



MEMORANDUM

DATE: APRIL 16, 2015
TO: MENDOCINO COUNTY PLANNING COMMISSION
FROM: PLANNING STAFF
SUBJECT: USE PERMIT #U_2013-0001 (RANGJUNG YESHE GOMDE CALIFORNIA)

On March 19, 2015, the Planning Commission held a public hearing for the above noted project which was subsequently continued to today's meeting. Prior to the March 19 hearing, language within Section 20.212.010 of the County Zoning Code was reevaluated finding the County's use of Contract Rezone provisions to be inappropriate as a means of allowing the addition of the requested use to the SR Zoning District. As a result, it was determined by Planning staff that a revision to the project request description was warranted in order to appropriately entitle the proposed development which would otherwise remain unchanged. The following is intended as an analysis of the process and the revised request recommended by Planning for the project to be able to move forward.

Original Request: The original report for the project was prepared as an evaluation of a three part request: 1) a rezone of that portion of property that is currently designated Rural Community in the General Plan from SR (Suburban Residential) to RC (Rural Community), 2) a Contract Rezone to allow for the use type "Transient Habitation-Resort and Recreational Facility" within the SR zoned area of the property, and 3) a major use permit to allow for the legal establishment and expansion of the existing resort and recreational use. Because the desired use type is not allowed under the current SR zoning of the property, the RC rezoning was believed to be necessary over the portion of the site designated RC that could remain consistent with its General Plan designation, while the Contract Rezone was originally felt to be an appropriate means of permitting the use over the remainder of the SR zoned portion where the use is not allowed. The entirety of the proposal would thus have allowed for the legal establishment and expansion of a religious organized camp as a Transient Habitation- Resort and Recreational Facilities use type which has existed on the site in some form since at least 1972.

As noted, the approach was initially believed by staff to be consistent with provisions of the Zoning Code. This was based on the understanding that conditions (or, stipulations of a Contract Rezoning) could be used to tailor a zoning district as a means of better integrating uses on a property with its surrounding land uses. This was to be accomplished by allowing for a specific transient habitation use *in addition* to those normally permitted in the district while restricting other land uses or standard allowances believed to be in conflict with the added use type. Upon a closer reading of Chapter 20.212 (AMENDMENTS, ALTERATIONS, AND CHANGES IN DISTRICTS), staff determined that this portion of the code was not being properly applied for this project. Section 20.212.010(A) of the County Code states that "*the Planning Commission may recommend and the Board of Supervisors may impose conditions to the zoning reclassification of property where said respective body finds that said conditions are necessary so as not to create problems inimical to the public health, safety, or general welfare of the County of Mendocino.*" The intent of the code language in such cases is to *restrict* potentially incompatible land uses rather than allowing for an *expansion* of uses. Therefore, Planning staff cannot recommend that a Contract Rezone be used to entitle the subject project.

Revised Request: As a result of the revised approach used to entitle the existing use, the request of the project has been revised accordingly as follows:

The project request has been amended to eliminate two of the three entitlements which were initially sought, but the improvements proposed as the project are unchanged. The original request included 1) a rezone of that portion of property that is currently designated Rural Community in the General Plan from SR (Suburban Residential) to RC (Rural Community), 2) a Contract Rezone to allow for the use type "Transient Habitation-Resort and Recreational Facility" within the SR zoned area of the property, and 3) a major use permit to allow for the legal establishment and expansion of the existing resort and recreational use. The request as amended will include only a use permit for the expansion of a legal non-conforming Transient Habitation (Resort and Recreational Facilities- "organized camp") use for up to 150 people. Final action under the original request would have been taken by the Board of Supervisors; the Planning Commission's action on the use permit will be final unless appealed to the Board of Supervisors.

Non-Conforming Uses: While the originally requested rezonings are no longer believed to be appropriate, entitlement of the project is possible as an expansion of an existing legal non-conforming use.

Section 20.204.025 of the County Code allows for "expansion of nonconforming uses and structures" subject to a minor use permit and the following findings:

- (1) *That it is not reasonably economically or physically feasible to make the use of the property compatible with the applicable general plan land use designation;*
- (2) *That the use is and will be compatible with adjacent land uses and that any increased adverse impacts on access or public facilities and services will be mitigated;*
- (3) *That the site is physically separate from surrounding properties such that continued nonconforming use is appropriate in that location.*

Section 20.196.010 states that minor use permits "shall be under the original jurisdiction of the Zoning Administrator...[although] [t]he Zoning Administrator may refer items to the Planning Commission or Board of Supervisors for consideration." In this instance, the Zoning Administrator deems it appropriate to have the project continue before the Planning Commission as the process initially had already involved that decision making body.

As a means of establishing the legal non-conforming status of the use, staff sought the assistance of the County Assessor's Office. County records indicate that the property has been used as a recreational area dating back to at least the early 1970s. Documentation from the County Assessor's Office show that a "recreational resort/campground" use of the property existed "in or before 1972" (see attached historical summary dated March 25, 2015) which pre-dates the current zoning code and was similarly used over the years as it evolved into the current organized camp that exists today.

As noted in the Initial Study from the original request, the property is located in an area just south of the community of Leggett. Based on the underlying RC and SR General Plan land use designations, the County believed this area to be a "logical" area for future growth. Along with the zonings put in place for those areas, subdivision potential could allow for one unit per 40,000 square feet. Realistically, however, that type of buildout may not occur for some time if it occurs at all based on the fairly steep sloping landscape and its relatively remote location. Indeed, despite the classification and zoning, the adopted 2009 General Plan did not list this area along with other "community planning" areas expected to take on substantial amounts of growth during the lifespan of the General Plan such as the Ukiah Valley, Hopland or Boonville.

Given the generally steep sloping terrain of the property, its location in a heavily wooded/timberland area and its proximity to the Eel River (bisecting the property from the south through its northwest portion), it is not suitable for subdivision to occur at the density allotted for in the General Plan. It is highly unlikely that

the property would be economically or physically fit for this type of development. As a result, the above noted "Finding Number 1" can be made. Findings Number 2 and 3 can also be made by noting the remote setting of the property (Finding Number 3) and the compatibility of the site with its natural setting. Again, the proposed development is a less intensive use of the property than what is potentially allowed under the current General Plan and Zoning District, and can serve as a type of buffer between the small Leggett community and its rural surroundings. Direct access from Highway 101 lessens impacts on emergency services and existing infrastructure can accommodate the requested use (Finding Number 2).

Ultimately, the applicant has been advised that the best long term solution to entitlement would be to seek a General Plan Amendment and Rezone of the property in order to avoid future reliance on the facility's non-conforming status.

Revised Conditions: Conditions proposed for the project in its original form will remain generally the same. The following revisions are nonetheless recommended with the elimination of the rezonings.

Condition Number 9 should be changed to read: "Future expansion shall be restricted to the current boundaries established through this entitlement with a maximum number of attendees not to exceed 20% (approximately 30 additional overnight accommodation structures) without a modification to the use permit. An exhibit map shall be provided to Planning and Building Services delineating the boundary of the retreat/resort including all areas of structural development, camping, event and gathering areas, water sources and primary and secondary septic fields. The entitlement shall be tied to only one of the five recognized parcels upon future transfer of one or more of the properties. Upon such transfer, failure to notify Planning and Building Services which of the parcels has been chosen to continue with the entitlement will result in the entitlement running solely with the RC zoned parcel (APN 053-400-55)."

Condition Number 12 should be changed to read: "This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$2,260.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services no later than May 1, 2015. Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void."

Condition Number 16 should be changed to read: "In the event that the use of the facility should cease operation for a period exceeding one year or more, the use shall be deemed invalid and the non-conforming status shall no longer be recognized."

The recommendation is revised as follows:

RECOMMENDATION: The Planning Commission approves the proposed Use Permit (#U_2013-0001) subject to the following conditions of approval and based on the following findings:

Environmental Findings: The Planning Commission finds that no significant environmental impacts would result from the proposed project that cannot be adequately mitigated through the conditions of approval; therefore, a Mitigated Negative Declaration is adopted.

General Plan Consistency Finding: As discussed under pertinent sections of the staff report, the proposed project is consistent with applicable goals and policies of the General Plan as subject to the conditions of approval.

Project Findings: The Planning Commission recommends approval U_2013-0001 subject to the conditions of approval recommended by staff further finding:

1. That the establishment, maintenance or operation of a use or building applied for is in conformity to the General Plan;

2. That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided;
3. That such use will not, under the circumstances of that particular case, constitute a nuisance or be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in or passing through the neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the county; provided, that if any proposed building or use is necessary for the public health, safety or general welfare, the finding shall be to that effect;
4. That such use preserves the integrity of the zoning district.

CONDITIONS OF APPROVAL: Conditions which must be met prior to use and/or occupancy and for the duration of this permit:

Aesthetics

- ** 1. All external lighting shall be shielded and downcast to prohibit light from being cast beyond the property boundaries. The number of exterior lighting fixtures shall be kept to the minimum required for safety.

Air Quality

- ** 2. The applicant shall comply with all regulations of the Mendocino County Air Quality Management District, including obtaining any required permits necessary for the site of this application.

Biological Resources:

- ** 3. The applicant shall contact the California Department of Fish and Wildlife (CDFW) to report all known occurrences of sensitive species noted in the Botanical Survey prepared for the project by J. George Strnad and Chris Hargreaves. Written verification from CDFW shall be submitted to the Department of Planning and Building Services that the noted occurrence has been recorded in the California Natural Diversity Database (CNDDDB).

Cultural Resources:

- ** 4. Any future development (i.e. grading, placement of structures, etc.) shall be reviewed against the Archaeological Survey prepared by Thad Van Buren dated June 25, 2013, to ensure continued avoidance of the sensitive region identified in the survey of the property.
- ** 5. In the event that archaeological resources are encountered during normal operation activities at the site, work in the immediate vicinity of the find shall be halted until all requirements of Chapter 22.12 of the Mendocino County Code relating to archaeological discoveries have been satisfied.

Hazards and Hazardous Materials:

- ** 6. The applicant shall adhere to the Fire Evacuation Plan prepared as part of the project including fuel reduction and fire prevention strategies and establishing fire safe zones in case of emergencies.
- ** 7. The applicant shall comply with those recommendations in the California Department of Forestry and Fire Protection (CalFire) letter of January 13, 2013 (CDF# 2-13), or other alternatives as acceptable to the CalFire. Written verification shall be submitted from the CalFire to the Department of Planning and Building Services that this condition has been met to the satisfaction of the CalFire.

Hydrology and Water Quality:

- ** 8. An annual accounting of event attendance shall be kept and made available to Planning and Building Services upon request. The accounting shall include the dates and durations of all events at the facility. Events involving more than 25 people per day shall be limited to 59 days or less a year. Should use of the facility exceed this limit, the applicant shall provide written verification from the California Department of Public Health- Drinking Water Program (CDPH), that any and all requirements for a public water system have been met to the satisfaction of that agency.

Land Use:

~~** 9. Future expansion shall be restricted to the current boundaries established through this entitlement with a maximum number of attendees not to exceed 20% (approximately 30 additional overnight accommodation structures) without a modification to the use permit. An exhibit map shall be provided to Planning and Building Services delineating the boundary of the retreat/resort including all areas of structural development, camping, event and gathering areas, water sources and primary and secondary septic fields. The entitlement shall be tied to only one of the five recognized parcels upon future transfer of one or more of the properties. Upon such transfer, failure to notify Planning and Building Services which of the parcels has been chosen to continue with the entitlement will result in the entitlement running solely with the RC zoned parcel (APN 053-400-55).~~

~~** 9. A contract between the property owner and the County shall be executed allowing for the Transient Habitation- Resort and Recreational Facilities use type to occur within the Suburban Residential zoned portions of the property on which the existing retreat/resort has been developed. Said contract shall be binding upon the successors and assignees of the owners of APN's 053-400-56, -57, -58 and -59. Future expansion shall be restricted to the current boundaries established through this entitlement with a maximum number of attendees not to exceed 20% (approximately 30 additional overnight accommodation structures) without a modification to the use permit. The entitlement shall be tied to only one of the five recognized parcels upon future transfer of one or more of the properties. Upon such transfer, failure to notify Planning and Building Services which of the parcels has been chosen to continue with the entitlement will result in the entitlement running solely with the RC zoned parcel (APN 053-400-55).~~

~~The SR:CR zoning shall cover the entirety of the portion of property zoned SR. However, the existing retreat/resort shall only be permitted within the boundaries established through the subject entitlement. The contract shall stipulate the following items:~~

- ~~a) The Transient Habitation- Resort and Recreation use type shall be permitted within the SR:CR zoned portion of the property confined to the area established through this entitlement. An exhibit map shall be provided to Planning and Building Services delineating the boundary of the retreat/resort including all areas of structural development, camping, event and gathering areas, water sources and primary and secondary septic fields.~~
- ~~b) No future subdivision of the SR:CR zoned property shall be allowed.~~

Public Services:

- ** 10. Written verification of compliance with any applicable fire safe regulations shall be provided from CalFire and the Leggett Fire Protection Department to the Department of Planning and Building Services.
- ** 11. Written verification shall be submitted from the County Division of Environmental Health to Planning and Building Services that all necessary approvals have been obtained, including, but not limited to, those regarding adequate water supply and wastewater disposal.

Standard Conditions:

12. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$2,260.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services no later than May 1, 2015. Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void.
- ~~12. This entitlement does not become effective or operative and no work shall be commenced under this entitlement until the California Department of Fish and Game filing fees required or authorized by Section 711.4 of the Fish and Game Code are submitted to the Mendocino County Department of Planning and Building Services. Said fee of \$2,260.00 shall be made payable to the Mendocino County Clerk and submitted to the Department of Planning and Building Services within 5 days of approval by the Board of Supervisors. Failure to pay this fee by the specified deadline shall result in the entitlement becoming null and void.~~
13. This permit shall become effective after all applicable appeal periods have expired or appeal processes exhausted. Failure of the permittee to make use of this permit within one year or failure to comply with payment of any fees within specified time periods shall result in the automatic expiration of this permit.
14. The use and occupancy of the premises shall be established and maintained in conformance with the provisions of Title 20 of the Mendocino County Code unless modified by conditions of the use permit.
15. That the application along with supplemental exhibits and related material be considered elements of this entitlement and that compliance therewith be mandatory, unless a modification has been approved by the Planning Commission.
16. In the event that the use of the facility should cease operation for a period exceeding one year or more, the use shall be deemed invalid and the non-conforming status shall no longer be recognized.
- ~~16. In the event that the use of the facility should cease operation for a period exceeding one year or more, the use shall be deemed invalid and a new use permit will be required for the operation as approved by U_2013-0001.~~
17. The applicant shall grant access to the property during hours of operation to permit County representatives or any consultants hired by the County for inspection, enforcement, or monitoring activities deemed desirable by the County. The applicant shall designate an individual who is to be available at all times for purposes of supplying information deemed necessary by the authorized County representatives in connection with such work during working hours.
18. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit described boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit described boundaries are different than that which is legally required by this permit, this permit shall become null and void.
19. This permit shall be subject to revocation or modification by the Planning Commission upon a finding of any one (1) or more of the following grounds:
 - a. The permit was obtained or extended by fraud.
 - b. One or more of the conditions upon which the permit was granted have been violated.
 - c. The use for which the permit was granted is so conducted as to be detrimental to the public health, welfare or safety, or as to be a nuisance.

Any such revocation shall proceed as specified in Title 20 of the Mendocino County Code.

20. The applicant shall endeavor to protect and maintain as much vegetation on the site as possible, removing only as much as required to conduct the operation.

Attachments:

Assessor's Memo
Planning Commission Staff report from 3/19/2015