



Sonoma County Planning Commission STAFF REPORT

FILE: ORD19-0011
DATE: December 1, 2022
TIME: At or after 1:05pm
STAFF: Marina Herrera, Project Planner

SUMMARY

Property Owner: Sweetwater Springs Water District
Applicant: Russian River Recreation & Park District
Address: 17448 River Lane, Guerneville
Supervisory District(s): Fifth
APN: 071-220-068
Description: Appeal of Legal Non-Conforming Use Determination (12/3/2021) of the subject property's historic use as a public trail extending over the parcel.
CEQA Review: The appeal and nonconforming use determination do not meet definition of a project under State CEQA Guidelines Section 15060(c). Alternatively, this would be exempt under CEQA Guidelines Sections 15301 (existing facilities) and 15061(b)(3) (common sense exemption).
General Plan Land Use: Urban Residential (UR)
Specific/Area Plan Land Use: Local Guidelines 116 Corridor, Russian River Redevelopment Guidelines
Ordinance Reference: Article 94, Section 26-94-010, Legal Non-Conforming Uses
Zoning: Low Density Residential (R1), B6 1 DU (1 dwelling unit per 1 acre), Floodway (F1), Floodplain (F2), Local Guidelines 116 Corridor (LG/116), Riparian Corridor (50 foot structural setbacks, 50 foot agricultural setbacks), Valley Oak Habitat (VOH)



RECOMMENDATION

The Permit Resource and Management Department (Permit Sonoma) recommends that the Planning Commission deny the appeal and uphold Permit Sonoma’s determination that a legal nonconforming use exists on the property located at 17448, River Lane, Guerneville (“the Property”), with clarification that this determination establishes a nonconforming use on the subject Property only.

EXECUTIVE SUMMARY

This report represents an appeal of an Ordinance Determination of the Legal Non-Conforming Use of the Property’s historic use as a public trail. Staff issued the Legal Non-Conforming Use Determination in accordance with Sonoma County Code Chapter 26 Article 94 (Nonconforming uses) on December 3, 2021, finding that credible evidence supported recognizing a nonconforming use on the Property as a public access point to the Russian River. A timely appeal of staff’s determination was filed by Rita O’Flynn, on December 13, 2021.

On November 25, 2019, the Russian River Recreation and Park District filed an Ordinance Determination (File No. ORD19-0011) requesting a legal nonconforming use determination of the subject property’s historic use as a public access point to the Russian River, specifically to an area locally known as Vacation Beach. The current use of the property is substantially unchanged and no new development, uses, or structures are proposed. Permit Sonoma determined the pertinent documents, including 16 public affidavits submitted with ORD19-0011, on file with Permit Sonoma, and available historic zoning maps, collectively substantiate the historic use of the property as a public access point to the Russian River.

The appeal and subsequent amendments to the appeal, cite several concerns including: inadequate public notice to adjacent property owners, incompatibility with the General Plan and the Russian River Development Plan, and non-compliance with CEQA, among other concerns, which are disclosed and addressed below.

PROJECT SITE AND CONTEXT

Historic Zoning:

Ordinance 230, adopted in 1945, established zoning districts in the County. Pursuant to Ordinance 230, unincorporated areas in the County that were not zoned under one of the zoning districts established in the Ordinance were designated as “U” Districts. Per Sections 12.2(a) and 14.1(b) of Ordinance 230, public uses were allowed in the U District. Ordinance 230, did not include the subject property in any of the specific zones created by the Ordinance, meaning that the U District applied to the Property and public uses were allowed on the property. Therefore, the public’s use of the Property as a public trail did not violate the zoning designation established in 1945 and was a legally established use in compliance with zoning at that time.

In 1961 Sonoma County Ordinance 698 re-zoned the Property as R1-Single-Family Residential. A Use Permit is required to authorize public access trails in the R1 zoning district. The Property has been zoned for R1 since 1961. Therefore, the public’s use of the Property does not conform with the current R1 zoning designation and can continue only if the use is determined to constitute a legal nonconforming use that predates the R1 zoning or if a use permit application is submitted and approved.

Ownership Changes



Sweetwater Springs Water District currently owns the subject property located at 17448 River Lane, Guerneville and previously operated a groundwater well on site. The well is no longer in operation. Credible evidence submitted to Permit Sonoma confirms the public currently uses a trail on the subject property and has done so continuously since the 1950’s or earlier, to access Vacation Beach. The Russian River Recreation and Park District intends to purchase the lot and maintain it as a public access point to the Russian River in perpetuity.

The subject Property was created by Vacation Beach Subdivision No. 3 recorded on June 3, 1936, Sonoma County Records Book 50, Page 38-40, Block A, Lot 1. The tract of land subdivided by Vacation Beach Subdivision No. 3 was previously owned by A. Genelly and was owned by the Genelly family since the early 1900’s until the property was transferred to Citizens Utility in 1953. The subject parcel provides unimproved pedestrian trail access to and includes a portion of a beach located on the Russian River, commonly known as Vacation Beach. Vacation Beach encompasses the following neighboring parcels, APN: 071-220-067, 071-220-018, 071-220-019, and 071-220-020. Specifically APN: 071-220-067 is located between the subject parcel, APN: 071-220-068, and the Russian River corridor (Attachment 4).

Ownership transfer of the subject parcel has occurred twice since parcel creation, from 1) Genelly to Citizens Utility and from 2) Citizens Utility to Sweetwater Springs Water District (DN 1992-0041217). Included in application submittals were a total of sixteen public affidavits from people who have historically used the subject property for river access dating back to at least 1950. Affidavits submitted are significant in staff’s determination as they are written statements of facts to be used as evidence, voluntarily made by the public regarding the historic use of the property.

Summary of Affidavits

Affidavit submitted by Herbert A. Genelly Jr. indicates that the property was used as an access point to Vacation Beach by the public during his family’s ownership of the property from the early 1900’s to 1953. Affidavit submitted by Xenia Zabelin a resident of the vacation beach subdivision since 1951 further substantiates the generational and continuation of use of Vacation Beach since the beginning of her residency in 1951 and continuing at least through 2019 when she submitted her affidavit. Affidavit submitted by Jack Bushgen, a former employee of Citizens Utility, who began his employment with the utility company in 1988, confirms that the subject property was used as an access point to the Russian River since at least 1988. Affidavit submitted by Ed Fortner, the General Manager of Sweetwater Springs Water District (property owner) states that to the Water District’s knowledge the subject property has been used as a river access point since the District’s acquisition of the property in 1992. Table 1 below lists all 16 public affidavits submitted with the application on file with Permit Sonoma.

Table 1. Affidavits submitted to Permit Sonoma

Affidavit Name & Date	Affiliation	Year Cited*
Herbert A Genelly Jr.	Previously owned (until 1953) & Family of original Subdivision	Early 1900’s
Richard Deering (8/9/2019)	Russian River Resident since 1966	1940’s
Nick Mironov (10/4/2019)	Vacation Beach user	1950
Vera Mironov (10/7/2019)	Vacation Beach user	1950
Katherine Meyer (10/2/2019)	Vacation Beach user	±1950



Affidavit Name & Date	Affiliation	Year Cited*
Xenia Zabelin (10/3/2019)	Resident of the Vacation Beach Subdivision as of 1951 Generational use of Vacation Beach	1951
Laura Clemens (11/14/2019)	Generational use of Vacation Beach	1955
Laura Gifether (9/15/2019)	Family owned property in Vacation Beach Subdivision 17754 Orchard Avenue since the 1930's Generational use of Vacation Beach	Over 50 years ±1969
Margaret Dodderer (9/29/2019)	Generational use of Vacation Beach	Over 60 years ±1959
Vic Teshin (11/14/2019)	Vacation Beach user	1955
Jack Bushgen	Citizens Utility (previous property owner) employee	1988
Ed Frortner	Sweet Water Springs Water District (current property owner)	1992
Hans Bruhner (11/11/2019)	Property owner within the Vacation Beach Subdivision as of 2003	2003
John Harreld (10/4/2019)	Property owner and full time resident of Guerneville	2004
Howard & Suarez (9/12/2019)	Property owners within the Vacation Beach Subdivision since 2014	2014
Angelina Lavroushin (10/21/2019)	Generational use of Vacation Beach	Not specified.

*Years cited for the use extend to November 2019, the time of application submittal unless otherwise specified

Area Context and Surrounding Land Uses

The subject parcel is located in the Vacation Beach Subdivision in Guerneville located east of the Russian River corridor. The Vacation Beach subdivision is a residential subdivision comprised of single-family residences.

Direction	Land Uses
North	Low Density Residential (R1) Single Family Residence
South	Low Density Residential (R1) Single Family Residence
East	Low Density Residential (R1) Single Family Residence
West	Low Density Residential (R1) Vacation Beach Parcel (APN 071-220-067)

Project History



Sonoma County Permit and Resource Management Department
 2550 Ventura Avenue Santa Rosa CA 95403-2859 (707) 565-1900
www.PermitSonoma.org



The table below summarizes key project milestones and events.

Date	Project Event/Milestone
11/25/2019	Application Submittal
12/23/2019	Complete for Processing
7/12/2021	Letter of Determination
7/20/2021	July 12, 2021 Determination Redacted
12/3/2022	Letter of Determination Issued
12/13/2022	Appeal Filed
11/21/2022	Notice of Planning Commission Hearing

ANALYSIS

General Plan Consistency

The Urban Residential Land Use category is applied to land planned for a full range of urban services to support residential development. This land use accommodates a variety of housing types and is applied to high, medium and low density residential areas

Zoning Consistency

The subject site is zoned Low-Density Residential (R1 B6 1) with a one unit per acre density, and designated with the following combining districts: Floodway (F1), Floodplain (F2), Riparian Corridor (RC50/50, 50’ setback development/50’ agriculture) and Valley Oak Habitat (VOH). No new structures or land uses are proposed with this request for a legal nonconforming use determination of the subject property’s historic use as an access point to Vacation Beach on the Russian River.

Riparian Corridor Combining Zone, Article 65

The purpose of the Riparian Corridor combining zone is to protect and enhance Riparian Corridors and to implement the provisions of the General Plan Open Space and Resource Conservation and Water Resources Elements. The project parcels Riparian Corridor designation requires a 50 foot structural setback and 50 foot agricultural setback as measured from the top of the higher bank as required by Section 26-65-010. This legal non-conforming use determination does not propose any new structures, land uses, or development onsite.

Floodway/Floodplain Combining Zone, Article 56 & 58

The Floodway (F1) combining zone is applied to properties located within the floodway as shown on the most recent FEMA maps. The Floodplain (F2) combining zone applies to properties located within the one hundred year flood hazard as shown on the most recent FEMA maps. This legal non-conforming determination does not propose any new structures, land uses, or development onsite

Valley Oak Habitat Combining Zone, Article 67

The Valley Oak Habitat (VOH) combining zone is intended to protect and enhance valley oaks and valley oak woodlands and to implement provisions of the General Plan Resource Conservation Element. This legal non-conforming determination does not propose to remove any Valley Oak trees.



Nonconforming Uses, Article 94:

The purpose of Article 94 of the Zoning Code is to recognize the legality of present land use that do not conform to current zoning regulations, but did conform to zoning regulations and were legal uses at the time the use commenced. The complete section of Article 94 has been included as Attachment 8.

Section 26-94-010 of the Zoning Regulations defines nonconforming uses as:

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

The use determination was analyzed under Article 94, Legal-Non Conforming uses. The application documents, including affidavits submitted by the public and available historic zoning maps, collectively substantiate the historic use of the subject parcel as a passive recreation area and that the use has not ceased or been closed for more than a year.

Environmental Analysis

This legal nonconforming use Determination is not subject to the California Environmental Quality Act (“CEQA”). According to Section 15060(c) of the CEQA Guidelines, an activity is not subject to CEQA if any of the following conditions apply:

- (1) The activity does not involve the exercise of discretionary powers by a public agency;
- (2) The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; or
- (3) The activity is not a project as defined in Section 15378.

The legal nonconforming use determination does not involve the exercise of discretionary powers. Staff has no authority to impose conditions on nonconforming use determinations and has to approve these determinations if the facts presented meet the requirements outlined in Section 26-94-010 of the Zoning Regulations. In this case, staff conducted a ministerial determination that the requirements in Section 26-94-010 and affirmed the nonconforming use. Therefore, no discretionary powers were used, and the determination is not subject to CEQA according to CEQA Guidelines Section 15060(c)(1).

Additionally, the nonconforming use determination is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment. The determination does not authorize any alterations to land, modifications to the existing use, or new land uses. Therefore, the determination will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not subject to CEQA according to CEQA Guidelines Section 15060(c)(2). Therefore, under either section 15060(c)(1) or 15060(c)(2), the nonconforming use determination is not subject to CEQA.

Staff has determined that even if this determination were subject to CEQA, the determination would be categorically exempt from CEQA under Sections 15301, Existing Facilities, and 15061, Common Sense Exemption, of the CEQA Guidelines. According to Section 15301, the operation of existing facilities “involving negligible or no expansion of use” are exempt from CEQA. Since at least the 1940’s, the subject property has been continuously used as a public facility - namely as a trail providing public access to the Russian River. There



will be no expansion of use as part of the determination because the determination will only recognize the existing use. Therefore, this determination qualifies for the exemption for Existing Facilities.

According to Section 15061(b)(3) “Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” The determination does not propose any structures, new uses, or development. The determination only recognizes an existing land use. Therefore, it can be seen with certainty that there is no possibility that the determination will have a significant effect on the environment and the Common Sense exemption applies. Therefore, even if the determination is subject to CEQA, the determination is exempt from CEQA pursuant to CEQA Guidelines Sections 15301 and 15061.

Concerns Raised by the Appellant:

1. Use of Faulty Incorrect Source Documents:

The appellant claims that the applicant submitted faulty/incorrect documents including but not limited to, a survey showing an incorrect Ordinary High Water Mark and incorrect parcel measurements.

Staff Response

Staff’s findings made in the legal nonconforming use determination are based on Permit Sonoma’s historical zoning records and the public affidavits submitted by the applicant on behalf of members of the public. Staff’s findings are not based on the Ordinary High Water Mark and whether the Record of Survey filed by the applicant depicts the highwater mark accurately or not, has no bearing on the issue of whether the nonconforming use of a public trail on the Property exists.

A series of Ordinary High Water Mark determinations have been issued on behalf of the subject property by the California State Lands Commission. According to SD2014-08-13.7 dated March 7, 2017, State Land Commission surveyors completed a field survey at Vacation Beach (comprising APNs: 071-220-018, 071-220-019, 071-220-020, 071-220-067 and 071-220-068) on July 26, 2016 with a follow up field survey dated August 29, 2016. Based on this field survey data, Commission staff determined that the high water mark is located at Elevation 27.35, NAVD 88. On September 25, 2020 the State Lands Commission issued a letter (SD2014-08-13.7) referencing a memorandum submitted from interested parties which provided additional information on an ordinary high water mark determination done by a third party Biologist (Prunuske Chatham, Inc.) for the Guerneville River Park - an unrelated project located an approximate 1.5 miles upstream. According to the September 25, 2020 letter, the high water mark is now shown as the shoreline between an Elevation of 17.8 and 20.7 feet, NAVD88. Staff is including this information as statement of fact as it pertains to the application; however, information by the State Lands Commission was not a basis of findings for approval of this Ordinance Determination.

Furthermore, a Record of Survey is a Surveyor’s opinion of the survey at that period of time. The County Surveyor’s review of a record of survey is limited to confirming compliance with technical requirements set by the California Professional Land Surveyors’ Act (Cal. Bus. & Prof. Code § 8766.) If the County Surveyor’s examination determines the survey complies with the technical requirements, the County Surveyor must file the survey with the County Recorder’s Office (Cal. Bus. & Prof. Code § 8767.) After examining a record of survey, the County Surveyor must file every record of survey submitted to their office with the County Recorder’s Office. (Cal. Bus. & Prof. Code § 8762.) If there are conflicting records



of survey, the surveyors who produced the surveys may resolve the dispute informally. Otherwise, only a judge has authority to determine which record of survey controls.

The Planning Commission does not have authority to determine whether the Property’s boundary lines are accurately reflected in the record of survey submitted by the applicant or in the record of survey submitted by the appellant. Regardless, the Commission has sufficient evidence to determine whether the nonconforming use of a public trail exists on the Property.

2. Incomplete References from Source Documents

The appellant contends that the following statement in the Staff’s Ordinance Determination is incomplete:

“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.” (Page 2, Permit Sonoma Ordinance Determination letter dated December 3, 2021).”

Staff Response

Staff included this statement as background information and staff was not interpreting the deed as the information in the deed speaks for itself and is included in Attachment 5. However, Permit Sonoma’s non-conforming use determination was not dependent or reliant on the legal description of the property. Rather Permit Sonoma’s determination was based on historical zoning records and the public affidavits submitted by the applicant on behalf of members of the public.

3. Inadequate Notification of and/or Approval by Regulatory Stakeholders, including, Army Corps of Engineers, Native American Heritage Commission, California Fish and Wildlife and The North Coast Regional Water Quality Board.

Staff Response

Staff’s Ordinance Determination does not propose any new structures, new land uses, or physical changes to the property. Approval from the Army Corps and North Coast Regional Water Quality Board is not required because the determination will not result in any discharge of dredge or fill material into the Russian River. Referral to the Native American Heritage Commission is not required because the determination does not authorize any land disturbance or excavation, thus no harm to cultural resources, if any are buried on the subject property, will occur. Approval from Fish and Wildlife is not needed because the determination will not result in any of the following: diverting or obstructing the flow of the Russian River, changing the bed/bank of the river, using material from the river, disposing of material into the river, or harming any protected species or critical habitat.

4. Inadequate Notification of Adjacent Property Owners

Staff Response

Legal Noticing was circulated on behalf of this Public Hearing as required by Section 26-92-050 of the Zoning Code.

5. Legal Non-Conforming Application is Incompatible with the General Plan and Russian River Development Plan

The appellant contends that the legal non-conforming use would require an amendment to the General Plan and Russian River Development Plan.

Staff Response

Legal non-conforming uses are lawful uses of land which do not conform to the current General Plan, specific area plans, or zoning regulations, but conformed to regulations that existed when the use began. A determination of a Legal Non-Conforming use does not require an amendment to the General Plan, specific area plan, or a zoning change on the subject parcel. Furthermore, the Development Guidelines for HWY 116 and the Russian River re-development plan pertain to development only. There is no development associated with the trail or beach access.

6. Disposal of Human Waste in accordance with the Clean Water Act

The appellant contends that because the Russian River is classified as an impaired river under the Clean Water Act, the North Coastal Regional Water Control Board has sewage management requirements under its Total Daily Maximum Load. Therefore, the appellant contends that a septic system developed in compliance with TDML is needed prior to Permit Sonoma’s consideration of this application.

Staff Response

Staff’s Ordinance Determination does not involve the approval for any new structures including a septic system, new land uses, or changes to the property. Thus, there will be no discharge of dredge or fill onto the Russian River and approval from the Regional Water Control Board is not necessary.

7. Misrepresentation of the proximity of the subject property to waterways

The appellant contends that the applicant’s representation of the subject property being 100+ feet to the Russian River is incorrect due to its Riparian Corridor combining zone designation and the lack of representation of a neighborhood storm water culvert traversing the subject property.

Staff Response

The proximity of the Property to the Russian River is not relevant to the issue of whether a nonconforming use of a public trail exists on the Property. The determination will not authorize any modifications to storm water culverts traversing the Property, if any exist.

8. Riparian Corridor and Biotic Habitat Combining Zone

The appellant contends that 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. Furthermore, the appellant contends that at a minimum a vegetation plan should accompany the application.

Staff Response



The Property is not subject to the Biotic Habitat Combining Zone. The legal nonconforming use on the Property predates the Riparian Corridor Combining zone and therefore does not have to comply with this zoning regulation. If future changes to the property are proposed, such as vegetation removal, the landowner would be required to obtain County and regulatory agency permit approvals.

9. Fire

The appellant contends that fire safety information should be included in the application.

Staff Response

The Property will continue to be served by the Russian River Fire Protection District. The Nonconforming Use Determination does not involve the approval of any new structures, land uses, or changes to the property.

10. Density, Parking, Access

The appellant contends that an independent study should be performed in regards to density parking and access.

Staff Response

The applicant does not propose any new structures, new land uses, or changes to the Property. Any future signage or development proposals would be subject to County and regulatory agency permit approvals.

11. Affidavits

The appellant contends that no verified affidavits have been submitted with the application.

Staff Response

16 public affidavits substantiating the use are summarized in Table 1 above and are included as Attachment 6.

12. Letters in Support of the Application

The appellant contends that the subject property is mistaken for historical access to the Russian River.

Staff Response

The public affidavits included in the application substantiate the use of the Property as a public trail, and are included as Attachment 6.

13. Prior Zoning Prohibits Public Uses

The appellant contends that R1 zoning of the Property occurred prior to 1961, as reflected in a zoning map attached to the appellant’s third appeal amendment, and public uses are therefore prohibited.

Staff Response



The Property was not zoned as R1 until 1961. Between 1945 and 1961 the Property was zoned as Unclassified District, which allowed public uses. The zoning map referenced by the appellant is not from 1928, that number refers to the Index Map identification. The zoning map is from the late 1960s/early 1970s.

14. Regulatory Taking

The appellant contends the inclusion of private property in the nonconforming use determination constitutes a regulatory taking.

Staff Response

The nonconforming use determination on the Property does not authorize any uses on neighboring parcels. If the applicant desires a legal non-conforming determination on any neighboring parcels they would have to apply separately for that.

15. Information Regarding Expansion

The appellant contends that additional information regarding the likely expansion of use/density is needed.

Staff Response

The nonconforming use determination requests the Commission affirm the current use. A request for a legal nonconforming use determination by definition, is not a request to expand existing use nor is it a request to permit a new use.

16. Ordinances Cited

The appellant contends that ordinances cited in the nonconforming use determination do not support a legal nonconforming use.

Staff Response

Reformatting of the Zoning Code has resulted in changes to citations. The December 3, 2021, determination cited Sections 26-06-020 and 26-02-140 in error.

Section 26-06-020(e) referenced the allowed use of a park with securing of a Use Permit. Section 26-08-030 is the correct citation.

Section 26-02-140 previously defined public use/facility as the following; *means a use operated exclusively by a public body, to serve the public health, safety or general welfare, including uses such as public schools and universities, parks, playgrounds, hospitals and administrative and service facilities.* Since the re-formatting of the zoning code a definition is no longer codified for public use/facility. Section 26-22-110 now provides a definition for Parks and Playgrounds.

Nevertheless, Permit Sonoma recognizes that in general, public uses would include for example, parks, bikeways, open space areas, picnic areas and public trails, among other uses. Notwithstanding, the applicant has requested a non-conforming use determination under Article 94 such that the legality of

the use is based on the time the use commenced. The current understanding of public uses and parks were provided as background information in the legal non-conforming use determination.

17. Noncompliance with Current Ordinances

The appellant contends that current ordinances do not support a legal nonconforming use because a use permit is required prior to establishing a public use in a R1 zone.

Staff Response

A legal nonconforming use is established by showing the use conformed to regulations in place at the time the use began. As indicated above, zoning allowed public uses on the Property when the subject use began.

NEIGHBORHOOD/PUBLIC COMMENTS

Public comment, letters of support and a petition from residents of the Vacation Beach subdivision have been included as Attachment 7. Comment regarding the application has been received by the appellant during duration of project processing, documents and communication with the appellant have been included as Attachment 3.

RECOMMENDATION

Staff Recommendation

The Permit Resource and Management Department (Permit Sonoma) recommends that the Planning Commission deny the appeal, uphold Permit Sonoma's determination that a nonconforming use exists on the Property, and clarify the nonconforming use affirmed is of a public trail commencing on the public right-of-way and extending through the northwest boundary of the Property based on the following findings:

1. The subject parcel was originally designated a "U" District by County Ordinance 230 in 1945. Public uses were allowed by Ordinance 230 in the U district. Therefore, the public's use of the Property as a public trail was a legal use in compliance with the original zoning designation of the Property.
2. County Ordinance 698 changed the zoning designation of the Property to R1-Single-Family Residential in 1961. The R1 District requires a Use Permit for the creation of a new public access trail.
3. Sonoma County Code Chapter 26 Article 94 establishes a County-wide procedure to recognize the validity of land uses that do not conform with current zoning but that were lawful uses when they commenced.
4. Credible evidence in the form of 16 public affidavits were included in the application submittal regarding the historic use of the Property for a public trail on the Property since the 1950's, which pre-dates 1961 zoning. Therefore, this historic use is considered pre- legal non-conforming, according to Sonoma County Code Chapter 26 Article 94. – Nonconforming Uses.
5. The current use of the Property is substantially unchanged from the date it commenced and has not ceased for a continuous period of one year.



ATTACHMENTS

1. Draft Resolution
2. Ordinance Determination issued December 3, 2021
3. Appeal Letter dated December 13, 2021, including subsequent Amendments and Documentation
4. Aerial Map
5. Application Submittals
6. Affidavits
7. Public Comment
8. Article 94, Legal Non-Conforming Code Section