



May 23, 2022

VIA Direct filing at Permit Sonoma
VIA MAIL: Tennis.Wick@sonoma-county.org

To: Tennis Wick, Director, Permit Sonoma, County of Sonoma
From: Valley of the Moon Alliance

Re: Appeal of Determination of Conditions of Approval Compliance Re Issuance of Building Permits for Kenwood Ranch. DRH16-0006 BLDG Permit Check

Director Wick,

The Valley of the Moon Alliance (VOTMA) hereby appeals the recent determination by Permit Sonoma (PS), that building permits can now be issued for the Kenwood Ranch Resort Project (KR or KR Project) based upon the finding that the applicant has satisfied the Conditions of Approval (COA) imposed in PLP01-0006 and DHR16-0006 (collectively, the use permit).

This appeal is triggered based upon an email dated May 13, 2022 from Georgia McDaniel of Permit Sonoma in which VOTMA was advised, by attachment to that email, that on May 11, 2022, the Planning Division had transmitted to the Engineering and Construction Division its approval that the COAs had been met. That determination is a prerequisite under the use permit to the issuance of building permits. This appeal is filed within the customary 10 day period from the date of that determination in accordance with the provisions for appeal allowed by the Sonoma County Code 26-92-040.

Appeal

VOTMA's reasons for the appeal are as follows:

- a. **Lack of compliance with Condition 99c of the Conditions of Approval .** Maintaining the visual screening of the project from the Sonoma Valley scenic corridor along Highway 12 west of Adobe Canyon Road was a requirement of Condition 99c under Resolution 18-0115. Preservation of the forested area around the KR Project site was the key component on which maintaining the required screening of the project site relied. That screening was destroyed in the Glass Fire of 2020. KR appears to have already removed some trees and will undoubtedly continue to remove trees that were killed or damaged by the fire

from the forested area and the project building site. No arborist's report or other factual evidence has been submitted since the Glass Fire to indicate either the full extent of the destruction of the trees intended to provide the screening to Highway 12, or the extent to which the screening required to be maintained still could exist after the Glass Fire. PS did not request an arborist's assessment of the area from KR, and KR has not submitted to PS any assessments it may have undertaken. PS has not requested or inquired about any replacement screening solution, and KP has not submitted any. Absent information on the extent of tree destruction and removal, and/or on any replacement solution, there is no factual basis upon which PS could conclude that the trees removed to date by KR and the trees likely to be removed in the future will still maintain the screening required by COA 99c. PS has not provided any supporting documentation to establish how it determined compliance with COA 99c has been met. PS' discretionary determination that COA 99c has been met is judgmental, arbitrary and unsupported by evidence.

b. Lack of compliance with Condition 101a of the Conditions of Approval.

COA 101a requires that all exterior light sources be "fully shielded from offsite view." Compliance with that requirement was to be accomplished both by orientation and direction of lighting sources and screening provided by the trees that no longer exist after the Glass fire ravaged the surrounding forested area. PS has not requested any photometric analysis to assess the extent to which light sources from the KR Project will now be visible offsite after the loss of the forest screening that existed before the Glass Fire. KR has not provided any photometric analysis showing whether the light sources from the project will be fully shielded. It is unclear whether any modifications have been made in the building plans submitted for approval to replace said screening, thereby potentially leaving residents of the Sonoma Valley open to the nighttime glare from light sources emanating from the project, and potentially impacting the dark-sky conditions requested by the nearby Ferguson Observatory to be addressed. PS has not provided any supporting documentation to establish how it determined compliance with COA 101a has been met. PS' discretionary determination that COA 101a has been met is judgmental, arbitrary and unsupported by evidence.

c. Lack of compliance with COA 99 and 100 of the Conditions of Approval.

COA 99 requires the applicant to implement measures "to minimize the visual contrast of the inn/spa/restaurant with the immediately surrounding setting so that the project will not attract attention as seen from State Route 12." COA 100 requires a "detailed landscaping plan for the inn/spa/restaurant site which addresses visual screening of the building and vegetation management for fire control and compatibility with preservation of native vegetation." The Glass Fire completely changed the visual screening capability of the surrounding forest and trees and substantially destroyed both the forest and the associated vegetation. Visual management plans and vegetation management plans that had been developed prior to the Glass Fire were rendered obsolete by that destructive fire. Since the Glass Fire burned away all or virtually all the trees on the inn/spa/restaurant building site, KR presumably has had to revise its landscaping plans, and rethink colors (99a), height of guest cottages (99b), finished floor elevations of the main building (99d), since each of those conditions, among others, are focused directly on mitigation required to minimize the amount of the buildings that can be seen from State Route 12. Any

such revisions require additional Design Review and potentially other environmental review based on changed project circumstances and the superseding effects of the Glass fire on conditions existing at the time of prior Design Review. PS has not provided any supporting documentation addressing KR Project changes to address visual contrast or alternative screening strategies, or to otherwise establish how it determined compliance with COAs 99 and 100 has been met. PS' discretionary determination that COAs 99 and 100 have been met is judgmental, arbitrary and unsupported by evidence.

Relief Sought

VOTMA asks that the BZA make a finding that:

- Overrules the determination by Permit Sonoma that all Conditions of Approval have been met with respect to the Kenwood Ranch project, and specifically that the determinations of compliance as to COAs 99c, 101a, 99 and 100 lack support based on substantial evidence.
- Requires that solutions to the issues raised in this appeal, including adequate plans and reports and including, specifically, a current arborist report, a visual study that takes in long distance views from the valley and the scenic corridors in the Valley, a lighting exposure study and report, and an assessment of visual contrast and screening modifications to buildings be brought to the BZA for approval before any building permit for the project is approved.
- Places a hold or suspension on any building permit issued based on PS' May 11, 2022 determination of condition compliance, and on all further grading or other operations on site that further exacerbate the conditions that now contribute to this appeal, until such time as the issues raised here are finally resolved.

Discussion.

A. Inadequate Condition Compliance Process

VOTMA asserts that in view of the devastating effects of the 2020 Glass Fire that ravaged the Project site/parcel, and based on the information provided by PS staff in a meeting on May 17, 2022, that PS did not undertake any studies or evaluations subsequent to the Glass Fire that provide documented support for its conclusions, there is no basis from which to conclude that the applicant has satisfied the specific conditions of approval relating to visual screening and lighting required for authorization of building permits. Any such determination by PS to the contrary is not supported by any facts or evidence known to VOTMA, after diligent efforts to uncover such information.

Similarly, VOTMA asserts, based on PS Planning staff's representations, that there is no independent or applicant-supplied documentation that has been submitted to PS subsequent to the Glass fire that supports PS' determination of compliance with the COAs relating to visual screening and lighting, and that details the specific basis and facts to support the judgment rendered by PS that the specific COAs relating to visual screening and lighting have been met.

The visual, aesthetic and lighting, screening assumptions and conditions--and their purposes-- that were foundational to the 2018 Board of Supervisors Resolution 18-0115 (Resolution) approving the revised Project design must still be respected and honored. The forest surrounding the Project building site that is now devastated was determined in 2018 to still provide adequate screening that allowed this Project to be permitted in the middle of a scenic corridor. The view passing by the KR Project site along Highway 12 today, after the Glass Fire, of the forested screening area leading up to the Project site reveals the surrounding forest dead and dying and significantly damaged, if not destroyed. As a result, the KR inn/spa/restaurant resort facility is almost certainly to be prominently visible from the Sonoma Valley along Highway 12, and will constitute a stark contrast that will be out of harmony with the remainder of the Hood Mountain corridor area. That was never supposed to happen.

As context, it is significant to note that the 2018 approval of the KR Project preceded the 2020 Glass Fire, but followed the 2017 Nuns fire. In approving the KR Project in 2018, the Resolution specifically addressed the issue of whether, and to what extent, the Nuns Fire (and the preceding multi-year drought) had significantly intensified the severity of the environmental effects that the KR Project would have on the environment. In particular, Sections 3.3(d) and (g) of the Resolution reflect the Board's focus on visual screening issues, with the latter subsection (g) addressing post-Nuns "fire-related" screening considerations. That same screening concern is reflected in Condition of Approval 99c. COA 101 addresses lighting impacts emanating from the Project, which the destruction of the forest around the Project site would similarly compromise. COAs 99 and 100 address expectations regarding forest screening of buildings from SR 12.

After considering all the information and studies prepared by then-applicant Tohigh that addressed the impacts of the long drought on the project site environment and specifically the surrounding forest trees, and after considering the MacNair & Associates arborist report prepared after the 2017 Nuns fire brushed through parts of the Project site and along its flanks, the Board concluded in paragraph 3.3(g) as follows:

Given the large number of unaffected trees on the site and the screening effects of the forested areas offsite, tree removal resulting from drought and disease does not impair the screening of the Proposed Project from Highway 12 because there are enough healthy trees in the locations which provide screening to ensure that no increased view impacts result from drought-related additional tree removal. Vegetation damage from the October 2017 Nuns fire does not substantially change the visual impacts of elements of the Proposed Project or the extent to which the Proposed Project fits into the natural topography of the site" (Section 3.3(g), page 26-27) (ital. added)

Section 2.5(e) of the Resolution contained additional specific findings relating to tree removal and fire damage. Overall tree removal plans for the Proposed Project at the time had been extensively documented "including in an inventory of all trees within the Proposed Project area *as well as trees important for screening views from critical viewpoints along Highway 12.*" (ital. added) Section 2.(h) specifically discussed fire damage from the Nuns Fire. The discussion notes that "the Nuns fire affected several of the upper residential subdivision lots and adjacent property to the north, west, east and southeast of the hotel site, all outside of the Proposed Project site. *A substantial portion of the forested backdrop behind the main inn remains unaffected, as does*

vegetation between the project site and Highway 12. (ital. added) Given what the Board viewed as the peripheral impact of the Nuns Fire, the discussion concludes with the finding that “Fire damage to trees onsite and in the area of the Proposed Project would not result in a new significant environmental effect or a substantial increase in the severity of a previously identified significant effect due to changes in the project or its circumstances, or new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Board certified the EIR. No new mitigation measures are required.”

That finding would not and could not have been made if the Board had been considering the effects of the Glass Fire instead. That fire directly incinerated the Project area and “trees important for screening views from critical viewpoints along Highway 12.” Imagine the applicant standing before the Board today arguing that the Glass Fire has not resulted in a change in the Project area that will in turn cause the Project to have a new significant environmental effect or a substantial increase in the severity of a previously identified significant effect. The Glass Fire constitutes a significant change to the project’s circumstance that was not known in 2018. New mitigation measures should at least be required to be analyzed to “minimize the visual impacts of the Project from Highway 12 and to provide a screen and minimize the amount of the building that can be seen from State route 12 west of Adobe Canyon Road.” (COA 99/99c)

PS’ position that it did not need an arborist’s assessment of the impact of the Glass fire on the Project building site or on the trees important for screening off views of the Project along highway 12, and its determination, without any such documentary support or analysis, that COA 99/99c had been met, was arbitrary and is not supportable.

Despite repeated efforts over the last 10 months, VOTMA was largely unable to engage with PS Planning Division on the need for studies and reports necessary to fully assess the impacts of the Glass Fire on the feasibility of satisfying the COAs based on the currently existing forest and site conditions. PS did meet via Zoom with VOTMA after it had made its determination that condition compliance had been met. In contrast, PS’ meetings with the applicant and applicant’s counsel on condition compliance commenced in November 2021.

It is apparent now that PS Planning Division did not require the applicant to provide an assessment of the amount of tree destruction and the resulting visual screening and lighting implications of the Glass fire on the site, and its corresponding implications for Project design purposes. KR apparently did not feel the need to undertake such an assessment itself, or if it did, to share it with PS. On May 17, 2022, PS planning staff confirmed in a zoom call that it did not have a post-Glass Fire arborist report or photometric report (i.e., that all documentation supporting its determination had been identified). Nor has KR independently submitted either an arborist’s report or any photometric lighting assessment of how the current ravaged site could satisfy those conditions of approval (which documentation would have been produced to VOTMA via its Public Records Act request to PS). VOTMA is not aware of design modifications after the Glass Fire that would similarly address visual issues addressed by conditions 99 and 100.

PS’ decision not to evaluate the Glass Fire impact on visual screening and lighting issues as part of its condition compliance process is somewhat jarring in light of the

fact that PS had in hand by at least April 2021 an Arborist Report on the Kenwood Ranch Graywood Creek North Riparian Zone prepared MacNair & Associates (who also did the 2017 post Nun Report discussed in the 2018 Resolution). That report, prepared after the Glass Fire and in connection with KP's request (ZPE21-0132) to remove a large number of dead trees that constituted a safety issue, showed significant tree mortality from the Glass Fire in that riparian zone. The scale of devastation the Glass Fire inflicted along that riparian corridor revealed a high percentage (83%) of the trees assessed as being standing dead, collapsed or dying.

Although the report did not address the adjacent forest screening zones per se, the scope and extent of tree damage shown suggested how significantly the Glass Fire likely would have affected the forest area important for screening views of the KP resort from Highway 12. Despite the dramatic impacts reflected in that report, the applicant has shown no inclination to be transparent as to the **overall** severe impacts the Glass fire had on the broader Project site.

Absent such studies and reports there is simply no substantive information that supports PS' determination that the building plans for the project as filed and pending, would be able to satisfy the relevant conditions. Those conditions require KR to preserve existing trees to the maximum extent possible in order "to provide a screen and minimize the amount of the building that can be seen from State Route 12 west of Adobe Canyon road" (COA 99c), and to ensure that "all light sources shall be fully screened from off-sight view." PS has received no plan from KR detailing the numbers of trees in the broad forest screening zone that are standing dead, collapsed, or dying. The April 1, 2021 MacNair Arborist Report filed in ZPE21-0132 gave that information only for the slice of trees located along the Graywood Creek North Riparian Zone. Even then, the report was limited primarily to Douglas fir trees. According to the Report, it was "too early to assess the oaks and madrone's viability accurately." It is not too early now.

Without that sort of updated comprehensive damage report, and without a tree reduction and preservation plan, PS simply would have no way to assess whether the trees still preserved or perhaps to be replaced are adequate to screen or minimize the view of the Resort from Highway 12. Without a report of how many trees and the exact location of the trees destroyed or already removed from the inn/spa/restaurant building site specifically, PS' has no way of know which trees that were retained in the approved project plan to provide screening are already gone. From the looks of the building site viewed from overhead, virtually all the trees that were there are now gone. Would their absence and the absence of all the other vegetation that was part of the landscape plan and the design, orientation and location of cottages implicate whether COAs 99, 100 and 101 have been met? VOTMA asserts that is the case. PS has no documentation to the contrary backing its subjective and arbitrary determination that all is good in terms of condition compliance.

B. Risk Allocation and Vested Rights

VOTMA recognizes that the risk situation facing the Project applicant as a result of the Glass Fire is dramatically different than what the applicant anticipated when it acquired the rights to the Project several years ago. VOTMA understands the frustration the applicant might feel and the sense of unfairness because the loss of screening was not the result of any action by the applicant per se.

But that is a risk the applicant certainly knew and took when it acquired the Project after the Nuns Fire had already occurred. Applicant has and will continue to cut dead, dying and damaged trees in the forest area that were required to be preserved for screening purposes. As the area becomes barren, the visual screening that was essential to the Project will be gone. The applicant's expectation interest was, and is always, conditional on and subject to events of nature beyond its control, and thus is not in any way guaranteed by the County. The applicant acquired the Project subject to satisfying conditions of compliance. The issue is whether conditions that require and depend upon the applicant to maintain forest screening for the Project have been satisfied. They clearly have not been.

The question how to allocate the risks of disruption by the force of nature ultimately underpins this appeal. The specific conditions of approval at issue in this appeal were included as part of the use permit as a way of setting mitigation requirements for a project that at best was not going to fit well within the Sonoma Valley scenic corridor and topography. They exist to ensure that the Project was adequately (but not entirely) screened for visual, aesthetic and lighting impacts. Other conditions address water, traffic and other areas requiring mitigation or conditional approval. The condition compliance requirements in the areas at issue in this appeal are not ministerial exercises. They are real issues of concern to the valley community. The extent to which sufficient numbers of healthy trees continue to exist and are maintained in order to provide the visual and light screening required as a condition of issuance of the use permit, and now ultimately the issuance of the permits to build, requires the exercise of informed discretion supported by and based on adequate information.

Permit Sonoma has failed at that calling, and that failure should not land on those who live in the community to bear. From VOTMA's perspective based on due inquiry, PS does not know the state of the health of the forest and trees around the Project generally or specifically; it does not know which trees were lost in the Glass Fire, which trees the applicant has removed based on a decision by the applicant alone as to which and why they needed to go, and which trees are proposed to be removed in the future based on current health; it does not know which trees within the immediate building site area are present or now gone, and their location generally or specifically relative to the offsets from the cottages required for screening, as detailed on a tree by tree basis in DRH16-0006; it does not know whether the trees now gone or those planned to be removed are directly critical to screening, and in which direction and location their screening orients; it does not know the extent to which the loss of the trees now gone or to be removed will allow lighting from the Project previously judged to be adequately screened to now become visible; it does not know how the now-unscreened buildings will appear at a distance and without a forest fronting or a green forest backscreen. There is so much that PS does not know and so little it does, such that the determination that the conditions of approval have been met, especially in light of the catastrophic intervention of the Glass Fire, seems entirely unsupported and unwarranted.

The applicant does know much or most of that information or could have undertaken to develop that information to support PS in its compliance assessment effort. It apparently chose not to. The default in that situation, where neither PS or the applicant have provided an adequate basis to support a determination of compliance with conditions at issue should not be that the condition is instead essentially ignored and administratively deemed satisfied. That is what appears to have happened here. VOTMA is appealing that determination for that reason.

C. Alternative Screen Possibilities

As a last point, VOTMA wishes to focus not on what has not been done, but what might be possible. In our discussion with PS planning staff on May 17th, VOTMA indicated that our focus in raising these compliance questions was also in part directed at determining whether either PS Planning Staff or the applicant were working on affirmative alternative screening options that would acceptably mitigate the loss of the forest tree screening that was so critical to ensuring that the Project fit into the natural topography of the site and create a visual disturbance as seen from the valley along Highway 12. PS staff did not indicate that they were working on or assessing any alternative screening options that could begin to mitigate the destruction of the screening benefits provided by the preexisting natural forest. PS staff indicated that although they had heard that the applicant may be considering a tree replacement planting program, the applicant had not provided staff with any details of any such plans and that they were not otherwise aware of any such plans. There was no indication whether some sort of interim medium term screen alternatives might be possible before replacement trees matured.

This is naturally distressing to those of us who live in Sonoma Valley and who see the scraping and scarring across the Project site that occurs daily as the applicant grades and cuts away the lower sections of Hood Mountain in preparation for receiving the necessary building permits to initiate actual construction of the inn/spa /restaurant and cottage elements of the Project. It is clear from overhead pictures of the broader project area previously provided to PS by VOTMA that virtually all the trees that were anticipated under the approved design to remain on the immediate project building footprint have already been removed, by fire itself or by the applicant as a result of impacts from the fire and any resulting design revisions it is making. The prospect that the inn/spa/restaurant and the surrounding cottages will be a dramatically more noticeable and out of character feature in northern Sonoma Valley for the foreseeable future is palpable.

At the same time, VOTMA recognizes that in time and with sustained effort some portion of the natural screening that we were all depending on to provide acceptable screening for the KR Project could be restored or reestablished. The question then is whether there are interim screening options that acceptably bridge that potentially lengthy time gap. VOTMA does not know, but VOTMA is willing to explore that possibility. For now however, the first course of action is to ensure that expectations for adequate screening of the Project, as reflected in the conditions of approval, are in fact fairly and fully assessed and honored.

We await the opportunity for a hearing on this matter.

Valley of the Moon Alliance

Roger Peters

Board Member, for the Board

