



filed via e-mail

May 25, 2022

Re: PLP05-0009 VJB Vineyard and Cellars (VJB)

Draft updated_Revised Subsequent MND

Dated April 26, 2022

To: Board of Zoning Adjustments (BZA) County of Sonoma)

From: Valley of the Moon Alliance (VOTMA)

BZA Commissioners,

VOTMA is submitting another set of comments on the referenced long-pending VJB application. The matter has been set for hearing for tomorrow, May 26th but has been proposed to be rescheduled for June 2nd to allow a District 1 Commissioner to be available.

Rather than outlining in great detail in these comments all the shortcomings of what is more properly titled as the ***Third Revised Subsequent MND*** (TRSMND) for this project, VOTMA incorporates by reference its July 8, 2021 comments on the *Second Revised Subsequent MND*, (SRSMND), together with the letter by VOTMA's counsel Stephan Volker filed on July 7, 2021, that addresses the important CEQA "baseline condition" issue that has permeated this application from the very start.

As in the past, for the most part, PS ignored VOMA's July 8, 2021 SRSMND comments (VOTMA has previously filed **eleven** sets of comments to past iterations of PS' MNDs in this proceeding; the first comment letter was

dated **February 10, 2015**); the questions and observations made 10 months ago in those July 8, 2021 comments (and the preceding 11 comments) remain relevant to the matters at issue. VOTMA will thus limit these comments to some overriding observations and to several key areas where the TRSMND has backtracked on the SSRMND to either accommodate the applicant's preferences or release VJB from significant mitigation monitoring requirements, or where the TRSMND simply did not address the issue previously raised by VOTMA.

Contextual Comments

As context for these more limited comments, it is relevant to point out again that the applicant here has been in violation of its 2007 use permit for more than a **decade**, and has undoubtedly profited handsomely from those violations during most or all of that period. VJB's strategy in this lengthy proceeding has been to prospectively legitimize its knowing violations of the use permit *without penalty*, while 1) continuing to exceed the parameters of the 2007 use permit, 2) expanding its ongoing business operations by *actually implementing* new operational measures for which it is still seeking *permission to undertake* in this application, and 3) otherwise interrupting and requesting multiple continuances in the processing of this application when faced with draft conditions that it claims are *impractical* simply because they would have disrupted the VJB business model of serving as many customers as possible, without regard to regulatory compliance or over-use of its facilities. (See TRSMND, pg. 2, para 4: "The [withdrawn] January 2020 SMND contained *impractical* customer limits not based on current use, but based on strict interpretation of the OWTS septic analysis.")

It seems apparent that so long as PS was not going to financially penalize the applicant or stop its operations, VJB was and is in no hurry whatsoever to conclude this ongoing soap opera.

Permit Sonoma has permitted this conduct to continue unabated for a decade, despite having clearly acknowledged years ago that the permit was being violated, and despite the fact that the Sonoma Valley CAC unanimously voted **5 years ago** (April 2017) to **reject** the applicant's requested amendments (while also criticizing PS for its failure to enforce the existing permit conditions).

This continuing disregard for permit conditions must end. VOTMA requests that the BZA deny VJB's requested amendment and require it to operate under the terms of the use permit it was granted in 2007. VJB has flouted the County for more than a decade. The reasonable window for requesting permission and forgiveness has long closed.

Practical Improvements to the TRSMND

- VOTMA recognizes that the decision to downscale an operating commercial establishment (even one operating in violation of its use permit) could be considered a radical step to be approached as a last resort and with hesitancy. Had PS been more diligent at any point over the last decade and simply issued a notice of violation and started the penalty clock ticking, it is probable that VJB would have responded quite differently than its demonstrated absolute indifference. VOTMA appreciates that denying the application, as the SVCAC recommended, and requiring VJB to just live with the limits that were inherent in the 2007 use permit (i.e., no commercial kitchens, a prepackaged truly self-service marketplace rather than a robust deli, actually establishing the full number of parking spaces *on site* that were authorized, etc.) would be justifiable, but jolting nonetheless to an "established" business.

Given that, VOTMA urges that if the BZA feels compelled to grant, at least in part and with conditions, the revised application for an amendment to the 2007 use permit, that at a bare minimum in connection with any such approval the TRSMND and use permit be modified to incorporate the following limits and conditions:

a) Number of Customers/Mitigation Monitoring/Seating

Numbers: If the BZA approves the applicant's proposal to replace its current 607 gallon system serving the tasting room and market with a new and larger 1500 gallon system (which VOTMA fully supports) so as to allow some limited expansion of its customer base (i.e., beyond that anticipated under the original use permit *and recognizing that VJB has already been hosting daily crowds 2 times larger than the TRSMND proposed limit of 313 customers per day*), VOTMA requests that the BZA set a very stringent daily customer limit consistent with a reasonable modified reading of applicable OWTS regulations that would assign 8 gallons per customer/day (gpd) (vs 5 or 13) for food service customers. The TRSMND uses 5 gpd, while the OWTS

specifies 13 gpd. That modified approach yields a daily customer limit somewhere around 153 wine taster customers (with assumed septic use of 3 gpd), 100 food service customers (using 8 gpd per food service customer) and 16 employees (at 15 gpd per employee. This results in a total demand of 1499 gpd for the 1500 gpd system for a total of 253 customers per day limit. That 8 gpd mid-point number for food service customers is a sensible reduction that backs off from the OWTS standard of 13 gpd and covers both food preparation and other customer wastewater generating uses that are functionally required to accommodate food service customers. It recognizes that the food service provided by the VJB facility is of a more limited nature but more than the 5 gpd standard that is associated with providing “catered” meals. (See discussion in VOTMA 07/08/21 comments at pages 5-8)

Mitigation: As the BZA settles on an appropriate daily customer limit it is also critically important, given VJB’s track record of extreme and persistent over-use of its facilities, that the BZA also require a strict monitoring plan to track compliance with the established daily customer numbers served limit. The SRSMND proposed such a condition and monitoring requirement (see Mitigation Measure Hydro-1 and associated Mitigation Monitoring (SRSMND section 10a at pages 23-25). But the TRSMND deleted that compliance monitoring requirement both for customer limits and for monitoring septic flows. The only explanation given for that deletion is that “this revised SMND has been updated...to reduce the septic monitoring requirement consistent with the OWTS Manual.”

Given VJB’s long history of ignoring and violating the 2007 use permit to serve multiple hundreds of customers per day on weekends above what was contemplated by the existing 607 gallon septic system in the 2007 use permit, PS’s elimination of the customer limit component of the compliance monitoring plan is not warranted. It bears recalling that under the 2007 use permit VJB proposed to use 4 picnic tables in a small patio area to serve its customers from the self-service marketplace, and that only *after* it constructed the left turn lane on to Shaw would it have been allowed to host 15 events of up 100 people per event, or a total of 1500 people per year. With VOTMA’s proposed 253 customer per day limit or the TRSMND 313 personlimit, that 1500 person yearly limit will still be exceeded every week.

It is critical that the BZA impose very transparent *frequent* mitigation monitoring requirements for disclosing *both* ongoing customer counts and measured septic flows to ensure that VJB does not again “lapse’ into another round of knowingly violating its limits by over-intensity of use of its facilities.

That VJB has been seriously overextending the use of its facility is hardly new news. In April 2017 at the SVCAC hearing that considered and rejected of the underlying proposed project, the applicant indicated that it was serving 700 customers per day on the weekends using the same septic system still in place today. VOTMA suspects that similar ongoing customer counts are being served currently. Despite VOTMA’s suggestion to PS months ago that it investigate VJBs current customer loads, it does not appear that PS has obtained any recent customer load information over the *last year* or more. As VJB moves out from under the COVID artificially reduce patronage world, a monthly compliance monitoring structure is clearly needed for this use permit. VJB certainly knows from its daily receipts how many customers it serves. That should be reported on a monthly basis.

Seating: The June 8, 2021 SRSMND proposed a COA limiting seating capacity to 104 seats to help achieve the maximum food/beverage capacity of 313 persons per day. That seating was based on the operating hours from 10am to 4 pm, and assumed an industry standard seating turnover of 3 times in 6 hours.

The TRSMND increased that seating to 157 total seats, of which 144 were on the patio. The remaining 13 seats are presumably devoted to seating for tasting room purposes. The TRSMND does not explain why 40 additional patio seats were added. This appears to be PS’ response to VJB objection that 104 seat patio limit was “*impractical.*”

If the BZA adopts the 100 food service customers per day limit suggested by VOTMA above, the 104 proposed seats from the SRSMND at a 3 times turn-over ratio should be more than adequate to handle food service customer seating requirements.

Of special note in this context is that neither the SRSMND nor the TRSMND addressed the extensive seating capacity VJB has installed on the second floor of the main building. That area was designated in the 2007 use permit

as “office space.” VJB apparently converted that space (which may not comply with the ADA disability access laws) on its own initiative to provide yet another area to serve customers that was not contemplated under the approved use permit. The BZA should add a condition that precludes the use of the designated office space (and the adjacent first floor wine storage room as well) for wine tasting or food service customer purposes.

b) Parking and the Proposed 75 Shaw Parking Lot

VJB never constructed the full allotment of on-site parking spaces that the 2007 use permit required. That failure to construct the full parking complement has resulted in VJB’s successful commercial operations coming at the expense of leaning on the neighborhood to accommodate VJB’s overuse of its facilities.

If the BZA were to establish a 253 daily customer limit, VOTMA suggests that VJB’s parking problem *might* substantially disappear. The BZA should assess that possibility. That PS did not forcefully move in that direction years ago is unfortunate, and has left the BZA with the resulting unsatisfying option of having to approve the proposed parking lot at 75 Shaw to restore community parking sanity. VOTMA reluctantly acknowledges the practicality of that outcome, but notes that since the South side of Shaw beyond the first 50’ of space is not proposed for parking restriction, there is no reason to believe that the prime spot there is the shade along side the park will not continue to be snapped up by VJB customers. That still happens today, even with the de facto 70 Shaw parking lot already in operation. PS should explain why the south side of Shaw down to Clyde should not also prohibit VJB customer parking.

If the BZA concludes that the 53 space parking lot VJB has proposed to construct should be authorized (recognizing that the applicant has already made some functional improvements to the parcel and has been using it as a parking lot since 2018), the BZA should at the same time make very clear by condition that such use is limited **only and solely** for parking for the VJB facility, as VJB proposed in its application. As such, the lot should have signage that indicates it may not be used to serve the adjacent corner parcel buildings (2 wine tasting sites and the now-departed Café Citti) that are owned by applicant. Had such other uses been contemplated or proposed, the development of that parking lot would have required a

different parcel- specific permitting and been subject to a different scope of environmental review (including an analysis of traffic and VMT impacts).

Similarly, approval of the parking lot improvement should also be operationally limited to VJB's operating hours and closed for use when VJB is closed.

c) Baseline, VMT and Environmental Review

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The TRSMND violates CEQA by adopting the existing or current conditions as of 2014 as the baseline condition for assessing environmental effects and impacts of the project. Where the existing conditions as of the date of initiation of environmental review reflects a violation of the then-authorized permitted uses, that would not be an accepted baseline. VOTMA's counsel Stephan Volker's July 7, 2021 opinion letter (attached), filled in response to the SRSMND, explains the applicable case law. Neither VJB nor County Counsel have directly responded to or explicitly disputed the Volker opinion letter; the TRSMND retains the same language justifying the use of 2012-2014 as the proper "baseline conditions" marker that was contained in the SRSMND.

The Volker comment also addresses the baseless determination that there is no difference between 2014 (or 2012) conditions and 2022 actual conditions with respect to GHGs, noise and general operations. VJB has provided no operational data (e.g., sales receipts) for the 2012-2014 period. PS has presented no data supporting the view that the level of operations in 2012-14 reflected 313 customers per day. The current ad hoc 53 space 75 Shaw parking lot was certainly not in existence and operational in 2012-2014.

Absent strong supporting evidence on actual 2012-14 customer volumes, it is baseless and unwarranted for the TRSMND to embrace the position that the addition of an ad hoc 53 vehicle parking lot (currently operational as of 2018, and holding 30-40 cars at any one time on the weekends) would *not* cause significant increased GHG emissions, traffic and transportation effects, (including VMT) from the level present in 2014. The associated suggestion that the multiple 100s of customers per week that arrive in vehicles now parked in the 70 Shaw lot would not have any environmental effects or impacts on water use, wastewater generation, and other

environmental effects associated with operating 60 Shaw beyond 2014 levels is also baseless and unwarranted.

Surprisingly, PS has actually seemed now to have adopted an even bolder stance in the TRSMND in terms of how it characterizes the traffic existing in 2012-2014 from the position articulated in the SRSMND. In the TRSMND PS now asserts the unsupported position that “an actual increase in traffic [from the proposed project] would not occur over the 2014 baseline conditions because the food patio service was already in operation **at full capacity** at that time.” (emphasis added) In the SRSMND PS characterized the patio food service [referenced in the SRSMND as “restaurant service”] more narrowly as being “in operation at that time.” PS makes no effort to explain how the customers who arrive in the 30-40 cars parked in the unpermitted 70 Shaw parking lot at any point in time over a typical weekend could possibly be served by VJB if the facility was already operating at “full capacity” in 2012-2014. PS presents *no factual backing* for any of its 2014 level historical assertions.

PS also completely misses on the issue of the failure of the TRSMND to include a vehicle miles traveled (VMT) study. In the SRSMND PS tried to bypass the issue by making the inaccurate statement that “VMT analysis is not required because the updated CEQA baseline analysis began before the VMT regulations took effect in July 2020.”

While the TRSMND has deleted that wrong statement, it did not present a VMT analysis for purposes of CEQA compliance. Instead, it again uses the factually unsupported assertion that “few additional vehicle trips over the baseline would be generated by the proposed project” and thus that “the project would not increase VMT over baseline conditions.” (TRSMND at pgs. 44-45) VOTMA does not understand how PS has convinced itself that the new 53 space parking lot that clearly did not exist in 2012-2014 could both not have any impacts on VJB’s food service (which according to PS was operating *at full capacity* in 2012-2014) or contribute to any significant vehicle trip generation VMT beyond that which already existed in 2012-2014, when the 53 car parking lot did not yet then exist.

The defects and shortcomings in the TRSMND analysis solely resulting from the misguided “baseline conditions” application across the board are enough to render the present MND incomplete and defective. As drafted, the TRSMND does not constitute a supportable CEQA analysis for any

decision approving the proposed amended use permit application as reflected in the TRSMND.

d). Left Turn Lane Westbound SR 12 to Shaw

The long-required but never constructed left turn lane from SR 12 to Shaw has been proposed to be informally developed by VJB, if *feasible*, including if approved by CalTrans. The left turn lane is and always was a critical safety issue. That was why VJB was not allowed to host special events (1500 people per year). VJB is now serving 1500 people per week and still no left turn lane. BZA should not entirely release that protection in any revised use permit.

If the left turn lane proves not to be feasible, for whatever reason, the COAs should, as a form of protective remediation, explicitly retain in the use permit the right to reopen the permit to reevaluate (lower) the authorized customer limits, and vehicle restrictions. BZA must retain jurisdiction to reduce those permitted loads as it deems necessary in the public interest. If there are 1000s of customers per week making that left turn without a turn lane, it is only a question of when serious accidents will occur, not if they will occur.

Under the proposed amended use permit VJB has given away the sleeves off its vest by releasing the right to have 15 events per year with 100 persons per event (1500 guests per year) in return for legitimizing its past use permit violations that are yielding more in the range of 1500 customers *per week*. For the BZA to condone that trade and then compound it by having released the left turn lane requirement that was the very reason for the 1500 persons per year special event conditional prohibition, would be a sad and illogical outcome. The BZA should block out that lose-lose result for Sonoma County.

Looking Forward: As a final and important point, and given the history of absurdly long delays in this proceeding with repeated revised MNDs, VOTMA requests if the BZA concludes, for whatever reason, that it cannot lawfully in its present form, or will not otherwise, take final action on the TRSMND and the staff report and recommendations on June 2nd, that BZA not essentially grant yet another “continuance” of VJB’s ongoing permit violations while PS again reworks the MND. The BZA should thus couple that inaction with an order providing notice of probable violation of the

2007 use permit (based on *PS' representations* to that effect in the TRSMND) and set that matter for enforcement hearing. At least then, the applicant will have no incentive to continue to delay this proceeding while ignoring the 2007 use permit conditions and limitations without peril of fine or revocation.

VOTMA also suggests that the limitations as to daily customer limits and reduced seating (*including* essential frequent mitigation monitoring protocols) be required take effect immediately if the use permit is approved, and it and other mitigation conditions not be delayed pending completion of the Shaw left turn/right turn and Shaw parking restriction elements that will take considerable time to implement.

VOTMA reserves the right to supplement these comments after it has reviewed the proposed Conditions of Approval supporting the PS recommendation. Those COAs were released last Friday. VOTMA is in the process of reviewing those new and revised COAs.

VOTMA appreciates the opportunity to provide comments. VOTMA looks forward to addressing these issues on June 2nd at the public hearing, and to responding to questions you may have on these comments.

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Roger Peters

The Valley of the Moon Alliance
Board Member

cc: Blake Hillegas--Permit Sonoma