August 26, 2020

VIA EMAIL
Blake.Hillegas@sonoma-county.org

Blake Hillegas
Supervising Planner
Permit Sonoma
County of Sonoma

Re: PLP05-0009--Revised Subsequent Mitigated Negative Declaration

Mr. Hillegas,

The Valley of the Moon Alliance (VOTMA) submits comments on the referenced Revised Subsequent Mitigated Negative Declaration (RSMND) in the above proceeding. The RSMND was published July 27, 2020 and apparently supersedes the Subsequent Mitigated Negative Declaration (SMNG) published on January 13, 2020. By comment letter dated February 13, 2020, VOTMA submitted comments on the SMNG. As with those earlier comments, VOTMA reserves the right to submit new, revised and/or supplemental comments in the pending Board of Zoning Adjustments (BZA) process for this long standing proceeding and subsequent appeals.

Overview Statement

As a preliminary matter and prior to proceeding to detailed comments, VOTMA has two overriding observations about the RSMND and the SMND that it offers as an attempt to reset the perspective on this 6 year tortured journey to amend the 2007 PLP05-0009 use permit. That journey was initiated on August 4, 2014 when

the applicant first filed an application to amend the use permit (which in retrospect and in effect has provided the applicant with the camouflage needed to continue unabated its practice of openly violating the existing 2007 use permit conditions of approval (COAs) for the financial benefit of the applicant while the matter was pending).

As a first point, it should go without saying (but apparently is needed here) that applicant has no right or entitlement to have the 2007 use permit modified, and certainly no legal right to continue to violate the existing 2007 COAs. Applicant has no right to a new parking lot or a new septic system so it can accommodate more and more customers, or for that matter to receive changes to the COAs in a manner which serve only to provide forgiveness and absolution for applicant's long standing practice of ignoring the existing COAs regarding "no food service" and "no commercial kitchens", etc. The applicant has consistently over-used the facility beyond the limits imposed by the 2007 COAs and without necessary approvals.

Here, applicant has the burden of convincing the PS and the BZA, and the Board of Supervisors (BOS) if it goes that far, that the changes to now authorize "food service", the authority to construct a new parking lot and a new expanded septic system, to eliminate a left turn lane requirement put in for safety purposes prior to customer numbers spiking during events, and all the other changes applicant has introduced/proposed over the last 6 years this application has been pending, are necessary, appropriate, in the public interest, and that approving them will not disadvantage or compromise the health, safety and wellbeing of the Kenwood neighborhood and the residents of Sonoma Valley. Applicant already has a functional use permit and previously made an investment decision to construct and operate allowed project facilities, presumably subject to the limits imposed by the 2007 COAs.

Somewhere along the way PS seems to have forgotten that a simpler option has always been on the table other than the "solution" the applicant proposes—that PS could just say no; you must stay within the limits the public, acting through the BZA (and ultimately the BOS on appeal) imposed for good and valid reasons and in the public interest in 2007. But PS seemingly has ignored that outcome in the way it has assessed the environmental impacts of these proposed changes. There is no analysis of the transportation situation if the applicant had simply

constructed the additional 20 parking spaces on the 60 Shaw parcel that the 2007 use permit authorized, and then operated within that environment. There is also no assessment of the maximum number of wine tasters and meal takers that could be accommodated under the existing septic system so as to allow that limit to be put in place as a reasonable public impact solution. In short, there is no analysis of how precisely the applicant would be disadvantaged by simply fully complying with the existing 2007 use permit. Would it probably have to downsize its current customer-serving excessive use operation in order to fit with the 2007 use permit? Likely so, but isn't that the case for all enterprises operating under use permits? That sort of "authentic baseline" perspective seems essential in order to make a reasoned decision on whether the application to amend and expand authorized business should be approved, denied or approved with modifications. But answers to that baseline question are nowhere to be found in the SMND or the RSMND.

Instead, the RSMND PS has prepared essentially assumes the answer is 1) yes, you can put in a new larger septic system that doubles capacity (but we will specifically limit the number of customers served), 2) yes, even though you haven't fully built-out your authorized on-site parking by shorting it by 20 spaces, a new 54 space parking lot on a different parcel across the street is appropriate to accommodate the grossly larger numbers of customers you are serving relative to what was assumed under the 2007 use permit (based on your violation of other provisions of the use permit prohibiting non-event "food service"), 3) yes, we will allow you not to install a left hand turn lane from Highway 12 north on to Shaw Ave that was added as safety prevention before you could have 15 events per year with 100 persons per year (i.e., a *total* of 1500 event customers *per year*), *even though* the 54 space new parking lot will present the *same* left turn risks the events would have created, but will now facilitate *hundreds* of more people *per day*, virtually *every day* of the year (rather than just 15 times per year as with special events), and 4) yes to the fact that because there have been few actual accidents at that Hwy12/Shaw intersection so far, it is okay to impose on the public (customers, locals and pass-through traffic) the risk associated with a bad driving decision by the *thousands* of applicant's customers who will be making that left hand turn on Highway 12 every year if applicant is permitted to have up to 313 customers per day. Where in the RSMND is the comparative analysis that addresses the health, safety and welfare of the public of simply saying no to applicant's forgiveness and expansion plan?

Second, turning specifically to the revisions reflected in the RSMND, it is clear that this superseding document makes significant changes to PS' prior published determinations and mitigations previously determined and forth in SMND. The RSMND 1) finds no significant impacts on the proposed new septic system capability resulting from increasing the wine tasters and meal customers per day proposed to be allowed from 96 persons per day (SMND) to 313 persons per day (RSMND); 2) finds no significant environmental impacts resulting from eliminating the existing required Highway 12 left hand turn lane on to Shaw before limited events of 100 people may commence, and instead now allowing daily customer use to rise to 313 customers, even if their presence is not for an "event" per se (but rather a *daily operational event*); 3) finds it reasonable to ignore and delete the DTPW's determination, as set out in the SMND, that allowing the much higher daily customer load of 313 customers has the operational use impacts "similar to or more intense than the traffic generation from occasional event activities" (SMND, pg. 27); and 4) finds it reasonable to delete, and thus disclaim, the notion stated in the SMND that PS retains the "authority through its zoning police powers to require traffic and circulation improvements, which are directly and proportionally tied to the proposed intensification of use even if the intensification has already occurred."(SMND, pg. 27).

Taken together these changes largely amount to a capitulation by PS in the RSMND to applicant's requests and business plan. They come with little explanation for how and why any relaxation in septic, parking and other operational limits imposed under the existing 2007 use permit or contemplated by the SMND assessment, for that matter, are needed or appropriately in the public interest. Certainly, the applicant would like the use permit to allow all the actions requested, but the County is under no obligation to grant an amendment, and indeed has a *much stronger* public health, safety and welfare obligation at this point to investigate why and how it came to be that the applicant has been violation of numerous explicit conditions of approval for many years. Those violations have intensified in impact since the initial application for an amended use permit was first filed in August 2014. Both PS and applicant simply ignore the fact that the baseline setting was fixed, at the latest, as of that 2014 filing date when CEQA review for an amended use permit commenced.

That PS would even issue a SMND and a RSMND that did not apply existing conditions for baseline purposes as set by that August 2014 filing (and associated CEQA referral) is itself astonishing and inexcusable. It is as if PS never even bothered to *consider* that a valid response after such a comparison would be a simple denial of the application. As to the apparent implied conclusion that the earlier SMND determinations were incorrect and required "revision" that would allow greater use of the facility, they come in the face of an applicant who has knowingly and flagrantly violated for years the Conditions of Approval of its use permit in numerous substantive respects. The cherry on the cake is that with PS' "revisions," the applicant is finally close to securing absolution and forgiveness for all past and ongoing blatant violations by means of this cure-all amended use permit without penalty of any sort.

The sheer gall of the applicant's dismissal of any meaningful respect for, and compliance with, Sonoma County's land use permitting and planning process is nowhere better displayed than by the fact that even while this often-revised permit amendment remains *unacted* upon by PS or the BZA, and *after* the April 26, 2017 SVCAC meeting where the SVCAC unanimously *rejected* applicant's proposed amended use permit now at issue (citing in part PS's failure to enforce COAs), including its request *for approval* to construct a parking lot at 70 Shaw Avenue (a lot the SMND determined was not necessary and the RSMND reverses and now determines has no impact), applicant nonetheless did actually construct the functional parking lot, and has been using it now for several *years*. PS was advised of that fact several times but has taken no enforcement action whatsoever. What value does the permit process serve if the applicant can proceed with the requested use amendment before the permit is actually acted on?

Applicant, ironically in turn, now uses the higher customer load impacts generated by its use of that unpermitted parking lot to argue that those customers represent actual "*existing conditions"* that effectively, by its reading of the law, precludes a CEQA analysis of the proposed lot's operational impacts relating to the proposed amended use permit. PS should have saved everyone a lot of time by simply clarifying at the outset that the baseline for existing conditions was frozen (at the latest) when the amended application was first filed in **August 2014**. The disregard for the 2007 COAs of course apparently started well before 2014. Indeed, it was only after community objections arose as to

applicant's clear overuse of the permit did applicant file the initial formal amendment that has now evolved into the full absolution form of amendment now before the BZA. To say this proceeding has fallen into a farcical posture over these last 6 plus years is an understatement.

Comments on RSMND

1. RSMND Introduction-pg1
   a. SVCAC 2017 Public Hearing. The statement that "there has not yet been a public hearing on the modified project" is not correct. It is true there has been not BZA hearing. But the SVCAC heard the matter in a publicly noticed hearing on April 26, 2017. The applicant presented the project, Mr. Hillegas of PS was present, discussed the project, and responded to pointed questions from the SVCAC commissioners regarding lack of PS' COA enforcement here, among other questions. The public gave extended testimony, for and against the project. The SVCAC thereafter unanimously approved the following resolution: "*Recommend denial of permit modification: food service, hours of operation, and parking have exceeded the uses of the property beyond its current use permit; impacts of additional parking and traffic from 53 space lot creating need for left turn lane, and must include traffic study."*

2. RSMND Project History—pg2.
   a. The Deli. The 2007 use permit was never a permit to operate a "deli", if by deli is meant a facility that sells to-order sandwiches and salads and other foods prepared on site and sells other packaged foods. The initial proposal in 2005 called for "a 'to go' market, with prepared sandwiches, meats, salads, olives, as well as market type items….The Market Place will be a place where visitors can pick up something lite to eat as they visit other wineries, or visitors can stay and enjoy a picnic in the courtyard or vineyard." (March 05) In describing the sewage demand in a June 30, 2005 summary VJB stated "No on-site food preparation is proposed." The proposal estimated 82 visitors per day. 2007 COA #26 is consist with that proposal and reads as follows: "Obtain and maintain all required Food Industry Permits from the Sonoma County Environmental Health Division *if required for wine tasting activities and special events. No other food service was requested or authorized by this permit."* (Ital and underline added) COA #59 states in relevant part

"With the exception of barbequed food, only catered food may be offered to the guests at special events. *A commercial kitchen is not permitted.*" (Ital added).

b. Food Service. The project history for the RSMND changes the description of food service in the SMND from "food service was limited to prepackaged food and deli food for consumption in the patio…." to "food service was limited to prepackaged food and *prepared* deli food…." The RSMND uses an ambiguous word choice; prepared where? A more accurate condition characterization would be "food service was limited to prepackaged food and *offsite pre-prepared lite* deli food." Clearly food service was at issue in the 2007 use permit, thus precluding the director from authorizing a change to COA #26. Applicant has presented no evidence that it requested such a changed in writing or that it received authorization from PS in writing to change COA #26.

3. RSMND Existing Facilities.
   a. Built vs Existing. The section on "Built" facilities in the SMND has been renamed as "Existing" facilities in the RSMND (perhaps to further the applicant's "existing conditions" legal posture) and continues, as was the case with the SMND, the mischaracterization that the built facilities "vary slightly" from the approved commercial square footages in the 2007 use permit. The facilities listed exceed the use permit approval by almost 30%. In addition, the outdoor "dining area" and "restaurant service" seating of 144 table seats exceeds the 4 picnic tables (8-16 seats?) in the picnic area by a more than considerable margin.

   b. Does the Parking Lot Exist? The existing facilities mentioned conspicuously omits the unpermitted 53 space parking lot at 70 Shaw that has already has been functionally created, with a VJB parking sign at the entrance, and has been operational for more than 2 years now. Perhaps the RSMND should be revised to show that the parking lot is both an "existing facility" and a proposed "project facility" since it has yet to be approved. In any case, it did not exist in 2014 and thus is not an existing condition for CEQA evaluation purposes.

c. Operating Commercial Kitchen. The reference to the indoor 400 S.F. commercial kitchen (commercial kitchens were specifically not requested or approved/permitted in the 2007 use permit) refers to that kitchen misleadingly in the RSMND as a "caterer's kitchen." It is an integral operating commercial kitchen that supports the unpermitted "food service" activities in the "deli."

d. Upstairs Office. Similarly, the reference to the 1615 s.f. "2nd story open room" is also misleading. That space was authorized in the 2007 use permit as "office" space associated with the business operations. Despite that, applicant has used that space for a considerable period of time (years) as an unpermitted wine tasting area, even though it appears to lack compliance with basic ADA access requirements. Interestingly, that office space is referred to on the September 2019 Dimensions 4 Engineering "Seating Plan and Dining Area" rendering as "Upstairs Overflow Area." Again, this conscious mischaracterization is another example of the apparent disregard by the applicant of the existing use permit COAs. The RSMND should explicitly preclude use of that area (as well as the wine case storage building) for wine tasting and related activities.

e. Administrative Discretion. Taken together, these "as built" existing facilities are clearly very significant both in terms of authorized square footage and overuse potential and reality. The "Existing Facilities" lead-in discussion of the RSMND, apparently in an attempt to inoculate these deviations as violations, refers to these as "minor deviation(s) in square footage [that] occurred through the routine issuance of building/construction permits and *were authorized under administrative discretion afforded to the Permit Sonoma director."* (italics added). If these changes in development and use were in fact approved through administrative discretion action by the PS director there would be a paper trail to verify that. Changes of that sort would be subject to COA #86, which provides in relevant part that modifications to the conditions for minor adjustments must be submitted in *"request form"* (i.e., before the fact) by the applicant in writing, and "must be documented with an approval letter from PRMD…." No such request/approval letters exist to VOTMA's knowledge.

COA 86 further provides: "Changes to conditions that may be authorized by PRMD are limited to those items that are not adopted standards or were not adopted as mitigation measures or that were not at issue during the public hearing process." (emphasis added) It seems apparent that the provisions regarding no on-site prepared to-order food, the absolute prohibition of commercial kitchens (there are now 2 such kitchens) and the use of office space (and case good storage space as well) for additional tasting room activities, among other activities, would exceed the limits of Permit Sonoma's director authority to approve such COA changes. Applicant's effort to hide behind the "administratively approved" cloak of invisibility is unavailing.

f. Amendment to Use Permit and COA #84. The RSMNG wholly fails to address or come to grips with the fundamental import of applicant's broad disregard of the COAs, and the potential implications for such disregard as provided in COA #84. Is it in the public interest to reward such serial violations with dispensation and absolution via an "all forgiven" use permit amendment? The applicant does implicitly acknowledge this issue by virtue of its sequential filing of numerous modifying amendments to the existing use permit by way of obtaining absolution for past violations and authorization to continue with these on-going COA violations. The RSMND should address this fact pattern as they relate to new significant impacts.

g. The Current Septic System. The "existing facilities" description references two in-ground septic systems "with a total of 900-gallon capacity." This appears to be an error. The Dimensions 4 Engineering letter to PS dated February 4, 2020 indicates that the two existing septic systems *currently serving* the project properties and facilities "have a total capacity of 840 gallons" and that "the pressure distribution system has a design capacity of 607 gallons per day and a dose setting of 220 gallons." (letter, pg.1) VOTMA assumes that the 607 pressure distribution system is functionally the primary means for septic treatment/disposal. This significant capacity shortfall relative to the existing customer visitation numbers will be discussed in more detail below.

4. Baseline for CEQA Analysis. Applicant's counsel previously submitted a letter dated February 14, 2017, discussing case law to the effect that the "appropriate" CEQA baseline to be used in considering the request to amend the 2007 use permit is the "current physical environment." Counsel's letter did not define whether the term "current" was a fluid moving-in-time concept or a fixed date. An example of the latter for purposes of this case, and apparently the approach used in the *Kenneth Fat* case the February 14, 2017 letter relied on, would be the August 4, 2014 date the *application* to amend was first filed by applicant and the referral letter to interested entities seeking comments under CEQA was initially issued.

   VOTM submitted comments on March 21, 2017 responding to and refuting the fluid moving-in-time "current use" baseline position both from a legal and a policy perspective. VOTMA also submitted comments on on February 13, 2020 objecting to the SMND's use of the "current conditions" baseline. As noted in both comments, use of a floating current conditions baseline in circumstances where the applicant knowingly and willfully serially violated existing COAs to establish an unpermitted and oversized use of the project facilities would constitute a policy that rewarded COA violators. PS' embracing such an approach, particularly where it had demonstrated no inclination to enforce significant COA violations as the SVCAC had noted, is hard to reconcile with its land use policies and its police power obligations.

   The RSMND continues to adhere to the existing conditions approach to setting the CEQA baseline as appropriate for CEQA purposes in this application. (RSMND, pg. 3) The RSMND does not provide evidence as to why this discretionary decision is appropriate "in the circumstances of this case." CEQA review for the application commenced 6 years ago. The COA violations commenced even earlier and were known to PS and not pursued. Yet applicant and seemingly PS are content to view the conditions as of 2020 as the appropriate baseline to assess an application whose functional purpose is to obtain post hoc absolution for its long-standing disregard to very clear COAs.

In the face of this obstinance and disregard for the rule of law VOTMA has secured an opinion of counsel assessing the merits of the assertions of both PS and applicant as to the rule relating to application of current conditions to determining CEQA baseline in this circumstance. That opinion, from the Law Offices of Stephen C. Volker and dated August 26, 2020, is being submitted to you separately.

VOTMA again requests that PS use a revised COA-based baseline that results in a CEQA assessment that is effective as an informational document under these particular chronic on-going COA violation circumstances, and avoids a misleading presentation to decision-makers faced with an applicant so clearly prone to ignore lawful COAs for financial gain. Use of a 2007 use permit COA-based baseline, or even an August 2014 application-filed baseline set point, would be fully within PS' discretion given the particular circumstances of this case and the equities involved.

5. RSMND-CEQA Standard for Subsequent MND
   a. CEQA Guidelines 15162(a)(1). PS' attempt to avoid application of CEQA Guidelines section 15162(a) to reopen the 2007 use permit reflects a nearsighted interpretation of that section. There is no doubt that the disregard of the "no food service " limitation and the corresponding expansion of food service dramatically over time, the construction of two commercial kitchens to support that expansion, the failure to create the 54 parking spaces (only 34 were created) on site that were required in the use permit, the use of the 2nd floor upstairs and the case goods room for wine tasting, the expansion of the patio from 4 picnic tables to 144 "dining" seats, the overuse of the limited existing septic system, the opening of the Maple Street gate for visitor egress (essentially creating a one-way traffic lane through the site), the functional but unauthorized creation of a 53 space parking lot offsite on a separate parcel (70 Shaw) across the street from 60 Shaw, the holding of unauthorized "events" (e.g., lobster feeds) without having undertaken the basic safety requirement to put in a left turn lane on to Shaw from northbound SR 12, taken together, represent "substantial changes to the project…due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects" as per Sec. 15162(a)(1).

b. CEQA Guidelines 15162(a)(2). The transformation of a small tasting room with a lite "market place" approved by the 2007 use permit into the juggernaut "wine tasting combined with sit down meal food service" venue that VJB has become (likely approaching or surpassing 1000 combined wine tasting or meal eating customers per every Friday-Sunday weekend in the peak season summer and fall months) is a change with respect to the circumstances under which the project was undertaken within the meaning of Sec. 15162(a)(2). This transformation occurred and is occurring at the same time the BOS, residents of Sonoma Valley and the PS are all trying to reconcile how to deal with an explosion of winery and wine-tasting related events over the last 4-5 years that threaten the health, safety, welfare and tranquility of the Sonoma Valley.

   The applicant completely ignores this linkage. Its traffic studies do not recognize or reference the Sonoma Valley Traffic Study commissioned by PS to assess the environmental impacts of this winery event explosion. Applicant's various traffic studies also do not recognize or reference the significant effort the Sonoma County Transportation Authority is devoting to update and correct its traffic demand model (tdm) to include better data on traffic patterns on Highway 12, including for the first time actually including data that tracks actual traffic demand patterns for Friday through Monday (i.e., the SCTA tdm that applicant's traffic consultants have been using to estimate *future* traffic conditions in conjunction with the revised project in operation did not track and integrate any weekend traffic data [Fri-Monday] into the model until the most recent iteration update just released in July 2020.)

c. CEQA Guidelines 15162(a)(3). Finally, there is most obviously "new information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence at the time the previous...negative declaration was adopted" that meets the requirements of Sec. 15162(a)(3). That new information quite simply is that the applicant in the 2007 use permit proceeding has clearly demonstrated that it apparently did not intend to nor has presently complied with a significant number of COAs adopted as mitigations in 2007 use permit. Had PS known that the applicant would ignore or at

best only partially comply with a variety of the key conditions of approval (as referenced, in part, in paragraphs 5 (a) and (b) above), it is highly probable that the MND would not have been approved and certified. Applicant can argue all it wants about whether the baseline for CEQA purposes should be or must be the "existing conditions" (which VOTMA will vigorously contest), but it can't run away from its past and ongoing violations of the existing (as of 2020) COAs. As such, this RSMND must reopen and deal with the deviations from the previously adopted 2007 MND. The PS proposed findings in the RSMND that 1) "the current project proposal…will result in few changes to the physical environment and does not amount to substantial change to the previously studied project," 2) there is no substantial change to the circumstances of the project," and 3) "there no new information that could not have been known with the exercise of reasonable diligence that will result in in a new significant environmental effect or a substantial increase in severity of a previously identified significant effect," (RSMND, p.5) are simply wrong and not supported by the reality on the ground.

6. RSMND-Initial Study Checklist
   a. Item 8-Greenhouse Gas

      The discussion indicates that the BAAQMD screening criteria for GHGs is not met for the existing tasting and food service aspects of the proposed use because those aspects of the proposed use consist of 6,309 s.f. It appears that would only be true if the 1,615 s.f. 2nd story "open room" is not included in the calculation. As indicated previously in 3c above, the Dimensions 4 "Seating Plan and Dining Area" is indicated to be for "overflow use." The addition of that 1,615 s.f. area would cause the proposed tasting and food service use to exceed the 7 ksf GHG threshold. This item (and the COAs) should include clarification that the 2nd story is for office use (as well as the case goods storage building) may not be used for tasting or food service overflow, consistent with the 2007 assessment. With that clarification, the proposed amendment does appear to just miss the GHG screening criteria. It would be helpful if the statement that the "existing tasting and food service aspects of the proposed use consist of 6,309 s.f." would be detailed.

In any event, it would be helpful for other parts of this RSMND assessment if the VMT associated with the proposed 53 space parking lot were calculated assuming a 3x turnover per day. For reference, VOTMA notes that at 2.5 customers per vehicle and a 3x turnover per day over 6 hours would generate 397 customers. Combined with the 34 on-site 60 Shaw parking spaces 34 x 2.5 x 3 = 255), and ignoring any other off-site parking, the modified parking structure proposed for the project would be capable of accommodating 652 customer per day. If the 34 on-site parking was expanded to the full authorized 54 spaces under the 2007 use permit, the facility (without the new parking lot) would be able to accommodate 405 customers. To state the obvious, fully utilizing the existing authorized on-site parking would still provide more parking than needed for the 313 customers the RSMND sets as a maximum per day, even if the expanded 1500 septic system was installed.

b. Item 10-Hydrology and Water Quality
This item and the mitigation measure imposed has been significantly revised from the January SMND draft was published on State Clearinghouse (but not adopted). The January SMND notes the small capacity of the existing system (SMND says 900 gallons, but should be 840, with the pressure distribution system component design capacity of 607 gallons) and finds that even with the new 1500 gallon system installed and in operation it would not comply with County septic design regulations to handle the peak projected customer loads of approximately 313 persons on a peak day.

To mitigate that significant impact, the January SMND proposed to impose mitigations measures that would 1) “reduce patio table seating area to 450 s.f. with 30 seats,” 2) “eliminate all wine tasting facilities and seating in all other locations within the project that are not expressly permitted for such use,” 3) provide that the maximum daily number of combined wine tasters and meals served shall be limited to 96 per day, and 4) require the applicant to “submit regular septic flow monitoring data and other information requested by the Well and Septic division to verify that the use is operating within the design

capacity of the system." The SMND also finds that with the reduction in customers to fit the project septic loads for the new 1500 gallon system "the parking demand is within the parking capacity as originally approved by the 2007 use permit. Off street parking [i.e., a new parking lot] is not necessary" to support the project. (SMND, pg. 24)

The effect of this mitigation framework would have been to down-size the applicant's winetasting and food service operation to conform to County regulations and negate the rationale for the new 53 space parking lot. VOTMA supports that approach and outcome. Notably, the January SMND did not discuss the fact that the current 840 gallon/607 gallon system almost certainly was (and is) not able to handle the now-current peak flows associated with the more than 300 customers (or the 300-700 customers per day per F/S/S peak season weekend applicant testified to in 2017—see discussion in #1 above and below in this Item10) currently patronizing the applicant's facilities, and also did not (and does not) have a grease interceptor installed

Both the SMND and RSMND should have determined what the comparable wine tasters vs. meal eaters ratio would be, and what the total customer per day limit would be, if the *existing* septic system were simply *left in place* (or alternatively replaced with a similar sized new more efficient system) and used to service the project facility. Calculation of those numbers is necessary to fairly and transparently evaluate and understand the growth in permitted customers (however the system load is calculated) that the new 1500 gallon system option would allow relative to the number of customers per day the current system is now capable of servicing from a system load perspective, especially in critical Friday/Saturday/Sunday 3 day peak season situations.

The July RSMND does not explicitly backtrack on the SMND approach to downsizing customer numbers to fit the County criteria approach. It instead uses different customer per gallon flow generation factors to determine projected peak flow demands. By using lower factors, it would allow 153 wine tasters per day and 160 meal customers, or a total of 313 customers per day and still stay within the 1500 gpd capacity. The RSMND thus "revises" the SMND to allow 217 additional

customers per day. The RSMND does not reduce the size of the outdoor patio (as does the SMND) but does reduce the 144 dinner seats for "restaurant use" applicant proposes to 104 table seats (a term not defined but appears elsewhere to mean all seating for all winetasting and meals for the entire project). It does not explicitly prohibit use of non-designated areas for wine tasting (i.e., 2nd floor office area and case goods room).

The discussion in Item 10 of the RSMND does not explain, describe or reconcile the rationale and the dramatic revisions to the SMND. The discussion in Item 11 (Land Use and Planning) of both the SMND and the RSMBD do provide detail but the rationale there not seem consistent with the rational outlined briefly in Item 10 in the RSMND, which refers to use of comparison data. The RSMND should be revised to address the inconsistency between Items 10 and 11, close the transparency gap and provide rational decisional information to aid the BZA and others who will assess whether substantial evidence supports this revision.

VOTMA has attempted through Public Records Act requests (required by PS in lieu of allowing strictly controlled access to the PS public files, apparently due to COVID concerns) to understand why PS walked back its downsizing max customer position in the SMND. Through those PRA responses, delivered on August 11, 2020, VOTMA has attempted to disentangle the web that resulted in the RSMND approach to allow 313 customers per day, every day of the week, to wine taste and have meals at VJB. VOTMA remains perplexed by the walk-back and recalculation.

The RSMND gives only a passing hint in the Item 10 discussion of hydrology at what is purported to be the basis for the walk-back position that the 1500 gallon replacement system can handle the needs of 153 wine tasters and 160 meal takers. Page 21 of the IS/SRMND reveals in summary fashion that "Utilizing methodology allowed in Section 4.5, C. (comparison information) of the County's On-Site Wasterwater Treatment (OWTS) Manual, the capacity of the proposed new septic system is designed to handle the proposed peak projected customer loads of approximately 313 persons per peak day."

This statement raises more questions than it answers. Where did the 313 projected customer "loads" per day come from? Where does the subdivision of the 313 customers per day into 153 winetasters and 160 meal takers come from? If a customer starts out as a wine taster, but on the way out ends up purchasing some "food service" to go as he/she leaves, is that a wine taster or a meal taker or both?

How are customer loads for winetasters and meal takers derived? Is it by comparison with other local facilities, or is it based on VJB's actual operations? Or, is it based on the industry standards that are outlined in the OWTS? Is it some combination of all of the above that somehow meets what the applicant's economic and operational needs are defined to be? VOTMA is not sure. It does bear noting, however, that at the January 25, 2017 SVCAC hearing the applicant was asked by the SVCAC how many customers per day there were, "500 a day or 1000 a day?" The applicant's response was "300-700-peak season per day (Friday, Saturday, Sunday)." (SVCAC, Minutes of January 25, 2017 meeting) That was and is a troubling response that should give PS pause as to whether the existing 840/607 gallon capacity was/is capable of handling VJB's actual operational customer levels. Although "currently" with fires and smoke that might not be a problem with lower customers, that is an issue that needs more immediate mitigation attention.

VOTMA is not able to sort out this adequate capacity use issue. VOTMA has reviewed correspondence between applicant, PS, County Well and Septic, Adobe Associates and Dimensions 4 Engineering that occurred from January 2020 to July. At times there seems to be an effort to compare VJB with other facilities (e.g., Cornerstone) that seem different; at times there is reliance on septic and other data gathered in 2018, which seems inappropriate given the drop in commercial activity post 2017 Sonoma fires which would render that data virtually useless; at times there are references to daily average flow calculations that span over long periods (e.g., from January 2018 to October 2019). Such averages are meaningless, especially if, as the applicant has publicly testified, the peak customer periods (and thus the peak septic flows) occur during the period Friday-Sunday in peak season. The capacity limit does not appear to generated from an average daily based calculation

or to adjust for periods of time that incorporates storm, 2017-18 wildfire and potential heat wave and wine tourism seasonality variations. In addition, unless VJB is going to a reservation system for both tastings and meals, it is hard to see how the 153/160 winetaster/meal taker split per day, with a 313 combined customer max, is analytically supported. On the one hand, Dimensions 4 Engineering's February 4, 202 letter to PS asserts that "customers *mainly* partake in wine tasting, while Adobe Associates' February 5, 2020 letter to VJB characterizes "the food service at VJB similar to a cafeteria" as it struggles to come up with the proper translation for how much typical flow allocation should be assigned to a particular use—wine tasting vs food service.

Finally, VOTMA is perplexed as to why what seems like the plain reading of the design flow rates set forth in Table 11.1 of the OWTS has not been followed. That table reads similar to the USEPA OWTS manual (Table 3-4, pg. 3-7). In both cases the calculation for design flow rates appears to have a two part calculation—what is the flow associated with the activity and what is the flow rate associated with the facility type. In Table 11.1 where there is a restaurant with a meal being prepared and served, the flow rate for the meal is 3 gallons per meal served (disposable utensils). To that is **added** the type of facility and associated flow rate for the customer. For a short order facility, the flow rate is 8 gallons per person. A wine tasting facility (no meals served-[but what about a meat and cheese plate?]) is 3 gallons per person. VOTMA does not purport to be an expert in this area, but it does seem that applying a straightforward reading of Table 11.1, the restaurant meal combined calculation for the current marketplace/deli should be 3 + 8 = 11 gallons per meal/customer; whereas the wine tasting should be 3 gallons per customer. Table 3-4 would suggest the same calculation for a short order restaurant, although the numbers there would be 3 + 6 = 9.

It appears that in the SMND a customer flow rate of 13 gpd was used and an employee flow rate of 15 gpd was used. In the RSMND a 5 gallon flow rate was used per customer partaking in food services, a 3 gallon flow rate was used for winetasters, and a 15 gallon flow rate was used for employees. As indicated VOTMA's reading of Table 1.1 would

suggest that a total flow rate for the meal/customer category would be between 9-11 gallons. If the RSMND is based on a combination of OWTS table 11.1, *as adjusted by applicant's consultants*, based on some historic existing use numbers for the existing facility, that data needs to be made public for scrutiny and assessment. VOTMA has not been provided any correspondence that provides the sources and nature of the raw data used to make the adjustment down from 9-11 gpc/meal to the 5 gpc/meal used to calculate the 313 max customer number with a 153/160 taster/meal-taker split.

Clearly some additional assessment is called for based on the issues raised above and the selection of flow rates used in the RSMND. Perhaps it is only an accident that the 153/160 split for winetasters/meal takers (didn't Dimensions say the *majority* of the customers were wine tasters?), using the per meal/customer numbers derived by the applicant's consultants, and using the magical 313 combination as allocated, results in capacity demand of 1499 gallons. That was close enough that PS rounded up to 1500. The RSMND does not address whether the current parking on site at 60 Shaw, if increased by 20 spaces to a total of 54 spaces, as contemplated and authorized in the 2007 use permit would be adequate to cover the parking demands associated with whatever the total authorized customers end up to be, whether its 313, which uses the maximum capacity available calculated by the applicant, or some lesser number which would both not fully tax the septic capacity and also not exhaust the parking availability. There is no reason PS could not determine where that optimal number would be, thereby avoiding the excess septic capacity risk and the excess food service demand issues associated with a new parking lot.

VOTMA closes its comment on this item with the observation that when a representative visited VJB on March 22, 2020 at approximately 2:30 in the afternoon there were approximately 150 customers present. Of those, there were 4 times as many people eating outside in the patio as there were people inside wine tasting. At a minimum this suggests that the winetasting/meals eating split may bear reconsideration, which in turn would affect the combined customer daily limit.

c. Item 11—Land Use and Planning

This Item has largely been addressed in Item 10 above. But several comments are warranted here regarding the RSMND's characterization of the parking lot benefits to traffic problems and circulation: 1) the new parking lot which has already been functionally established and been in operation for two years has not diminished or eliminated the on-street parking problem on Shaw Avenue all the way down past the county park parking lot. This is an example of what might be called the Field of Dreams phenomena—if you build it (the parking lot) they will come (the total customers will grow); 2) the parking lot has not eliminated cars and limos from stopping in the middle of the street in front of the VJB entrance and disgorging customers who amble into VJB's entrance, at times without regard to oncoming traffic; and 3) the removal of the 4 parking spots on the northside of Shaw will complicate the traffic situation on Shaw and create an unsafe space for customers who wish to access the establishments on that parcel (two wine tasting shops and a café) by parking in the back and proceeding along the north side. The right turn lane created and the space requirements for that lane need to be assessed from a pedestrian safety perspective.

Separate from the foregoing, the RSMND does not address who is allowed to use the proposed parking lot. Applicant indicated previously that the parking lot would be reserved exclusively for VJB operations and would close at 4 pm. Presumably that means it would be chained off. That arrangement needs to be clarified and codified as a condition.

PS and the applicant have been resistant to VOTMA's argument that 70 Shaw is a separate parcel and cannot be processed as a part of the 60 Shaw parcel project that is separated by a public street. If 70 Shaw is to be made available for public use, the traffic studies need to be revised to reflect that fact and to assess the overall neighborhood and business traffic/transportation impacts. If the use is not exclusive to VJB, a separate proceeding would seem to be required for a proposal to transform that parcel into public parking lot. If 70 Shaw is to be used only for VJB then the restrictions on the parking (i.e., elimination) as applied to the northwest corner parcel, needs to be publicly noticed as a County imposed restriction on the entitlements as to that parcel and to

consider safety issues associated the public's constrained access along northwest side of Shaw resulting from the blind right turn lane.

d. Item 17—Transportation

i). Left Turn Lane from Highway 12 to Shaw. The difference between the Transportation analysis and conclusions in the SMND and the RSMND is so dramatic as to suggest a change in directive to staff. The SMND finds that "elimination of the option to hold up to 15 special events per year does not justify deletion of the existing mitigation measure requiring construction of a left turn lane."

Conversely, the RSMND takes the position that since the left turn improvements have not been installed on Highway 12 and were deferred in accordance with Mitigation Monitoring COA #58, the only consequence of the applicant not installing the improvements is that the applicant may not commence any permitted events and may not change the hours of operation. Applicant has indicated that it will forego any conditionally permitted special events and will not change the hours of operation. By that logic there is thus no obligation to complete the left turn lane improvements. The RSMND accepts that grossly uneven tradeoff (giving up 1500 event customer *per year* in return for receiving permission to construct a parking lot that has the same safety/congestion geographic profile as the events left turn but which could generates 397 customers *per day every day of the year)* with the summary statement (and without discussion): "Accordingly, mitigation measure Traffic-1 and its associated mitigation monitoring provision are modified [i.e., eliminated] in the [R]SMND."

The RSMND buttresses it efforts to fall in line with the applicant by starting the discussion on Transportation, and thereafter restating its position several times, that the RSMND is evaluating the proposed use amendment application comparing it against "existing conditions" and the project analyzed by the 2007 MND, and that there are no changes in the proposed project that would now result in significant conflicts. As the RSMND states it *"For the purposes of this CEQA analysis, existing traffic conditions, including the site as it is currently operated, are the baseline for analysis. The assessment of environmental impacts in this*

revised Subsequent Initial Study are limited to any additional potential impacts moving forward. While the traffic study notes additional traffic generation for the restaurant use compared to the project as approved in 2007, an actual increase in traffic would not occur *as the restaurant use is an existing condition."* (ital and underlining added) In other words, since the applicant is already inviting/allowing its customers to park in the unpermitted parking lot and they have responded in numbers that, together with on-site and street parking, overwhelm the on-site project facilities relative to what was contemplated in the permit and in obtaining "food service" that was prohibited in the permit, that should be deemed the existing baseline, and so for CEQA purposes there is no new impact to consider in this RSMND. This appears to be yet another form of the popular new form of thinking as to unacceptable impacts that "it is what it is."

The RSMND brings home the bacon for the applicant by also *deleting the entire discussion in the SMND* to the effect that the "County has the authority through its zoning police powers to require traffic and circulation improvements, which are directly and proportionally tied to the proposed intensification of use even if the intensification has already occurred." In essentially disabling itself PS goes so far as to delete the finding of the DTPW contained in the SMND that "operating the proposed restaurant use on a daily basis is similar to or more intense than the traffic generation from occasional event activities."

Applicant is playing a dangerous game here from a land use planning perspective. It relies on the "existing conditions" approach as a "get out of jail card" for its present and future operations even though the proposed parking lot those cars are already now parking in did not exist in April 2017 when the SVCAC rejected the project, and certainly did not exist in August 2014 when this amended application was initially filed (*thus triggering the baseline set for CEQA project review process*). In any event, the cases applicant relies on for "existing condition" absolution are easily distinguishable where, as here, there is a preexisting use permit issued by the same governing entity from which applicant now seeks a modification. This is not a regulatory gap/overlap situation or a preexisting unregulated business where the unlawful conduct is

occurring. Applicant is violating the conditions that the same agency that issued its use permit imposed.

Applicant's clear violation of numerous conditions of approval also puts its permit at jeopardy under COA #84. It is already using a parking lot it has applied for permission to establish. Similarity, applicant publicly testified several years ago that it was already harboring 300-700 customers per day on a 3 day F/S/S peak season weekend, which obviously calls into question the capacity and functionality of its *existing* septic system and perhaps associated groundwater issues. Perhaps most significantly, applicant by its conduct over the last 6 or 7 years has shown generally that it simply doesn't care about use permit compliance as a business matter. PS needs to protect the sanctity of its permit process and enforce is own permit conditions.

ii). Right Turn Lane from Highway 12 to Shaw. The RSMND makes short work of the right turn lane requirement on to Shaw by accepting applicant's proposal that involves eliminating all the parking on the northwest side of the building across from VJB and using that space as part of the right turn lane, presumably with some buffer from the wall. Undoubtedly that action would adversely impact the occupants of that parcel (conveniently owned by applicant). More importantly, it does seem that the elimination of much of that current buffer space could well create additional safety issues for pedestrians and even potential patrons of the applicant who prefer not to take the risk of cross-walking Shaw midway to access the VJB entrance. The RSMND finds that approach "equally effective mitigation that will ensure that the project does not substantially increase hazards due to geometric designs, but will instead improve turning movements and circulation in the neighborhood." That may be all well and fine for vehicles, but what about creating hazards to the pedestrians where there is no curb to provide safe passage? This is not an "equality effective" mitigation measure.

iii). Parking Analysis. Mindful that prior portions of these comments have addressed many of the transportation issues associated with the Parking Analysis portion of the RSMND, the comments here will be brief.

---Item 17(a) Overflow Use. It is abundantly clear that even with 87 spaces (current parking plus the 70 Shaw parking lot) the parking would not support use of 850 s.f. of the 1800 s.f. the case goods storage for "restaurant" purposes and 1425 s.f. of the 1,615 2nd story office area as "overflow" for winetasting or restaurant activities. This part of the proposal (never formally made to VOTMA's knowledge) should be understood as a "Hail Mary" pass offered in the manner of the sleeves off applicant's vest.

---Item 17(b) Vehicle Miles Traveled. The RSMND statement (pg. 32) that the creation of a 53 space parking lot as part of the amended project "would not increase Vehicle Miles Traveled over "existing conditions" because "current conditions" already include restaurant operations is frankly beyond being absurd. This amendment seeks, among other things, to obtain permission to modify the use permit to allow the applicant to conduct "food service" and wants a new 53 space parking lot to facilitate higher daily customer counts.

Even if applicant was already lawfully conducting restaurant food service, an amendment seeking authorization to construct a new parking lot that increased the parking capacity by 156% (53/34) would more certainly result in increasing the VMT of the project.

It is hard to understand how, with a straight face, PS can issue a SMBND with this sort of illogical comment. The SMND at least tried to argue that there was no VMT issue because the project (and specifically here the portion dealing with the parking lot) was located "along a transit corridor with bus stops less than ½ mile away." Guideline 15064.3 subdivision (b) provides that "Generally, projects located within a half-mile of either a major transit stop or a stop along an existing high quality transit corridor should be presumed to have a less than significant transportation impact." (emphasis added) But it is not seriously debatable that some or even any of the customers who park in the new proposed parking lot will arrive by a high quality transit stop along Highway 12. That proposition was absurd, which is probably why the RSMND deleted that explanation and merely retained the

conclusory statement, perhaps in the hope that no-one would actually read and apply Guideline 15064.3(b).

--- Item 17(c) Transportation Hazards. As mentioned previously, the RSMND does not adequately address or assess the hazards to pedestrians, and drivers who might hit pedestrians, as a result of the buffer-reducing right turn from Highway 12 on to Shaw being proposed.

VOTMA believes that the Highway 12 left turn lane to Shaw pre-requirement should be applied to any use of the new parking lot, if that lot is deemed necessary and is approved. If that condition is not imposed, the 100 foot "go-around" proposal should be imposed as a condition of approval to at least reduce the hazard of rear-end accident probabilities on Highway 12 at the Shaw intersection.

---Maple Street Traffic and Hazard Assessment. The RSMND does not address the transportation or hazard implications of authorizing the Maple Street gate to be open for egress from the 60 Shaw property. Whether the County Fire Chief has administratively approved that gate being open during business hours for egress and well as emergency equipment ingress is irrelevant to the transportation and hazard assessment.

VOTMA understands that the left turn at Maple from Highway 12 currently meets the requirements for a left turn lane. Certainly, customers exiting 60 Shaw through the Maple gate and then turning left for access to Highway 12 will experience delays, regardless of whether they turn left or right on to Highway 12. If they turn left they will experience significant time delays from both directions, and also hazards from on-coming cars from the south with no middle land to buffer integration on to Highway 12 northbound.

Applicant's traffic studies do not adequately deal with this issue, although applicant has clearly proposed this permanent significant COA change in use. The RSMND does not even address the issue in Item 17 or anywhere else to VOTMA's knowledge. This is a significant transportation impact issue that must be addressed in the RSMND.

Summary/Recommendations

Based on the foregoing comments, VOTMA recommends the following actions relating to the RSMND and subsequent CEQA review, and applicant's ongoing violations of the 2007 use permit:

1. Baseline. Set baseline for subsequent CEQA review of this amended application at 2007 use permit, or at a minimum as of the initial filing date of the amendment to the use permit-August 4, 2014.
2. Scope of CEQA review. Reevaluate applicability of CEQA guidelines 15162(a) and scope of review in view of proper baseline reset.
3. Correct RSMND errors/assessments. Correct errors, assessments and mischaracterizations on pages 1-5 of RSMND regarding introduction, project history, existing facilities, proposed project, CEQA baseline, CEQA standards. Compare current operations with 2007 COAs and clarify scope, extent and evidence relating to any changes purportedly implemented by administrative discretion approval of PS director.
4. Traffic Studies. Required revised traffic study (including VMT impacts) associated with proposed project compared with revised baseline. Include comparative assessment with Sonoma Valley Traffic Study, peer review, and use of most current Sonoma County Transportation Authority travel demand model for future conditions.
5. Current Septic System. Reassess correct customer per gallon design flow generation factors per Table 11.1 of OWTS. Assess customer per day capacity of current septic system per corrected 2007 baseline. Assess and impose immediate limits on current operations consistent with that assessment.
6. Proposed Septic System. Reassess customer per gallon design flow factors for proposed new septic system per Table 11.1 of OWTS. Explain how per day customer limits in the aggregate were derived and how the split between wine tasters and meal takers was calculated.
7. On-Site (60 Shaw) Parking. Determine parking capacity on site based on applicant fully utilizing authorization in 2007 use permit to construct 54 parking spaces. Compare with present and proposed

septic system customer per day limits to determine whether new 53 space parking lot at 70 Shaw required.

8. 70 Shaw Parking Lot. If 70 Shaw parking lot required, clarify whether use is limited to applicant's operations and subject to applicant's hours of operation or will be available for broader public or other use. If latter, redo traffic studies to reflect impact of broader use and times of use re transportation/traffic impacts, including need for left turn lane on to Shaw. Prohibit use pending use permit approval.
9. Left Turn Lane 12N to Shaw. Determine whether new parking on-site (60 Shaw) or new parking lot, together with projected customer septic hydrology flow limits for existing or proposed septic, presents the same traffic risks/hazards that prompted initial left turn lane requirement prior to "events" in 2007 use permit. If so, retain.
10. Evaluate Pedestrian Hazards. Evaluate pedestrian hazards associated with proposed right turn lane 12S to Shaw.
11. Maple Gate Exit and Highway 12. Evaluate traffic and risk impacts associated with opening Maple Gate for egress and immediate left turn to Highway 12 intersection compared to revised baseline.
12. Enforcement During Pending Application. Consider appropriate enforcement structure, including prohibitions and penalties, for continued operation in violation of 2007 use permit while the application remains pending, including during any appeal periods.

This concludes VOTMA's comments on the RSMND. Thank you for the opportunity to provide input.

Respectfully,

Roger Peters

Valley of the Moon Alliance

cc: Greg Carr—BZA
Tennis Wick—Permit Sonoma Director
Bruce Goldstein—County Counsel