herrera@sonoma-county.org>

**Cc:** William.Keene@sonoma-county.org; Jennifer Kuszmar <Jennifer.Kuszmar@sonoma-county.org>; Paige MacDonell <rec.park@gmail.com>; Mark O'Flynn <markoflynn@msn.com>

**Subject:** ORD19-001: Additional Objections, Non-Conforming Use and CEQA Requirements

Good Afternoon,

I have conducted additional research regarding the above referenced application and am adding the following objections, which I believe to be true, to those I have previously submitted.

1. *In order for PRMD to consider RRRPDs application for legal non-conforming use, the use must have existed **lawfully** before the current zoning ordinance became effective. In other words, unless it can be shown that the property was at one time zoned for recreational use or that it was used for recreational purposes before the implementation of zoning codes, the application for legal non-conforming use cannot be*

*granted. Nothing provided by RRRPD in its application shows that recreational use of this property was ever legal from a zoning standpoint or not subject to zoning at the time illegal use began.*

- 2. As to CEQA, its applicability is dependent upon meeting the criteria for a "project". A project is defined as the whole of an action that has the potential to result in a direct or reasonably foreseeable indirect physical change in the environment, **and that involves issuance of a lease, permit, or other entitlement for use by a public agency.** 14 Cal Code Regs §15378(a). Here, it is reasonably foreseeable that the increased presence of recreators has the potential to result in change to the environment along an already environmentally impaired river (per the EPA); an appropriate Environmental Review probably should have accompanied the application. Regardless, should PRMD grant a permit for legal non-conforming use, the property will then meet the definition project under CEQA, subject to all requirements for Environmental Review.*

Also, may I please have an update on the status of this application?

With Kind Regards,

Rita O'Flynn  
415-260-7608

Sent from [Mail](#) for Windows 10

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**Warning:** If you don't know this email sender or the email is unexpected, **do not** click any web links, attachments, and **never** give out your user ID or password.

**From:** [Paige MacDonell](#)  
**To:** [Hannah Spencer](#)  
**Cc:** [Ed Fortner](#)  
**Subject:** legal non conforming application  
**Date:** Thursday, January 9, 2020 4:37:09 PM

---

Hi Hannah,

Just a note to address recent correspondence regarding our application.

- Our district is well aware of the riparian corridor ordinance.
- Our district currently applies for permits from Army Corp of Engineers, Sonoma County Water Control Board, Department of Fish & Wildlife, State of California and County of Sonoma for various permits when applicable and is well versed in the process and necessity.
- The State of California has made a determination at 17448 River Ln whether preliminary or not and our district is not mis-representing this information.
- 17448 River Ln has been an access for the public since 1940's as evidenced in letters in our application and closing it would be detrimental to the neighborhood and fishing community.
- Sweetwater Springs Water District plans to surplus this property and would like to see it continued as public use as it has been.
- This parcel is a buildable lot so if sold privately it would likely be developed. Our purchase comes with a conservation easement from Open Space with strict restrictions about maintaining the natural resources.
- The lower Russian River area is suffering from a lack of public access and needs more not less.
- Privatizing long standing easements along our corridor is happening on a regular basis by fencing, signage and scare tactics.
- 17448 River Ln has always been public and should remain public.

thank you,

**Paige MacDonell** | Administrator  
Russian River Recreation & Park District  
Office 707.869.9184  
email [rec.park@gmail.com](mailto:rec.park@gmail.com)  
[www.russianriverrecpark.org](http://www.russianriverrecpark.org)

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Sonoma County Permit Resource Management Department (PRMD)

Re: Application for Legal Non-Conforming Use at 17448 River Lane, Guerneville, CA 95446 (“subject property”) to convert a residentially zoned property (R1) into a river front recreational area-Change in Land Use

Dear Hannah,

The Russian River Recreation and Parks District (RRRPD) has been asked to remove any references to the Ordinary Highwater Mark from its application as this has not been legally established (documentation provided to T.Wick, Sonoma County PRMD, on 2 December 2019). Any land use considerations made by PRMD must be limited to the subject property only and exclude any references to the Public Trust Doctrine.

Here are some of the objections and issues with the above referenced application. Additional objections, such as objection to the CEQA exemption, may be presented later.

#### **1) INADEQUATE NOTIFICATION OF/APPROVAL BY KEY, REGULATORY STAKEHOLDERS.**

The Russian River Recreation and Parks District and Sweetwater Springs Water District (herein after to be referred to as “Applicants”) should have engaged the following agencies prior to submitting a request for a non-conforming use. Approval from these agencies should supersede any approval by PRMD.

- a) Army Corps of Engineers:** The Army Corps of Engineers (ACE) has jurisdiction of non-tidal, navigable waters as authorized under Section 404 of the Clean Water Act. A permit or finding of “no adverse effect” from ACE is required before the Applicants pursue a change in land use that is compliant with Federal law.
- b) Native American Heritage Commission:** Because ACE is a federal agency, it must act in accordance with Section 106 of the National Historic Preservation Act (NHPA) and the NHPA’s implementing regulations, 36 CFR 800.4. The Applicants need to consult with the Native American Heritage Commission. Consultation may result in the Applicant’s need to secure a cultural report or cultural inventory in order to secure a permit or finding of “no adverse effect” from ACE.
- c) California Fish and Wildlife:** California Fish and Wildlife (CFW) is also a regulatory stake holder. The subject property is in an area classified as a “Critical Habitat Zone” by the US Fish and Wildlife Department and a permit may be required for recreational use at this location. At a minimum, a finding of “no adverse effect” may be necessary in order to proceed with the application for legalizing a non-conforming use.
- d) The North Coast Regional Water Quality Board:** The North Coast Regional Water Quality Board (NCRWQB) has jurisdiction over the subject property under Section 401 of the Clean Water Act. The Russian River at the subject property is an “Impaired Water”

due to pathogen indicators bacteria concentrations exceeding water quality standards. NCRWQB has identified recreational use as a source of bacterial contamination.

The Applicants must apply to the NCRWQB for a permit to change the use from residential to recreational before proceeding with the application for legalizing a non-conforming use.

**2) INADEQUATE NOTIFICATION OF ADJACENT PROPERTY OWNERS**

The Applicants have routinely failed to notify adjacent, **riverfront owners** of their intentions regarding the subject property and have misrepresented objections to its plans by such property owners. Objections to grant funding for the purchase of the subject property were raised by multiple, riverfront property owners (available upon request) and will most likely be raised again should proper notice be provided regarding the application for recreational use at the subject property.

**3)**

**a)**

*the Zoning Ordinance of the County of Sonoma, California, as it now exists or may hereafter be amended.”*

**b)**

Amendments to both plans would be required in order to change the land use at the subject property.

**4) DISPOSAL OF HUMAN WASTE IN ACCORDANCE WITH THE CLEAN WATER ACT IS NOT ADDRESSED BY THE APPLICANTS**

In response to the application query: “Sewage disposal”, the Applicants replied, “None”.

As noted above, the Russian River is classified as an impaired river under the Clean Water Act. To address this, the NCRWQB has sewage management requirements under its Total Daily Maximum Load (TDML) Plan that must be adhered to. Sonoma county, as part of its Letter of Understanding with the NCRWQB, enforces the TDML Plan. A sewage disposal system that is in compliance with the TDML Plan will be needed in order for PRMD to consider any application for non-conforming use.

**5) MATERIAL MISREPRESENTATION OF THE PROXIMITY OF THE SUBJECT PROPERTY TO WATERWAYS**

In response to the application query: “proximity to creeks, waterways, and impoundment areas”, the Applicants replied “100 + ft to Russian River”. The property is directly adjacent to the Russian River and subject to setbacks per the Sonoma County General Plan and Sonoma county zoning ordinances regarding riparian corridors and biotic resource zones.



Many of these setbacks apply to projects less than 100 ft from the Russian River. Additionally, the applicants have failed to identify a neighborhood storm water culvert traversing the subject property as would be appropriate when responding to this query.

**6) THE APPLICANTS PRESENT A LACK OF KNOWLEDGE OF AND APPRECIATION OF THE SUBJECT PROPERTY AS A RIPARIAN CORRIDOR AND BIOTIC HABITAT ZONE**

In response to the application query: “Vegetation on site”, Applicants replied, “Native & non-native species-dense”. In response to the query, “Vegetation to be removed; Applicants replied, “None at this time” which implies there will be removal of vegetation at a later time.

The classification of the subject property as a riparian corridor and biotic resource zone should require a survey of native and non-native species before proceeding with the application. At a minimum, a vegetation plan must accompany the application for non-conforming use (per telephone conversation with Yolanda Solano on 18 October 2019). A full conservation plan, such as that required of Patterson Point Preserve may be required.

**7) THE APPLICANTS HAVE DISREGARDED THE POTENTIAL FOR CATASTROPHIC FIRE OUTCOMES**

In response to the application query: “Fire safety information (existing/proposed water tanks, hydrants, emergency access and turnaround, building materials, etc.)”; the Applicants replied, “Unknown”.

Considering the county’s recent history with catastrophic fires, forced evacuations from the area adjacent to the subject property, and the single evacuation route from the area (Neeley Road), the response of “unknown” is unacceptable and should be addressed before proceeding with the application.

**8) THE APPLICANTS HAVE NOT DONE THE DUE DILIGENCE REGARDING DENSITY, PARKING, AND ACCESS**

In response to the application query: “Number of vehicles per day: Passenger”, the Applicants replied, “Unknown-Public”.

The Forestville access/Mother’s Beach is a prime example of what happens when overuse overwhelms existing resources and, without conducting studies on actual use, the Applicants don’t know what impact of density (including pedestrian) and parking (or lack thereof) may have on fire control and evacuations. An independent survey should be performed before proceeding with the application.

RRRPD has 8 river recreational public accesses along the Russian River, including 2 within ½ mile of the subject property. Additionally, there will soon be another public access to the at Dubrava Beach that is less than 1/4mile upriver from the subject property. There is no deprivation of river access for local residents by denying the permit for non-conforming use and the risk of harm to this fragile environment outweighs any benefit that may be claimed.

It is requested that PRMD reject the application for non-conforming use based the ample grounds provided above. Also, as a means of mitigating further environmental damage, we request that the current owner of the subject property be restricted from any and all unregulated use of the property until the issues associated with this application have been addressed.

With Kind Regards,

Rita O'Flynn

Sonoma County Permit Resource Management Department (PRMD)

Re: Application for Legal Non-Conforming Use at 17448 River Lane, Guerneville, CA 95446 (“subject property”) to convert a residentially zoned property (R1) into a river front recreational area-Change in Land Use

Dear Hannah,

The Russian River Recreation and Parks District (RRRPD) has been asked to remove any references to the Ordinary Highwater Mark from its application as this has not been legally established (documentation provided to T.Wick, Sonoma County PRMD, on 2 December 2019). Any land use considerations made by PRMD must be limited to the subject property only and exclude any references to the Public Trust Doctrine.

Here are some of the objections and issues with the above referenced application. Additional objections, such as objection to the CEQA exemption, may be presented later.

#### **1) INADEQUATE NOTIFICATION OF/APPROVAL BY KEY, REGULATORY STAKEHOLDERS.**

The Russian River Recreation and Parks District and Sweetwater Springs Water District (herein after to be referred to as “Applicants”) should have engaged the following agencies prior to submitting a request for a non-conforming use. Approval from these agencies should supersede any approval by PRMD.

- a) Army Corps of Engineers:** The Army Corps of Engineers (ACE) has jurisdiction of non-tidal, navigable waters as authorized under Section 404 of the Clean Water Act. A permit or finding of “no adverse effect” from ACE is required before the Applicants pursue a change in land use that is compliant with Federal law.
- b) Native American Heritage Commission:** Because ACE is a federal agency, it must act in accordance with Section 106 of the National Historic Preservation Act (NHPA) and the NHPA’s implementing regulations, 36 CFR 800.4. The Applicants need to consult with the Native American Heritage Commission. Consultation may result in the Applicant’s need to secure a cultural report or cultural inventory in order to secure a permit or finding of “no adverse effect” from ACE.
- c) California Fish and Wildlife:** California Fish and Wildlife (CFW) is also a regulatory stake holder. The subject property is in an area classified as a “Critical Habitat Zone” by the US Fish and Wildlife Department and a permit may be required for recreational use at this location. At a minimum, a finding of “no adverse effect” may be necessary in order to proceed with the application for legalizing a non-conforming use.
- d) The North Coast Regional Water Quality Board:** The North Coast Regional Water Quality Board (NCRWQB) has jurisdiction over the subject property under Section 401 of the Clean Water Act. The Russian River at the subject property is an “Impaired Water”

due to pathogen indicators bacteria concentrations exceeding water quality standards. NCRWQB has identified recreational use as a source of bacterial contamination.

The Applicants must apply to the NCRWQB for a permit to change the use from residential to recreational before proceeding with the application for legalizing a non-conforming use.

**2) INADEQUATE NOTIFICATION OF ADJACENT PROPERTY OWNERS**

The Applicants have routinely failed to notify adjacent, **riverfront owners** of their intentions regarding the subject property and have misrepresented objections to its plans by such property owners. Objections to grant funding for the purchase of the subject property were raised by multiple, riverfront property owners (available upon request) and will most likely be raised again should proper notice be provided regarding the application for recreational use at the subject property.

**3) LAND USE CHANGE UNDER HISTORIC USE IS INCOMPATIBLE WITH THE SONOMA COUNTY GENERAL PLAN AND THE RUSSIAN RIVER DEVELOPMENT PLAN**

a) Zoning ordinances prevents the granting of the application under any claims of historic use. Per the Russian River Development Plan, PRMD must use current zoning ordinances when considering the Applicants' application for non-conforming use. *"This plan defines zoning ordinance as **the Zoning Ordinance of the County of Sonoma, California, as it now exists** or may hereafter be amended."*

b) Per plan maps, the subject property is in a riparian corridor and biotic habitat zone, and it is designated as an "urban residential" only area.

Amendments to both plans would be required in order to change the land use at the subject property.

**4) DISPOSAL OF HUMAN WASTE IN ACCORDANCE WITH THE CLEAN WATER ACT IS NOT ADDRESSED BY THE APPLICANTS**

In response to the application query: "Sewage disposal", the Applicants replied, "None".

As noted above, the Russian River is classified as an impaired river under the Clean Water Act. To address this, the NCRWQB has sewage management requirements under its Total Daily Maximum Load (TDML) Plan that must be adhered to. Sonoma county, as part of its Letter of Understanding with the NCRWQB, enforces the TDML Plan. A sewage disposal system that is in compliance with the TDML Plan will be needed in order for PRMD to consider any application for non-conforming use.

**5) MATERIAL MISREPRESENTATION OF THE PROXIMITY OF THE SUBJECT PROPERTY TO WATERWAYS**

In response to the application query: "proximity to creeks, waterways, and impoundment areas", the Applicants replied "100 + ft to Russian River". The property is directly adjacent to the Russian River and subject to setbacks per the Sonoma County General Plan and Sonoma county zoning ordinances regarding riparian corridors and biotic resource zones.

Many of these setbacks apply to projects less than 100 ft from the Russian River. Additionally, the applicants have failed to identify a neighborhood storm water culvert traversing the subject property as would be appropriate when responding to this query.

**6) THE APPLICANTS PRESENT A LACK OF KNOWLEDGE OF AND APPRECIATION OF THE SUBJECT PROPERTY AS A RIPARIAN CORRIDOR AND BIOTIC HABITAT ZONE**

In response to the application query: “Vegetation on site”, Applicants replied, “Native & non-native species-dense”. In response to the query, “Vegetation to be removed; Applicants replied, “None at this time” which implies there will be removal of vegetation at a later time.

The classification of the subject property as a riparian corridor and biotic resource zone should require a survey of native and non-native species before proceeding with the application. At a minimum, a vegetation plan must accompany the application for non-conforming use (per telephone conversation with Yolanda Solano on 18 October 2019). A full conservation plan, such as that required of Patterson Point Preserve may be required.

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In response to the application query: “Fire safety information (existing/proposed water tanks, hydrants, emergency access and turnaround, building materials, etc.)”; the Applicants replied, “Unknown”.

Considering the county’s recent history with catastrophic fires, forced evacuations from the area adjacent to the subject property, and the single evacuation route from the area (Neeley Road), the response of “unknown” is unacceptable and should be addressed before proceeding with the application.

**8) THE APPLICANTS HAVE NOT DONE THE DUE DILIGENCE REGARDING DENSITY, PARKING, AND ACCESS**

In response to the application query: “Number of vehicles per day: Passenger”, the Applicants replied, “Unknown-Public”.

The Forestville access/Mother’s Beach is a prime example of what happens when overuse overwhelms existing resources and, without conducting studies on actual use, the Applicants don’t know what impact of density (including pedestrian) and parking (or lack thereof) may have on fire control and evacuations. An independent survey should be performed before proceeding with the application.

RRRPD has 8 river recreational public accesses along the Russian River, including 2 within ½ mile of the subject property. Additionally, there will soon be another public access to the at Dubrava Beach that is less than 1/4mile upriver from the subject property. There is no deprivation of river access for local residents by denying the permit for non-conforming use and the risk of harm to this fragile environment outweighs any benefit that may be claimed.

It is requested that PRMD reject the application for non-conforming use based the ample grounds provided above. Also, as a means of mitigating further environmental damage, we request that the current owner of the subject property be restricted from any and all unregulated use of the property until the issues associated with this application have been addressed.

With Kind Regards,

Rita O'Flynn

**From:** [Rita August O'Flynn](#)  
**To:** [Marina Herrera](#)  
**Cc:** [Mark O'Flynn](#)  
**Subject:** RE: ORD19-001  
**Date:** Thursday, October 22, 2020 4:29:29 PM  
**Attachments:** [SD 2014-08-13.7 Letter 9 25 20.pdf](#)

---

Dear Ms. Herrera,

I hope this email finds you well. I am attaching a recent letter from the California State Lands Commission correcting the Ordinary Highwater Mark (OHWM) on the property referred to in ORD19-001.

The California State Lands Commission had determined that the OHWM sits well below the waterward boundary of the property. This precludes any direct access to the Russian River from the property under the Public Trust Doctrine. I kindly ask that this letter be included in the file for ORD19-001.

With Kind Regards,

Rita O'Flynn  
415-260-7608

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**From:** [Rita August O'Flynn](#)  
**To:** [Hannah Spencer](#); [Rita August O'Flynn](#)  
**Cc:** [Mark O'Flynn](#); [Ed Fortner](#); [Paige MacDonell](#)  
**Subject:** RE: ORD19-0011 (071-220-068)  
**Date:** Tuesday, January 7, 2020 6:19:06 PM  
**Attachments:** [Objections to Legalization of Non-Conforming Use Application.docx](#)

---

Dear Ms. Spencer,

Thank you for your response. There are objections to the above referenced application that have been detailed in the attached document and outlined below that should be taken into consideration when reviewing the application for non-conforming use.

- 1. INADEQUATE NOTIFICATION OF/APPROVAL BY KEY, REGULATORY STAKEHOLDERS.**
  - a. **Army Corps of Engineers**
  - b. **Native American Heritage Commission**
  - c. **California Fish and Wildlife**
  - d. **The North Coast Regional Water Quality Board**
- 2. INADEQUATE NOTIFICATION OF ADJACENT PROPERTY OWNERS**
- 3. LAND USE CHANGE UNDER HISTORIC USE IS INCOMPATIBLE WITH THE SONOMA COUNTY GENERAL PLAN AND THE RUSSIAN RIVER DEVELOPMENT PLAN**
- 4) DISPOSAL OF HUMAN WASTE IN ACCORDANCE WITH THE CLEAN WATER ACT IS NOT ADDRESSED BY THE APPLICANTS**
- 5. MATERIAL MISREPRESENTATION OF THE PROXIMITY OF THE SUBJECT PROPERTY TO WATERWAYS**
- 6) THE APPLICANTS PRESENT A LACK OF KNOWLEDGE OF AND APPRECIATION OF THE SUBJECT PROPERTY AS A RIPARIAN CORRIDOR AND BIOTIC HABITAT ZONE**
- 7) THE APPLICANTS HAVE DISREGARDED THE POTENTIAL FOR CATASTROPHIC FIRE OUTCOMES**
- 8) THE APPLICANTS HAVE NOT DONE THE DUE DILIGENCE REGARDING DENSITY, PARKING, AND ACCESS**

With Kind Regards,

Rita O'Flynn  
415-260-7608

---

**From:** Hannah Spencer  
**Sent:** Monday, January 6, 2020 11:56 AM  
**To:** 'Rita August O'Flynn'  
**Subject:** RE: ORD19-0011 (071-220-068)

Hi Rita, we have no update on this application yet. It will be processed in the order it was received. Since you are listed as an interested party on this application, you will receive a copy of Permit Sonoma's determination for approval or denial the same day we mail it to the applicant.  
-Hannah

---

**From:** Rita August O'Flynn <[rita\\_august@msn.com](mailto:rita_august@msn.com)>  
**Sent:** 06 January, 2020 9:39 AM  
**To:** Kyle Rabellino <[Kyle.Rabellino@sonoma-county.org](mailto:Kyle.Rabellino@sonoma-county.org)>; Hannah Spencer



<[Hannah.Spencer@sonoma-county.org](mailto:Hannah.Spencer@sonoma-county.org)>

**Subject:** RE: ORD19-0011 (071-220-068)

Happy New Year. I am writing to see if there are any updates regarding the status of this application.

Rita O'Flynn

415-260-76-8

Sent from [Mail](#) for Windows 10

---

**From:** [Kyle Rabellino](#)

**Sent:** Tuesday, December 24, 2019 11:19 AM

**To:** [Hannah Spencer](#)

**Cc:** '[rita\\_august@msn.com](mailto:rita_august@msn.com)'

**Subject:** ORD19-0011 (071-220-068)

Hey Hannah,

Rita (cced) reached out to me about this ORD19-0011 for a status update. I know that we typically work with code enforcement on these, but by chance do you know who it might be assigned to? It's for a legal nonconforming determination for a park along Russian River. Thank you!

Kyle Rabellino

Planner III

707-565-7383

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Sonoma County Permit Resource Management Department (PRMD)

Re: Application for Legal Non-Conforming Use at 17448 River Lane, Guerneville, CA 95446 (“subject property”) to convert a residentially zoned property (R1) into a river front recreational area-Change in Land Use

Dear Hannah,

The Russian River Recreation and Parks District (RRRPD) has been asked to remove any references to the Ordinary Highwater Mark from its application as this has not been legally established (documentation provided to T.Wick, Sonoma County PRMD, on 2 December 2019). Any land use considerations made by PRMD must be limited to the subject property only and exclude any references to the Public Trust Doctrine.

Here are some of the objections and issues with the above referenced application. Additional objections, such as objection to the CEQA exemption, may be presented later.

#### **1) INADEQUATE NOTIFICATION OF/APPROVAL BY KEY, REGULATORY STAKEHOLDERS.**

The Russian River Recreation and Parks District and Sweetwater Springs Water District (herein after to be referred to as “Applicants”) should have engaged the following agencies prior to submitting a request for a non-conforming use. Approval from these agencies should supersede any approval by PRMD.

- a) Army Corps of Engineers:** The Army Corps of Engineers (ACE) has jurisdiction of non-tidal, navigable waters as authorized under Section 404 of the Clean Water Act. A permit or finding of “no adverse effect” from ACE is required before the Applicants pursue a change in land use that is compliant with Federal law.
- b) Native American Heritage Commission:** Because ACE is a federal agency, it must act in accordance with Section 106 of the National Historic Preservation Act (NHPA) and the NHPA’s implementing regulations, 36 CFR 800.4. The Applicants need to consult with the Native American Heritage Commission. Consultation may result in the Applicant’s need to secure a cultural report or cultural inventory in order to secure a permit or finding of “no adverse effect” from ACE.
- c) California Fish and Wildlife:** California Fish and Wildlife (CFW) is also a regulatory stake holder. The subject property is in an area classified as a “Critical Habitat Zone” by the US Fish and Wildlife Department and a permit may be required for recreational use at this location. At a minimum, a finding of “no adverse effect” may be necessary in order to proceed with the application for legalizing a non-conforming use.
- d) The North Coast Regional Water Quality Board:** The North Coast Regional Water Quality Board (NCRWQB) has jurisdiction over the subject property under Section 401 of the Clean Water Act. The Russian River at the subject property is an “Impaired Water”

due to pathogen indicators bacteria concentrations exceeding water quality standards. NCRWQB has identified recreational use as a source of bacterial contamination.

The Applicants must apply to the NCRWQB for a permit to change the use from residential to recreational before proceeding with the application for legalizing a non-conforming use.

**2) INADEQUATE NOTIFICATION OF ADJACENT PROPERTY OWNERS**

The Applicants have routinely failed to notify adjacent, **riverfront owners** of their intentions regarding the subject property and have misrepresented objections to its plans by such property owners. Objections to grant funding for the purchase of the subject property were raised by multiple, riverfront property owners (available upon request) and will most likely be raised again should proper notice be provided regarding the application for recreational use at the subject property.

**3) LAND USE CHANGE UNDER HISTORIC USE IS INCOMPATIBLE WITH THE SONOMA COUNTY GENERAL PLAN AND THE RUSSIAN RIVER DEVELOPMENT PLAN**

a) Zoning ordinances prevents the granting of the application under any claims of historic use. Per the Russian River Development Plan, PRMD must use current zoning ordinances when considering the Applicants' application for non-conforming use. *"This plan defines zoning ordinance as **the Zoning Ordinance of the County of Sonoma, California, as it now exists** or may hereafter be amended."*

b) Per plan maps, the subject property is in a riparian corridor and biotic habitat zone, and it is designated as an "urban residential" only area.

Amendments to both plans would be required in order to change the land use at the subject property.

**4) DISPOSAL OF HUMAN WASTE IN ACCORDANCE WITH THE CLEAN WATER ACT IS NOT ADDRESSED BY THE APPLICANTS**

In response to the application query: "Sewage disposal", the Applicants replied, "None".

As noted above, the Russian River is classified as an impaired river under the Clean Water Act. To address this, the NCRWQB has sewage management requirements under its Total Daily Maximum Load (TDML) Plan that must be adhered to. Sonoma county, as part of its Letter of Understanding with the NCRWQB, enforces the TDML Plan. A sewage disposal system that is in compliance with the TDML Plan will be needed in order for PRMD to consider any application for non-conforming use.

**5) MATERIAL MISREPRESENTATION OF THE PROXIMITY OF THE SUBJECT PROPERTY TO WATERWAYS**

In response to the application query: "proximity to creeks, waterways, and impoundment areas", the Applicants replied "100 + ft to Russian River". The property is directly adjacent to the Russian River and subject to setbacks per the Sonoma County General Plan and Sonoma county zoning ordinances regarding riparian corridors and biotic resource zones.

Many of these setbacks apply to projects less than 100 ft from the Russian River. Additionally, the applicants have failed to identify a neighborhood storm water culvert traversing the subject property as would be appropriate when responding to this query.

**6) THE APPLICANTS PRESENT A LACK OF KNOWLEDGE OF AND APPRECIATION OF THE SUBJECT PROPERTY AS A RIPARIAN CORRIDOR AND BIOTIC HABITAT ZONE**

In response to the application query: “Vegetation on site”, Applicants replied, “Native & non-native species-dense”. In response to the query, “Vegetation to be removed; Applicants replied, “None at this time” which implies there will be removal of vegetation at a later time.

The classification of the subject property as a riparian corridor and biotic resource zone should require a survey of native and non-native species before proceeding with the application. At a minimum, a vegetation plan must accompany the application for non-conforming use (per telephone conversation with Yolanda Solano on 18 October 2019). A full conservation plan, such as that required of Patterson Point Preserve may be required.

**7) THE APPLICANTS HAVE DISREGARDED THE POTENTIAL FOR CATASTROPHIC FIRE OUTCOMES**

In response to the application query: “Fire safety information (existing/proposed water tanks, hydrants, emergency access and turnaround, building materials, etc.)”; the Applicants replied, “Unknown”.

Considering the county’s recent history with catastrophic fires, forced evacuations from the area adjacent to the subject property, and the single evacuation route from the area (Neeley Road), the response of “unknown” is unacceptable and should be addressed before proceeding with the application.

**8) THE APPLICANTS HAVE NOT DONE THE DUE DILIGENCE REGARDING DENSITY, PARKING, AND ACCESS**

In response to the application query: “Number of vehicles per day: Passenger”, the Applicants replied, “Unknown-Public”.

The Forestville access/Mother’s Beach is a prime example of what happens when overuse overwhelms existing resources and, without conducting studies on actual use, the Applicants don’t know what impact of density (including pedestrian) and parking (or lack thereof) may have on fire control and evacuations. An independent survey should be performed before proceeding with the application.

RRRPD has 8 river recreational public accesses along the Russian River, including 2 within ½ mile of the subject property. Additionally, there will soon be another public access to the at Dubrava Beach that is less than 1/4mile upriver from the subject property. There is no deprivation of river access for local residents by denying the permit for non-conforming use and the risk of harm to this fragile environment outweighs any benefit that may be claimed.

It is requested that PRMD reject the application for non-conforming use based the ample grounds provided above. Also, as a means of mitigating further environmental damage, we request that the current owner of the subject property be restricted from any and all unregulated use of the property until the issues associated with this application have been addressed.

With Kind Regards,

Rita O'Flynn

**From:** [Rita August O'Flynn](#)  
**To:** [Marina Herrera](#)  
**Cc:** [Mark O'Flynn](#); [Ivan Jimenez](#); [Hannah Spencer](#); [Tennis Wick](#); [Keri Rynearson](#)  
**Subject:** Appeal of the Order of Determination for Legal Non-conforming Use: ORD19-0011  
**Date:** Monday, January 17, 2022 2:15:53 PM  
**Attachments:** [QA614601EFF34FD1867E210FEF902197.png](#)  
[C&P Corrected Survey.pdf](#)

---

Dear Ms. Herrera,

Attached please find a survey performed by James Dickey of Cinquini and Passarino that I would like to have included in my appeal documents. The survey was commissioned by the Agricultural and Open Space District as part of due diligence for a grant to the Russian River Recreation and Parks District (RRRPD) to purchase lot 071-220-068 (subject property), currently owned by the Sweetwater Springs Water District. It was recorded in the County of Sonoma on 7 June 2021. This survey was not provided to Permit Sonoma by RRRPD.

As you will see, this survey includes notes regarding the Hogan Survey used for Permit Sonoma's December 3, 2020 Order of Determination and states the following:

---

### **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.**

This survey confirms the that the subject property is not riverfront. Thus, the statement in paragraph 5 of the Order of Determination "*The subject parcel ...includes a portion of a beach located on the Russian River...*", is incorrect.

Furthermore, you are in possession of the 25 September 2020 letter from the California State Lands Commission placing the Ordinary Highwater Mark at no more than 20.7 ft, well below the subject property boundary. Thus, the subject parcel does not provide for access to the Russian River without trespass.

In light of the material differences in Cinquini and Passarino Survey to RRRPD's application, Permit Sonoma should consider withdrawing its December 3, 2020 Order of Determination for ORD19-0011.

Rita O'Flynn  
415-260-7608

Sent from [Mail](#) for Windows

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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

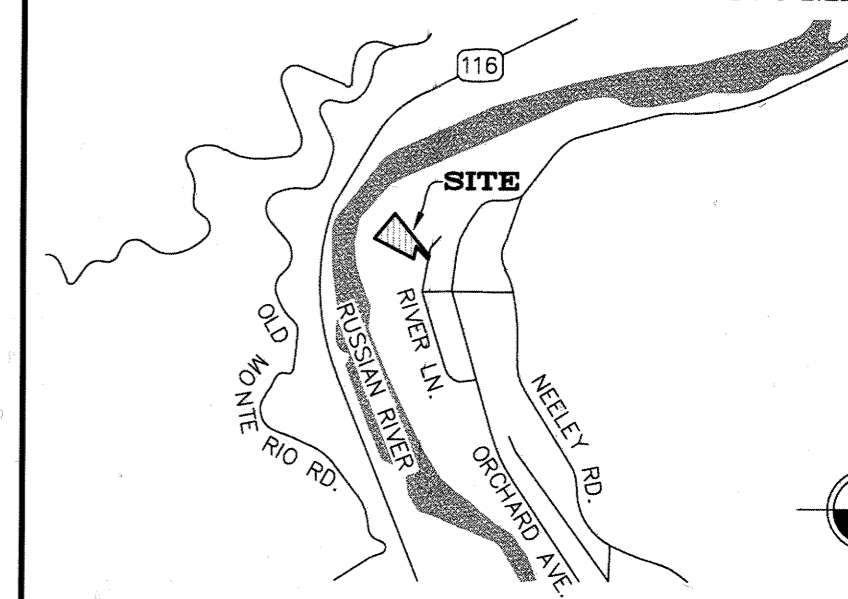
SURVEYORS NOTES

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

UNINCORPORATED SONOMA



LOCATION MAP NOT TO SCALE

LEGEND

- SUBJECT PROPERTY BOUNDARY
- ADJACENT PROPERTY BOUNDARY
- HOGAN SURVEY FROM MARCH 3, 2017 (R5)
- LOW WATER LINE PER R2
- LOW WATER LINE PER R4
- CENTERLINE OF RUSSIAN RIVER
- 1/2" IRON PIPE AS SHOWN ON R5
- DN DOCUMENT NUMBER
- IP IRON PIPE
- N.T.S. NOT TO SCALE
- O.R. OFFICIAL RECORDS
- (R#) RECORD BEARING AND DISTANCE AS NOTED

BASIS OF BEARINGS

BEING S88°43'00"E BETWEEN FOUND 6"x6" CONCRETE MONUMENT ALONG THE RIVER LANE AS SHOWN ON THE FINAL MAP OF THE VACATION BEACH SUBDIVISION NO.3, FILED IN BOOK 50 OF MAPS PAGES 38-40, SONOMA COUNTY RECORDS.

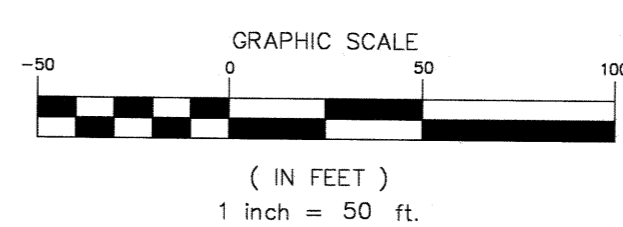
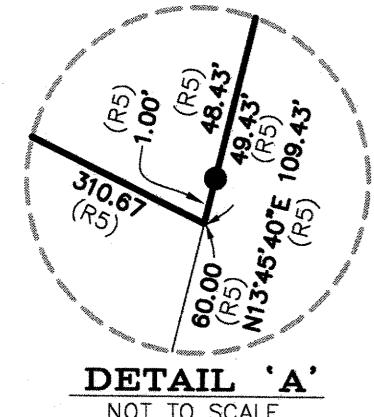
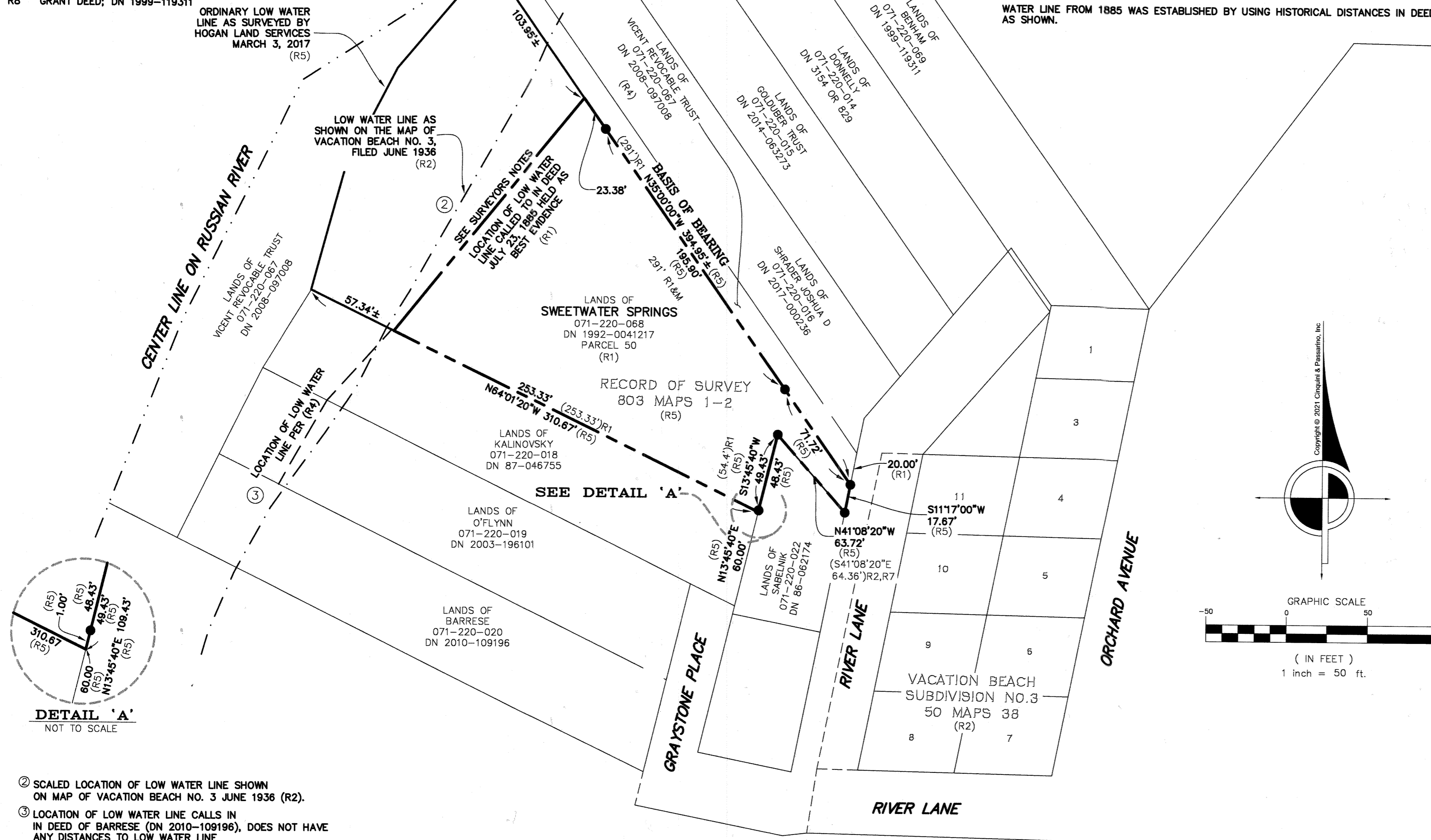
NOTES

ALL DISTANCES AND DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.  
 ALL TIES ARE AT RIGHT ANGLES UNLESS OTHERWISE NOTED.  
 ALL MEASUREMENTS AND MONUMENTS ARE IDENTICAL TO THOSE SHOWN ON THE SURVEY FILED IN BOOK 803 ON MAPS PAGES 1-2, SONOMA COUNTY RECORDS. THE PURPOSE OF THIS SURVEY IS TO SHOW THE LOW WATER LINE AS DESCRIBED AND CALLED TO IN (R1) AS OPPOSED TO THE SURVEYED LINE SHOWN ON (R5). NO FIELD WORK WAS PERFORMED FOR THIS SURVEY.

EXEMPT FROM SB2 FEE PER §27388.1(A)(2)(D)

RECORD OF SURVEY

BEING THE LANDS OF SWEETWATER SPRINGS WATER DISTRICT AS DESCRIBED IN DOCUMENT NUMBER 1992-0041217, PARCEL 50 BEING RECORDS OF SONOMA COUNTY, AND LYING WITHIN TOWNSHIP 8 NORTH, RANGE 10 WEST MDM&M. LYING WITHIN SECTION 31 OF TOWNSHIP 8 NORTH, RANGE 10 WEST M.D.B.&M. COUNTY OF SONOMA STATE OF CALIFORNIA MARCH 2021 SCALE: 1"=50'

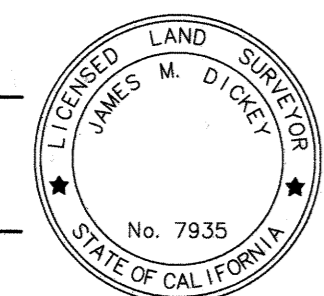


- ② SCALED LOCATION OF LOW WATER LINE SHOWN ON MAP OF VACATION BEACH NO. 3 JUNE 1936 (R2).
- ③ LOCATION OF LOW WATER LINE CALLS IN IN DEED OF BARRESE (DN 2010-109196), DOES NOT HAVE ANY DISTANCES TO LOW WATER LINE

SURVEYOR'S STATEMENT

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE PROFESSIONAL LAND SURVEYORS' ACT AT THE REQUEST OF SONOMA COUNTY OPEN AG + SPACE DISTRICT ON JUNE 27, 2021.

James M. Dickey, P.L.S. 7935  
 EXP. DATE 12/31/21  
 DATE: 5/19/2021



COUNTY SURVEYOR'S STATEMENT

THIS MAP HAS BEEN EXAMINED IN ACCORDANCE WITH SECTION 8766 OF THE PROFESSIONAL LAND SURVEYORS' ACT THIS 4<sup>TH</sup> DAY OF JUNE, 2021.

LEONARD H. GABRIELSON, P.L.S. 7886  
 COUNTY SURVEYOR  
 SONOMA COUNTY, CALIFORNIA



RECORDER'S STATEMENT

FILED THIS 7<sup>TH</sup> DAY OF JUNE, 2021, AT 9:08 AM. IN BOOK 822 OF MAPS AT PAGE(S) 6, AT THE REQUEST OF THE COUNTY SURVEYOR.

DEVA MARIE PROTO  
 COUNTY RECORDER  
 2021066946  
 DOC. NO.  
 \$9.00  
 FEES

CINQUINI & PASSARINO, INC.  
 LAND SURVEYING  
 1360 No. Dutton Ave.  
 Santa Rosa, Ca. 95401  
 Phone: (707) 542-6268  
 Fax: (707) 542-2106  
 WWW.CINQUINIPASSARINO.COM



**From:** [Rita August O'Flynn](#)  
**To:** [Marina Herrera](#); [Hannah Spencer](#)  
**Cc:** [Cecily Condon](#); [Mark O'Flynn](#); [Tennis Wick](#)  
**Subject:** RE: Notice of Unavailability and Request for 30 Day Notification  
**Date:** Tuesday, August 9, 2022 7:53:31 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

---

Dear Marina,

December 1 should work.

Rita O'Flynn  
415-260-7608

Sent from [Mail](#) for Windows

---

**From:** [Marina Herrera](#)  
**Sent:** Thursday, August 4, 2022 1:27 PM  
**To:** [Rita August O'Flynn](#); [Hannah Spencer](#)  
**Cc:** [Cecily Condon](#); [Mark O'Flynn](#)  
**Subject:** RE: Notice of Unavailability and Request for 30 Day Notification

Hello Rita,

I am working to schedule a hearing date which will accommodate your attendance. I have included Planning Commission dates below, Planning Commission Hearings begin at 1pm. Please let me know which of the following dates works for you, 11/3, 11/17, 12/1.

**Marina Herrera**

Planner III

[www.PermitSonoma.org](http://www.PermitSonoma.org)

County of Sonoma

Administration Division | Customer Service

2550 Ventura Avenue, Santa Rosa, CA 95403

Direct: 707-565-2397 | Office: 707-565-1900





---

**From:** Marina Herrera  
**Sent:** Thursday, June 30, 2022 12:20 PM  
**To:** Rita August O'Flynn <[rita\\_august@msn.com](mailto:rita_august@msn.com)>; Hannah Spencer <[Hannah.Spencer@sonoma-county.org](mailto:Hannah.Spencer@sonoma-county.org)>  
**Cc:** Tennis Wick <[Tennis.Wick@sonoma-county.org](mailto:Tennis.Wick@sonoma-county.org)>; Mark O'Flynn <[markoflynn@msn.com](mailto:markoflynn@msn.com)>  
**Subject:** RE: Notice of Unavailability and Request for 30 Day Notification

Hello Rita,

We are working with management to determine a Public Hearing date. We will be in contact once determined.

**Marina Herrera**

Planner III

[www.PermitSonoma.org](http://www.PermitSonoma.org)

County of Sonoma

Administration Division | Customer Service

2550 Ventura Avenue, Santa Rosa, CA 95403

Direct: 707-565-2397 | Office: 707-565-1900



---

**From:** Rita August O'Flynn <[rita\\_august@msn.com](mailto:rita_august@msn.com)>  
**Sent:** Wednesday, June 29, 2022 10:47 AM  
**To:** Marina Herrera <[Marina.Herrera@sonoma-county.org](mailto:Marina.Herrera@sonoma-county.org)>; Hannah Spencer <[Hannah.Spencer@sonoma-county.org](mailto:Hannah.Spencer@sonoma-county.org)>  
**Cc:** Tennis Wick <[Tennis.Wick@sonoma-county.org](mailto:Tennis.Wick@sonoma-county.org)>; Mark O'Flynn <[markoflynn@msn.com](mailto:markoflynn@msn.com)>  
**Subject:** FW: Notice of Unavailability and Request for 30 Day Notification

I am informed that the Planning Commission only meets on Thursdays. The frequency of my Thursday obligations should lessen to once a month after October.

Please call me at 415-260-7608 if discussion of this accommodation is needed.

With Kind Regards,

Rita O'Flynn  
415-260-7608

Sent from [Mail](#) for Windows

---

**From:** [Rita August O'Flynn](#)

**Sent:** Wednesday, June 29, 2022 8:26 AM

**To:** [Marina Herrera](#); [Hannah Spencer](#)

**Cc:** [Tennis Wick](#); [Mark O'Flynn](#)

**Subject:** Notice of Unavailability and Request for 30 Day Notification

I am unavailable on Mondays and Thursdays for the remainder of the year. I will be completely unavailable from 19 September through 21 October 2022.

I kindly ask for 30 days advance notice of the appeal hearing along with the completed Staff Report.

With Kind Regards,

Rita O'Flynn  
415-260-7608

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**From:** [Rita August O'Flynn](#)  
**To:** [Marina Herrera](#)  
**Cc:** [Cecily Condon](#); [Tennis Wick](#); [Mark O'Flynn](#); [Ivan Jimenez](#); [Hannah Spencer](#)  
**Subject:** RE: Appeal of River Lane Project: 17448 River Lane  
**Date:** Tuesday, November 15, 2022 11:45:37 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

---

Hi Marina,

I have made a compelling case against: a) the inclusion of our private property in the December 2021 Order of Determination and b) a non-conforming use permit to affect a public recreational area at 17448 River Lane.

RRRPD has other pathways for the creation of a legal, public recreation facility at this location, such as obtaining a conditional use permit, spot zoning change, amendment to the Sonoma County General Plan, the creation of Conservation Plans, etc. The conditions of these alternate pathways are essential to this environmentally fragile location and are not available under a non-conforming use permit.

Perhaps the staff report to the appeal could reflect conditional/contingent approval of a public access trail/park once RRRPD has secured all the required approvals/amendments noted above for 17448 (and 17444 River Lane - the riverfront parcel RRRPD is purchasing).

As always, we are happy to discuss.

With Kind Regards,

Rita O'Flynn  
415-260-7608

Sent from [Mail](#) for Windows

---

**From:** Marina Herrera <Marina.Herrera@sonoma-county.org>  
**Sent:** Wednesday, November 9, 2022 4:03:47 PM  
**To:** Rita August O'Flynn <rita\_august@msn.com>; Hannah Spencer <Hannah.Spencer@sonoma-county.org>; Misti Arias <Misti.Arias@sonoma-county.org>; jhaig@sweetwatersprings.com <jhaig@sweetwatersprings.com>; Paige MacDonell <rec.park@gmail.com>  
**Cc:** Cecily Condon <Cecily.Condon@sonoma-county.org>; Tennis Wick <Tennis.Wick@sonoma-county.org>; Mark O'Flynn <markoflynn@msn.com>; Ivan Jimenez <Ivan.Jimenez@sonoma-county.org>

**Subject:** RE: River Lane Project: 17448 River Lane, Appeal Amendment #4

Hello Rita,

This appeal amendment has been received and will be provided to the Planning Commission.

**Marina Herrera**

Planner III

[www.PermitSonoma.org](http://www.PermitSonoma.org)

County of Sonoma

Administration Division | Customer Service

2550 Ventura Avenue, Santa Rosa, CA 95403

Direct: 707-565-2397 | Office: 707-565-1900



---

**From:** Rita August O'Flynn <[rita\\_august@msn.com](mailto:rita_august@msn.com)>

**Sent:** Wednesday, November 9, 2022 3:32 PM

**To:** Marina Herrera <[Marina.Herrera@sonoma-county.org](mailto:Marina.Herrera@sonoma-county.org)>; Hannah Spencer <[Hannah.Spencer@sonoma-county.org](mailto:Hannah.Spencer@sonoma-county.org)>; Misti Arias <[Misti.Arias@sonoma-county.org](mailto:Misti.Arias@sonoma-county.org)>; [jhaig@sweetwatersprings.com](mailto:jhaig@sweetwatersprings.com); Paige MacDonell <[rec.park@gmail.com](mailto:rec.park@gmail.com)>

**Cc:** Cecily Condon <[Cecily.Condon@sonoma-county.org](mailto:Cecily.Condon@sonoma-county.org)>; Tennis Wick <[Tennis.Wick@sonoma-county.org](mailto:Tennis.Wick@sonoma-county.org)>; Mark O'Flynn <[markoflynn@msn.com](mailto:markoflynn@msn.com)>; Ivan Jimenez <[Ivan.Jimenez@sonoma-county.org](mailto:Ivan.Jimenez@sonoma-county.org)>

**Subject:** RE: River Lane Project: 17448 River Lane, Appeal Amendment #4

Please see the attached.

Rita O'Flynn  
415-260-7608

Sent from [Mail](#) for Windows

---

**From:** Marina Herrera <[Marina.Herrera@sonoma-county.org](mailto:Marina.Herrera@sonoma-county.org)>

**Sent:** Thursday, November 3, 2022 10:57:38 AM

**To:** Rita August O'Flynn <[rita\\_august@msn.com](mailto:rita_august@msn.com)>; Hannah Spencer <[Hannah.Spencer@sonoma-county.org](mailto:Hannah.Spencer@sonoma-county.org)>; Misti Arias <[Misti.Arias@sonoma-county.org](mailto:Misti.Arias@sonoma-county.org)>; [jhaig@sweetwatersprings.com](mailto:jhaig@sweetwatersprings.com) <[jhaig@sweetwatersprings.com](mailto:jhaig@sweetwatersprings.com)>; Paige MacDonell <[rec.park@gmail.com](mailto:rec.park@gmail.com)>

**Cc:** Cecily Condon <[Cecily.Condon@sonoma-county.org](mailto:Cecily.Condon@sonoma-county.org)>; Tennis Wick <[Tennis.Wick@sonoma-county.org](mailto:Tennis.Wick@sonoma-county.org)>

[county.org](#)>; Mark O'Flynn <[markoflynn@msn.com](mailto:markoflynn@msn.com)>; Ivan Jimenez <[Ivan.Jimenez@sonoma-county.org](mailto:Ivan.Jimenez@sonoma-county.org)>

**Subject:** RE: River Lane Project: 17448 River Lane, Appeal Amendment #3

Hello Rita,

The Planning Commission is the appropriate Hearing body.

**Marina Herrera**

Planner III

[www.PermitSonoma.org](http://www.PermitSonoma.org)

County of Sonoma

Administration Division | Customer Service

2550 Ventura Avenue, Santa Rosa, CA 95403

Direct: 707-565-2397 | Office: 707-565-1900



---

**From:** Rita August O'Flynn <[rita\\_august@msn.com](mailto:rita_august@msn.com)>

**Sent:** Thursday, October 27, 2022 3:07 PM

**To:** Marina Herrera <[Marina.Herrera@sonoma-county.org](mailto:Marina.Herrera@sonoma-county.org)>; Hannah Spencer <[Hannah.Spencer@sonoma-county.org](mailto:Hannah.Spencer@sonoma-county.org)>; Misti Arias <[Misti.Arias@sonoma-county.org](mailto:Misti.Arias@sonoma-county.org)>; [jhaig@sweetwatersprings.com](mailto:jhaig@sweetwatersprings.com); Paige MacDonell <[rec.park@gmail.com](mailto:rec.park@gmail.com)>

**Cc:** Cecily Condon <[Cecily.Condon@sonoma-county.org](mailto:Cecily.Condon@sonoma-county.org)>; Tennis Wick <[Tennis.Wick@sonoma-county.org](mailto:Tennis.Wick@sonoma-county.org)>; Mark O'Flynn <[markoflynn@msn.com](mailto:markoflynn@msn.com)>

**Subject:** RE: River Lane Project: 17448 River Lane, Appeal Amendment #3

Thank you. Given the issues related to zoning, shouldn't this be going in front of the Board of Zoning Adjustments or a combined Planning and Zoning meeting?

Rita

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**From:** [Marina Herrera](#)

**Sent:** Thursday, October 27, 2022 2:51 PM

**To:** [Rita August O'Flynn](#); [Hannah Spencer](#); [Misti Arias](#); [jhaig@sweetwatersprings.com](mailto:jhaig@sweetwatersprings.com); [Paige MacDonell](#)

**Cc:** [Cecily Condon](#); [Tennis Wick](#); [Mark O'Flynn](#)

**Subject:** RE: River Lane Project: 17448 River Lane, Appeal Amendment #3

Rita,

The third appeal amendment has been received and will be provided to the Planning Commission. I do want to take this opportunity to remind you that the project is scheduled for December 1<sup>st</sup>, Planning Commission at 1pm.

**Marina Herrera**

Planner III

[www.PermitSonoma.org](http://www.PermitSonoma.org)

County of Sonoma

Administration Division | Customer Service

2550 Ventura Avenue, Santa Rosa, CA 95403

Direct: 707-565-2397 | Office: 707-565-1900



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**From:** Rita August O'Flynn <[rita\\_august@msn.com](mailto:rita_august@msn.com)>

**Sent:** Wednesday, October 26, 2022 12:40 PM

**To:** Marina Herrera <[Marina.Herrera@sonoma-county.org](mailto:Marina.Herrera@sonoma-county.org)>; Hannah Spencer <[Hannah.Spencer@sonoma-county.org](mailto:Hannah.Spencer@sonoma-county.org)>; Misti Arias <[Misti.Arias@sonoma-county.org](mailto:Misti.Arias@sonoma-county.org)>; [jhaig@sweetwatersprings.com](mailto:jhaig@sweetwatersprings.com); Paige MacDonell <[rec.park@gmail.com](mailto:rec.park@gmail.com)>

**Cc:** Cecily Condon <[Cecily.Condon@sonoma-county.org](mailto:Cecily.Condon@sonoma-county.org)>; Tennis Wick <[Tennis.Wick@sonoma-county.org](mailto:Tennis.Wick@sonoma-county.org)>; Mark O'Flynn <[markoflynn@msn.com](mailto:markoflynn@msn.com)>

**Subject:** RE: River Lane Project: 17448 River Lane, Appeal Amendment #3

Dear Marina,

Attached please find a 3<sup>rd</sup> amendment to my appeal.

As you will see, I have a zoning map from Permit Sonoma dated 1928 which shows R1 zoning at 17448 River Lane. In light of this, how does Permit Sonoma intend to proceed?

With Kind Regards,

Rita O'Flynn  
415-260-7608

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**From:** [Marina Herrera](#)

**Sent:** Thursday, September 15, 2022 2:09 PM

**To:** [Rita August O'Flynn](#); [Hannah Spencer](#); [Misti Arias](#); [Nathan Quarles](#); [jhaig@sweetwatersprings.com](mailto:jhaig@sweetwatersprings.com); [Ivan Jimenez](#)

**Cc:** [Cecily Condon](#); [Tennis Wick](#); [Mark O'Flynn](#)

**Subject:** RE: River Lane Project: 17448 River Lane, Appeal Amendment #2

Rita,

Yes all of the comments and documents you have submitted will be included in the Staff Report packet for the Planning Commission.

**Marina Herrera**

Planner III

[www.PermitSonoma.org](http://www.PermitSonoma.org)

County of Sonoma

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2550 Ventura Avenue, Santa Rosa, CA 95403

Direct: 707-565-2397 | Office: 707-565-1900



---

**From:** Rita August O'Flynn <[rita\\_august@msn.com](mailto:rita_august@msn.com)>

**Sent:** Wednesday, September 14, 2022 5:59 PM

**To:** Marina Herrera <[Marina.Herrera@sonoma-county.org](mailto:Marina.Herrera@sonoma-county.org)>; Hannah Spencer <[Hannah.Spencer@sonoma-county.org](mailto:Hannah.Spencer@sonoma-county.org)>; Misti Arias <[Misti.Arias@sonoma-county.org](mailto:Misti.Arias@sonoma-county.org)>; Nathan Quarles <[Nathan.Quarles@sonoma-county.org](mailto:Nathan.Quarles@sonoma-county.org)>; [jhaig@sweetwatersprings.com](mailto:jhaig@sweetwatersprings.com); Ivan Jimenez <[Ivan.Jimenez@sonoma-county.org](mailto:Ivan.Jimenez@sonoma-county.org)>

**Cc:** Cecily Condon <[Cecily.Condon@sonoma-county.org](mailto:Cecily.Condon@sonoma-county.org)>; Tennis Wick <[Tennis.Wick@sonoma-county.org](mailto:Tennis.Wick@sonoma-county.org)>; Mark O'Flynn <[markoflynn@msn.com](mailto:markoflynn@msn.com)>

**Subject:** RE: River Lane Project: 17448 River Lane, Appeal Amendment #2

Thank you.

Can I be assured that this document, along with those I have previously submitted and those I may submit, will be provided to the Appeal Committee in its entirety?



With Kind Regards,

Rita O'Flynn

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**From:** [Marina Herrera](#)

**Sent:** Wednesday, September 14, 2022 12:46 PM

**To:** [Rita August O'Flynn](#); [Hannah Spencer](#); [Misti Arias](#); [Nathan Quarles](#); [jhaig@sweetwatersprings.com](mailto:jhaig@sweetwatersprings.com); [Ivan Jimenez](#)

**Cc:** [Cecily Condon](#); [Tennis Wick](#); [Mark O'Flynn](#)

**Subject:** RE: River Lane Project: 17448 River Lane, Appeal Amendment #2

Rita,

This document has been received. Thank you.

**Marina Herrera**

Planner III

[www.PermitSonoma.org](http://www.PermitSonoma.org)

County of Sonoma

Administration Division | Customer Service

2550 Ventura Avenue, Santa Rosa, CA 95403

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**From:** Rita August O'Flynn <[Rita\\_August@msn.com](mailto:Rita_August@msn.com)>

**Sent:** Friday, September 9, 2022 1:26 PM

**To:** Hannah Spencer <[Hannah.Spencer@sonoma-county.org](mailto:Hannah.Spencer@sonoma-county.org)>; Misti Arias <[Misti.Arias@sonoma-county.org](mailto:Misti.Arias@sonoma-county.org)>; Nathan Quarles <[Nathan.Quarles@sonoma-county.org](mailto:Nathan.Quarles@sonoma-county.org)>; Marina Herrera <[Marina.Herrera@sonoma-county.org](mailto:Marina.Herrera@sonoma-county.org)>; [jhaig@sweetwatersprings.com](mailto:jhaig@sweetwatersprings.com); Ivan Jimenez <[Ivan.Jimenez@sonoma-county.org](mailto:Ivan.Jimenez@sonoma-county.org)>

**Cc:** Cecily Condon <[Cecily.Condon@sonoma-county.org](mailto:Cecily.Condon@sonoma-county.org)>; Tennis Wick <[Tennis.Wick@sonoma-county.org](mailto:Tennis.Wick@sonoma-county.org)>; Mark O'Flynn <[markoflynn@msn.com](mailto:markoflynn@msn.com)>

**Subject:** River Lane Project: 17448 River Lane, Appeal Amendment #2



Good Afternoon,

Attached please find a second amendment to my appeal of the above referenced matter.

As always, we are happy to discuss.

With Kind Regards,

Rita O'Flynn  
415-260-7608

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