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PLANNING DEPARTMENT**

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APPEAL FORM

Appellant(s):

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Agent:

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Project or Action Being Appealed Non-conforming status of Angels Gun Club

Please attach written description or reason(s) for appeal.

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Date Stamp

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**Calaveras County
Planning Department**

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April 9, 2019

VIA FEDERAL EXPRESS

Peter N. Maurer
County of Calaveras
Department of Planning
891 Mountain Ranch Road
San Andreas, CA 95249-9709

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

Dear Mr. Maurer:

Thomas Tryon hereby appeals the Planning Commission's March 28, 2018 denial of his appeal of the Planning Department's December 19, 2018 determination that 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 section 17.04.010 and 17.92.010. A copy of the December 19, 2018 letter is attached. Also, Mr. Tryon incorporates the letter dated March 25, 2019 from Donald B. Mooney to the Calaveras County Planning Commission.

As discussed in the December 19, 2018 letter, 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 there to 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."

A nonconforming use describes a lawful use that existed on the effective date of a new zoning restriction that has continued since that time without conformance to the ordinance. While a new zoning ordinance may not operate constitutionally to compel immediate discontinuance of an otherwise lawfully established use or business, the general policy of the law is for elimination of nonconforming uses. (See *City of Los Angeles v. Wolfe* (1971) 6 Cal. 3d 326, 337; *Livingston Rock & Gravel Co. v. County of Los Angeles* (1954) 43 Cal. 2d 121, 127.) However, if an activity constitutes a public nuisance, it can be removed immediately as long as due process protections are provided. (*Id.*; see also *City of Bakersfield v. Miller* (1966) 64 Cal.2d 93, 103.) Zoning laws look to the future with the goal to eliminate nonconforming uses so as to change or to

accommodate changed circumstances. Given the objective of zoning to eliminate nonconforming uses, courts generally apply a strict policy against the extension or enlargement of nonconforming uses. (*See County of San Diego v. McClurken* (1951) 37 Cal.2d 683, 686-687.) The spirit of the zoning ordinance with a provision that permits nonconforming uses is to allow, *but not increase the nonconforming use*. Thus, intensification or expansion of an existing non-conforming use, or moving the use to another location on the property, is not permitted. (*See Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533; see also *Fontana v. Atkinson* (1963) 212 Cal.App.2d 499; *County of Orange v. Goldring* (1953) 121 Cal.App.2d 442 (number of cattle grazing cannot increase); *Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal.2d 552 (drilling new well on same tract is an increase); *County of San Diego v. McClurken, supra*, 37 Cal.2d 683 (larger gasoline storage tanks cannot replace smaller storage tanks).)

The December 19, 2018 letter states there has been no expansion of use per appropriate use.¹ This determination is not consistent with the applicable law and the evidence before the Planning Department. As demonstrated in documents provided to the Planning Department, there have been significant improvements, expansion and realignment of the rifle and pistol ranges to accommodate a significant increase in usage. Additionally, there has been significant modification to the trap shooting facilities and an intensification of usage since 2000. Also, the letter does not mention the expansion of shotgun use to Wednesdays, which makes shot gun use 3 days a week instead of two days. Additionally, all three shooting ranges are either overshooting on Tryon property or have the potential to do so.

The record demonstrates that the Gun Club has expanded its use and made significant improvements to the facilities since 2000. For example, the Gun Club's January-February-March 2015 Newsletter states that "Rangemaster Dave Ver Halen assumed management these past few years and participation has greatly increased." The June 2012 Newsletter states that the "Board of Directors has been discussing the need to upgrade the pistol range for safety reasons." This was confirmed in the August 2012 Newsletter where the improvements and expansion are discussed. The minutes from the November 10, 2014 Board of Director's meeting states that trees rifle and pistol range had trees removed for the realignment of the pistol range. In 2004, trees were removed to realign the rifle range. In 2003, the Gun Club moved dirt to raise the trap fields. In 2005, the Gun Club added lighting to Trap 1. The October 19, 2010 Newsletter discusses the planning stages for redeveloping the rifle and pistol range. On October 20, 2006, the Newsletter discusses the new trap houses, concrete fingers and railing. The minutes for the August 10, 2009 meeting also indicated a plan to pour a 20 x 20 concrete slab

¹ It should be noted that the letter misstates the history of the Gun Club's use. The letter states that the use was established prior to 1961 on all parcels; yet parcel 032 was purchased in 1975 and parcel 007 was purchased in 1987.

Mr. Peter N. Maurer

April 9, 2019

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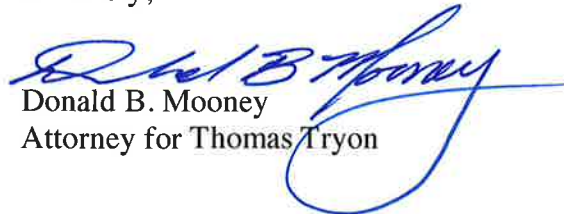
walkway, establish a 10, 15, & 25 yard shooting station. The minutes from the Board of Director's April 5, 2010 meeting states that the "Committee is looking into relocating the rifle and pistol range." The October 10, 2016 minutes also indicate the intent to commence significant earth movement. On August 6, 2012, the Board discussed the improvements that were made to the pistol range.

The record also demonstrates the intensification of use. For example, the minutes from the March 5, 2012 meeting of the Board of Directors indicates that "[t]here are 39 teams, up 8 from last year." The January 5, 2015, minutes indicate additional trap shooting to run once a month for eight months.

While the Gun Club may have operated a target and shooting range at this location prior to 2000, it is quite clear from the evidence that significant improvements, expansion, and realignments have taken place since 2000. Additionally, document clearly indicates an intensification of use since 2000. As a result, the Gun Club should be required to obtain a conditional use permit as required by Ordinance Section 2624.

Mr. Tryon reserves the right to submit additional evidence and argument to the Board of Supervisors during the course of this appeal. At your earliest convenience, please let me know when this appeal will be heard and considered.

Sincerely,



Donald B. Mooney
Attorney for Thomas Tryon