



County of Calaveras Department of Planning

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NON-CONFORMING USE DETERMINATION

Date: December 19, 2018

Subject: Legal Non-Conforming Status of the Angels Gun Club
APNs 64-005-031, 64-006-007 and 64-006-008

Code Section: 17.04.010 and 17.92.010 et seq.

Determination

The Angels Gun Club, by operating trap shooting stations, a pistol range, and a rifle range on three parcels totaling approximately 20 acres, identified as APNs 64-005-031, 64-006-007 and 64-006-008, is engaging in legal non-conforming use pursuant to Sections 17.04.010 and 17.92.010 as the use pre-dated Ordinance No. 250 establishing zoning in Calaveras County and Ordinance No. 2624 requiring a conditional use permit for a target and shooting range in the REC zone and prohibiting the use in the C2 and U zones.

Background

Several sections of the zoning ordinance (Title 17) address non-conforming uses.

17.04.010 - Restriction on building construction and land use.

- A. No building or structure shall be constructed, nor any land use commenced, enlarged or altered unless it is permitted in the zone in which the land is located.
- B. No building, structure or use of land shall commence, be altered, or enlarged unless it meets the requirements of the zone in which the land is located.
- C. A legally existing nonconforming use or structure may be expanded or enlarged upon approval of a conditional use permit pursuant to Chapter 17.82 and 17.90.

Section 17.92.010 of the Calaveras County Code further provides that the lawful use of land and structures existing prior to the codification of the ordinance or amendments thereto may be continued although the use does not conform to the provisions of the zoning code. Section 17.92.020 states, in part, "Any existing building designed, arranged or intended for or devoted to a use not permitted in the district in which such structure is located shall not be enlarged, extended, reconstructed, structurally altered or reoccupied unless a permit for such work or reoccupation is approved by the Planning Commission."

Ordinance No. 2624, An Ordinance Amending the Zoning Code Requiring a Conditional Use Permit for Target and Shooting Ranges (ZA99-108A), adopted by the Board of

Supervisors on June 12, 2000, amended the Definitions section of Title 17 and specified that target and shooting ranges require a conditional use permit ins the General Agricultural (A1), Agricultural Preserve (AP), General Forest (GF), Timber Production (TP), and Recreation (REC) zones. "Target Shooting Organizations" is defined as "the use of property with stationary or mobile targets are provided for repetitive firing of projectiles for target practice by an organization. These provisions do not apply to strictly private uses."

The Angels Gun Club asserts that it was established in 1947 and that it has been operating continuously since that time. Secretary of State records reflect that the Angels Gun Club files as a business entity on May 12, 1947. The Club asserts that rifle, pistol, and trap shooting have all occurred since that time. The Director is not in possession of any evidence that the gun club has not been operating a rifle, pistol, and/or trap shooting range on its properties since 1947.

The gun club property comprises three parcels, APNs 64-005-031, 64-006-007, and 64-006-008. The club leased APN 64-006-008 from the Fairgrounds until it was transferred to the club in 1972 as depicted on Record of Survey 9-23, recorded on January 21, 1972. APN 64-005-031 was transferred from Bertha Roller to the club on May 20, 1975 (O.R. 398-70). The club acquired APN 64-006-007 from Sam Manuel on May 4, 1987 (O.R. 815-319).

The gun club parcels were zoned U, Unclassified in 1961 through Ordinance 250. One of the gun club parcels (APN 64-006-008) was rezoned in 1974 to Recreation (Ordinance No. 696). Although not included in an ordinance amendment in 1979 that rezoned adjacent property to C2-MH-PD, APN 64-005-031 was reclassified to C2-MH-PD with adoption by the Board of Supervisors of Sectional Zoning Maps on May 5, 2006. The third parcel remains zoned Unclassified.

Two questions have arisen:

- 1) Whether the gun club's shooting activities violate the County Zoning Ordinance on any of the gun club's parcels because these activities are disallowed in the parcel's zone; and
- 2) If any of the gun club's shooting activities are disallowed in one or more parcels' zones, but are protected as a legal non-conforming use, whether the gun club has expanded or modified its operation such that these activities are no longer a legal non-conforming use under County Code.

Findings

The Angels Gun Club facility is comprised of several structures, five trap shooting stations, a pistol range and a rifle range. All but the rifle range are located on APN 64-006-008 which is zoned REC, Recreation. The rifle range is located on APN 64-005-031 and is zoned C2-MH-PD, General Commercial-Mobile Home-Planned Development. Shot from the trap stations fall on APN 64-006-007, zoned U, Unclassified.

Zoning laws were first adopted in Calaveras County in 1961 as Ordinance No. 250. That ordinance provided a list of uses in different zones. “Target and shooting ranges” was not a defined use or a use listed in any zone. Section 7 of that ordinance reads:

No building or structure shall be erected, reconstructed or structurally altered in any manner, nor shall any building or land be used for any purpose, other than as *permitted by* and in conformance with this Ordinance and all other ordinances, laws and maps referred to herein (emphasis added).

Thus, had the gun club initiated its use of its parcels after 1961, its use of its properties as a target shooting club would have been prohibited unless that use was expressly permitted in its parcels’ zones. Because the gun club had been in operation *before* Ordinance No. 250 was adopted in 1961, any uses it was engaged in that were not enumerated through Ordinance No. 250 as uses allowed in its parcels’ respective zones would be legal non-conforming uses.

Numerous amendments to the zoning ordinance have been made subsequent to that original zoning ordinance, but it was not until 2000 that “target shooting organizations” were specifically defined and “target and shooting ranges” were limited to a conditional use in specified zones. The findings of the Board of Supervisors states: “Because of the potential impacts on neighboring properties, target and shooting ranges need to have public hearings.” Had the gun club initiated its use of its parcels after 2000, not only would the use have to be enumerated as a permitted or conditional use in a specific zone, but a conditional use permit would also have been required for the use to occur in the zones where it is allowed. Because the gun club, however, has been in operation before this 2000 amendment restricting “target shooting organizations”, its continued operation on its parcels is a legal non-conforming use—assuming there is no abandonment of the use as described in 17.92.010 and no expansion of the use at described in 17.92.020 on any of gun club’s parcels.

In a sworn deposition taken on September 13, 2018 of Dave Verhalen, President of the Angels Gun Club (the transcript having been provided by an adjacent property owner), Mr. Verhalen states that he has been involved with the gun club since the mid-1970s and has been on the Board of Directors since 1996. He states that the gun club has been in continuous operation during that time. He further states that there were trap shooting, rifle range, and pistol range activities on the properties since 1947. The Director has no evidence that any of these activities were abandoned on the properties between 1947 and the beginning of Mr. Verhalen’s involvement with the gun club, Therefore, the Director finds that the use has not been abandoned as described in 17.92.010.

Based on review of aerial imagery taken in 1998 (the earliest available) compared with the most recent imagery taken in January, 2018, it does not appear that there has been any expansion of the structures, pistol range, or trap shooting stations since that time, and the Director does not have evidence of any enlargement prior to that time. Improvements appear to have been made, but the Director has no evidence that any

have been made to the degree that would rise to the level of an “enlargement” of the use under Chapter 17.92. There were five trap shooting stations visible in the 1998 aerial. Two of those appear to have been improved between 1998 and the current date, although all five are currently still in use.

The pistol range is in the same location as it was in 1998, and, while the space between the shooting station and the target berm backstop has recently been graded and fresh rock placed on the site, it has not expanded in area or structure.

The aerial image of 1998 shows a dirt track to the site of the rifle range shooting station. It is unclear from the image whether this was used at this time for shooting, but the Director has no further evidence that it was not. Between 2010 and 2014 the road leading to the pistol range and the target area of the rifle range was improved and a new access and encroachment onto Gun Club Road was constructed. It is clear that improvements have been made to the target area and the shooting station, but these improvements are not extensive enough to constitute an “enlargement” of the use for purposes of 17.92.020 as it is also apparent that shooting had occurred here prior to 2000, when the ordinance was amended to require a CUP for target shooting.

Copies of the Angels Gun Club Board meeting minutes were provided to Planning by an adjacent property owner. These minutes purported to show that improvement to the club facilities occurred that constitute an expansion. Staff has reviewed the minutes, which indicate that money was expended for trap house replacement, importation of dirt, replacement concrete shooting stations for trap shooting, and grading of the rifle and pistol ranges. None of these improvements constitute “enlargements” under 17.92.020 as discussed above. A mere change in the type of shooting—without a corresponding and adequately significant structural change—would not itself rise to the level of an “enlargement of the use” as anticipated by 17.92.020. In addition, the minutes included reports of new plans to realign the rifle range and relocate the pistol range. There is no evidence that such a realignment or relocation actually occurred; and more specific information about the plans for these changes would be needed before a determination could be made that these changes rise to a level of an “enlargement” under 17.92.020. A further report in the minutes states that trees were removed for future realignment of the rifle range. The removal of trees does not, by itself, constitute an enlargement or expansion of the use.

On December 12, 2018 the Planning Director made an inspection of the adjacent property with its owner, Thomas Tryon, who was concerned that shot and projectiles from the trap and rifle ranges were travelling onto his property or that there was a potential for errant projectiles from the rifle range due to its alignment. The Director observed a large amount of spent shot on APN 64-006-007, although he was unable to tie the spent shot to the gun club. Unrelated to the determination of whether the gun club operation is an unlawful use or a legal non-conforming use, it appeared to the Director that the location of the target area for the rifle range has the potential for projectiles to cross over the property line onto Mr. Tryon’s property. The Director spoke with Sheriff Rick DiBasilio, who had also visited the Tryon property, and he expressed

having noted a similar concern about the potential for projectiles to trespass from the gun club onto the Tryon property.

The Director attempted several times to contact members of the Angels Gun Club for permission to inspect the gun club properties; however no return calls were received and there was no answer to several calls made to the phone number listed on the web site. The Director made an inspection of the gun club properties from the perimeter of the site and could not discern any improvements that exceeded those visible in the aerial photographs.

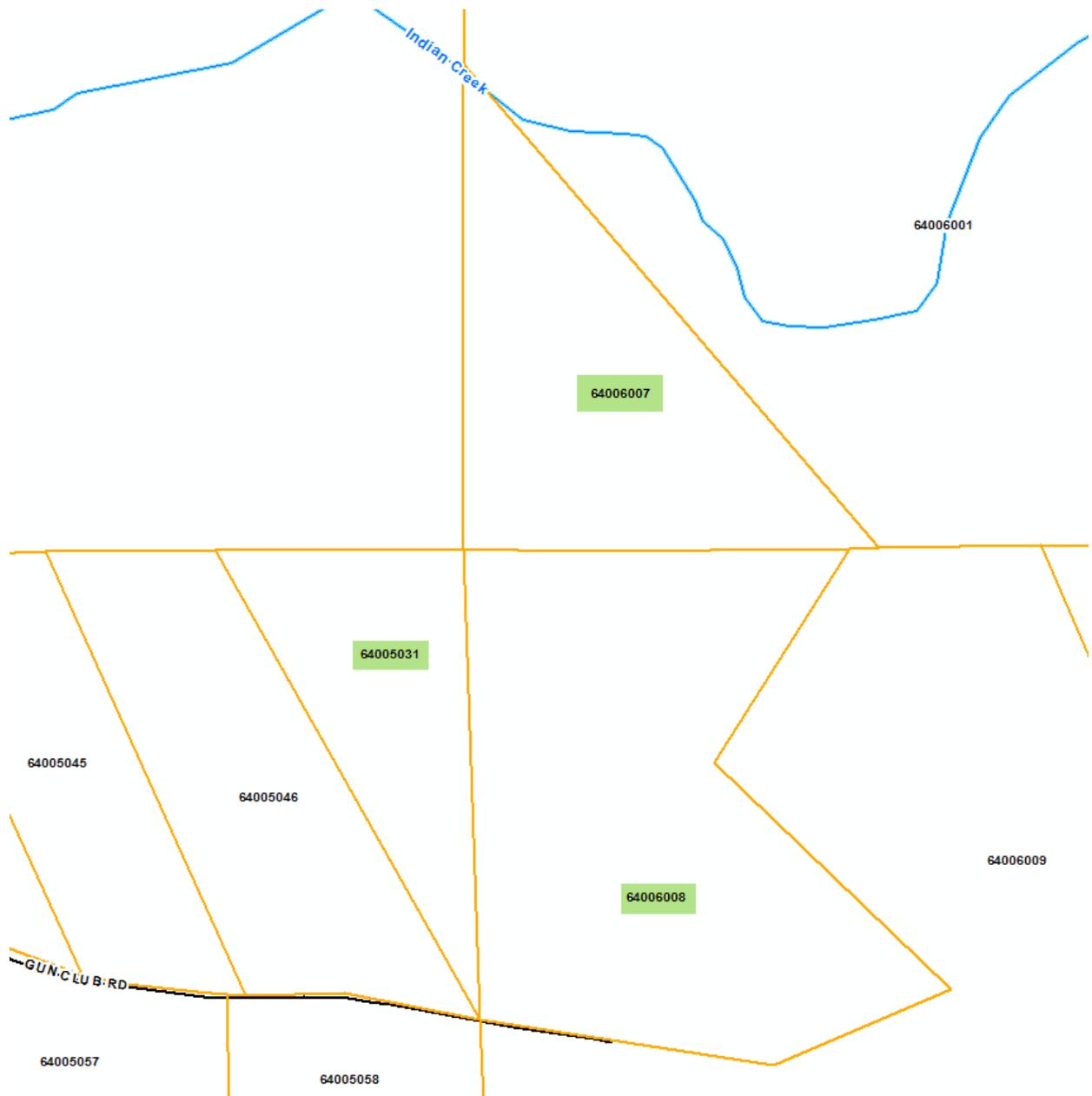
Based on the Director's inspection of the site, the review of aerial imagery, sworn testimony by the Angles Gun Club Board President, and the requirements of the zoning code as it has been amended over time, the Planning Director finds that—based on evidence currently in his possession--the gun club in its current configuration is a legal, non-conforming use per 17.02.010. The gun club's use of its three properties pre-dated the enactment of zoning in Calaveras County in 1961. It was not until 2000 that a conditional use permit was required for a new shooting range in the REC zone. Even though the other parcels are zoned U and C2, the use was established on all parcels prior to the County's first zoning ordinance in 1961. There is no evidence that the use has expanded since then. It should be noted that there is not a lot of information about the gun club in the Planning Department's files, and it is possible that other evidence may surface through the involved parties to support or negate this finding. Should such evidence be presented to the Planning Department, the Director could revisit his finding.

Because this determination was requested by an adjacent, affected property owner (and separately by Sheriff DiBasilio), it is being sent to both the Angels Gun Club and the adjacent property owner. This determination may be appealed to the Planning Commission pursuant to Section 17.98.020. An appeal must be filed within 15 calendar days from the date of this determination together with the \$500 appeal fee. An appeal form is available on the Planning Department's website.

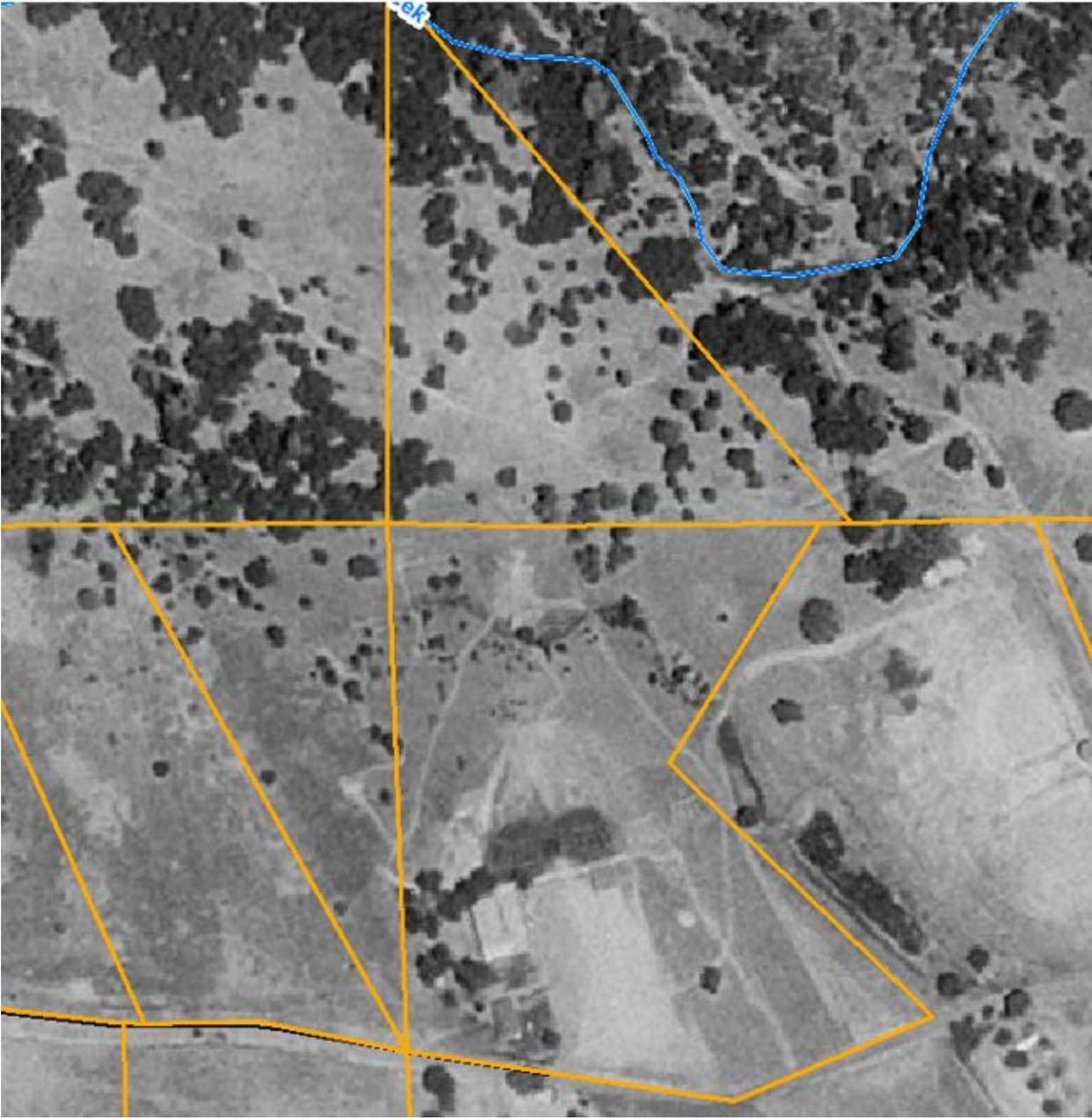
Attachments:

1. Map of Gun Club Parcels Showing Assessor's Parcel Numbers
2. Aerial Image of Gun Club Property, 1998
3. Aerial Image of Gun Club Property, 2018
4. Chapter 17.92, Calaveras County Code

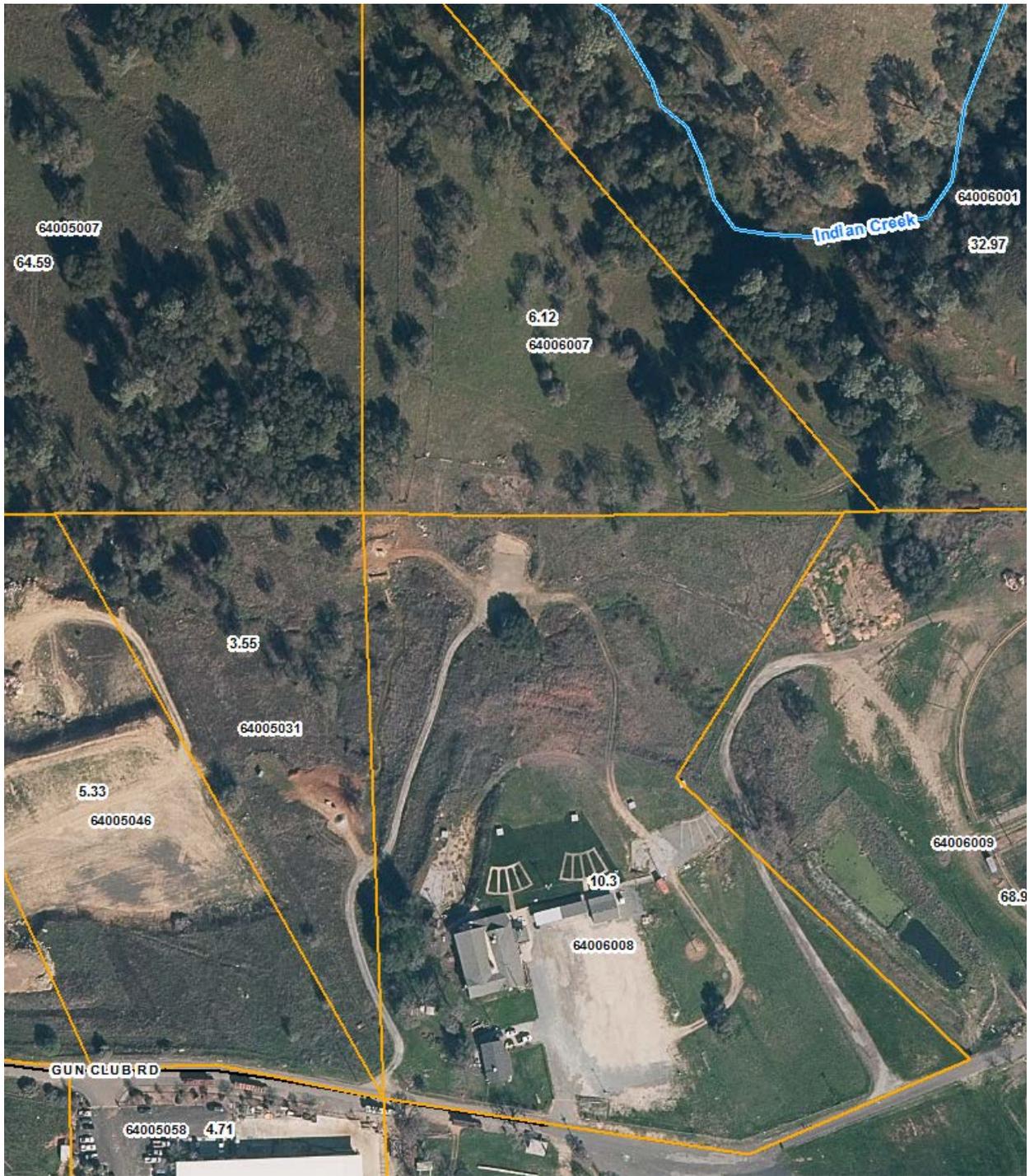
Attachment 1 – Gun Club Parcels



Attachment 2 – 1998 Aerial Image



Attachment 3 – Gun Club Property – January 2018 Aerial Image



Attachment 4 – Chapter 17.92 - NONCONFORMING USES AND ZONING

17.92.010 - Land use existing prior to the effective date of this title.

The lawful use of land and structures thereon existing on the effective date of the ordinance codified in this title, or amendments thereto, may be continued although such use does not conform to the provisions of this title. If such use is discontinued for a period of one year, any future use of such land or structures thereon will require approval as set forth in Section 17.92.020 of this chapter, except for the following reasons: discontinuance for a period of one year due to destruction of structures for which a building permit for repairs or replacements cannot be reasonably issued in that one-year period; discontinuance for a period of one year due to acts of terrorism or acts of God.

17.92.020 - Enlargement of nonconforming use or building.

Any existing building designed, arranged, or intended for or devoted to a use not permitted in the district in which such structure is located shall not be enlarged, extended, reconstructed, structurally altered or reoccupied unless a permit for such work or reoccupation is approved by the planning commission. Provided, however, any alteration or change to any structure associated with a nonconforming use shall be permitted if caused significantly by any governmental regulation affecting such use. Provided, further, that any damage or destruction to any structure associated with such nonconforming use is permitted to be repaired or replaced in substantially the same square footage as originally existed.

17.92.030 - Nonconforming lots of record.

Whenever a lot or parcel legally established and recorded in the office of the county recorder and with less area than the minimum lot size for new lots and parcels exist, such lots or parcels are permitted the same uses, conditional uses and temporary uses as lots greater than the minimum; provided other site development standards are satisfied.

17.92.040 - Nonconforming infrequent use.

Uses, such as mining operations and farm operations, which have a history of infrequent use, although such use does not conform to the provisions of this title, may be continued, although if such use is discontinued for a period of three years, any further use of such property will require approval in accordance with Section 17.92.020 of this chapter.