

DRH16-0006 Appeal

October 31, 2016

Tennis Wick
Director-Permit & Resource Management Department
Sonoma County
2550 Ventura Avenue
Santa Rosa, CA 95403

Re: DRH16-0006: Appeal of Design Review Committee Approval

To: Director Wick

INTRODUCTION

On October 19, 2016, the Design Review Commission (DRC), by a 2-1 vote (Henderson & Harris—aye; Wurtz—nay) approved applicant Tohigh Investment SF LLC's (Tohigh) revised proposed design for The Resort at Sonoma County Inn (The Resort). Pursuant to Sonoma County Code section 26-82-050(e), the Valley of the Moon Alliance (VOTMA) hereby appeals the DRC's decision. As more fully discussed below, in approving the design for The Resort, the DRC (1) approved significant discretionary revisions to the project design for The Resort without the required supporting environmental review; (2) adopted without authority a project design that varied from and was not consistent with the design adopted by the Board of Supervisors in 2004, as analyzed and described in the EIR and reflected in the "Final Conditions of Approval and Mitigation Monitoring Program Use Permit: Inn/Spa/Restaurant: Sonoma Country Inn" (Conditions of Approval) as Condition # 84 issued in PLP01-006; (3) failed to carry out the full review and complete assessment of this proposal as required by the various Conditions of Approval in file PLP01-0006; and (4) otherwise improperly failed to consider and address the changed design and use-related impacts resulting from The Resort project as now proposed, compared to the materially different previous project as it was approved by the Board of Supervisors in 2004.

THE DRC'S APPROVAL VIOLATES CEQA

- A. The DRC Adopted Significant Discretionary Revisions to The Resort's Design and Layout Without the Required Supporting Environmental Review. The DRH decision adopting the Tohigh Revised Design is not supported by substantial evidence.**
 - 1. The Permit and Resource Management Department (PRMD) Staff Report was incomplete and inaccurate and should have included an environmental reassessment.**

The Resort has been sitting largely inactive as a project over the last decade. The PRMD Staff Report (Staff Report) mischaracterized the project as now proposed as follows: “The current project is almost exactly the same with minor modifications to structures and facilities to better accommodate existing vegetation and minor changes in architectural style.”

Consistent with this mistaken premise, the Staff Report did not identify any new environmental issues that should be investigated; the DRC Agenda asserted that “Env. Doc: Non Applicable.” Indeed, PRMD Staff stated at the outset of the hearing that since Pete Parkinson, the PMRD Director at the time, had issued a “vesting letter” on October 2007, no “discretionary action” was involved in the Design Review Committee’s review and approval. (VOTMA notes that it was advised on October 27, 2016 that no audio recording of the hearing was captured due to an equipment malfunction. VOTMA’s characterizations of statements made during that hearing are therefore based on the recollections of the three VOTMA members present at the hearing.)

PRMD Staff’s effort to classify the actions of the DRC as essentially “ministerial” is not consistent with long standing CEQA interpretation. Those interpretations make it abundantly clear that the term “ministerial” is limited to those approvals that can legally be compelled without substantial modification or change. Where the agency has the ability to require or reject changes or modifications to the design, at its discretion, in order, among other reasons, to mitigate in whole or in part one or more environmental consequences of the requested action, the exercise of that authority constitutes discretionary approval.

PMRD Staff’s conclusion that no discretionary action was involved in the Design Review Committee’s action was an error that significantly prejudiced and influenced the nature and scope of the DRC hearing process. The revised design ultimately considered by the DRC was in fact significantly altered from that approved by the Board of Supervisors in 2004 and significantly altered again, just prior to the hearing, from the proposal Tohigh filed in July 2016. These proposed modifications will have significant adverse environmental effects that were not evaluated by PRMD Staff or considered by the DRC in its decision to approve 100% of the modifications proposed by Tohigh.

Specifically, PRMD’s Staff Report does not mention that the revised proposed design submitted by Tohigh (both initially in August 2016 when it was circulated for public review, and by the one or more revisions filed as late as early October 2016 which were not circulated for public review) includes the following changes from the project plan contained in the 2004 EIR (EIR, Exhibit 3.0-10—Layout of Inn/Spa/Restaurant). The project as approved by the DRC:

- 1) *eliminates* all parking near or adjacent to cottages on western and eastern areas of project site;

- 2) *consolidates* the majority of parking in a single large *new* 67-space parking lot on the northeastern edge of site, to be serviced solely by valet parking from the entrance;
- 3) *adds a new* 27-parking lot at the Inn motor court front entrance (not clear whether serviced by valet parking) and *adds* 8 spaces at the Spa;
- 4) *relocates* cottages on the western peninsula of site, including moving some cottages down slope and relocates other cottages on the eastern side;
- 5) *reconfigures* the Spa and *adds* a new outside swimming pool;
- 6) *reconfigures* two smaller pools below the Inn into one larger infinity pool appearing to use more water;
- 7) *adds a new* “support building” on the northeast part of the site, beyond the valet parking area;
- 8) *removes* scores of trees in critical areas to accomplish all the foregoing and
- 9) *eliminates* the south-facing roof of the Inn and substitutes a *new* outdoor garden and lounge area with a terrace bar for daytime and nighttime customer activity.

Of all those changes the *only* one even addressed by the Staff Report was the elimination of the south roof on the Inn. The Staff Report characterized the elimination of the south roof and the establishment of a roof top garden/terrace in its place as the most significant change in *architecture*. The Staff Report contained no comment on the impact of that change beyond the architectural aspect.

The Staff Report correspondingly fails to address any potentially significant environmental impacts resulting from any of these other substantial project changes. Nor does the Staff Report address any changed circumstances or new information available today that was not available at the time of the original EIR in 2004 that would cause the impacts of the project as now revised to be more severe than previously indicated in the EIR. The failure of the Staff report to address these project changes and their new or more severe and potentially significant environmental impacts renders the Staff Report incomplete and inaccurate for purposes of DRC reliance and decision-making.

2. **VOTMA raised the issue of the need for an assessment of the environmental impacts both based on the nature of the changes proposed and the passage of time since the 2004 EIR.**

Both in written comments submitted prior to the DRC hearing, and in oral comments presented during that hearing, VOTMA identified substantial changes in the proposed project design and addressed potential impacts that were new or different and more severe from those analyzed in the 2004 EIR based on publicly available information (drought, traffic, concentration of events) and actions taken by Sonoma County itself in response to those new and changed circumstances.

VOTMA submitted comments on Tohigh's revised design for The Resort on August 26 and October 18, 2016 covering these shortcomings. VOTMA's comments did not capture all the design changes acted on by the DRC because the final undated proposal (Tohigh's "Proposal Statement" [Exhibit A of Staff Report] is undated; the Project Drawings (Exhibit D) dated 10/02/16) were not circulated by PRMD and the agenda packet was not placed online. VOTMA was only able to glance through the DRC meeting packet an hour or so before the meeting while the meeting room was inadvertently left unlocked (later locked until just before the meeting).

In its written comments and at the hearing on October 19, 2016 VOTMA identified potentially significant environmental impacts resulting from the proposed design changes. As stated at the hearing, VOTMA's position is that "design influences use," and therefore any significant proposed change in design must be assessed for changed uses and new impacts not previously identified.

Among those changes identified by VOTMA are apparent increased water uses associated with the new pool and reconfiguration of prior proposed pools; the numbers and *locations* of trees being eliminated to accommodate the entirely new parking configuration across the project site, the new support building, and the relocation of other buildings; potential stormwater flow, habitat impacts and other noise and lighting impacts resulting from the relocation and consolidation of parking to the *new* valet lot; traffic impacts (both on site and on State Route 12) resulting from the increased patronage generated by the creation of two large new parking lots adjacent to the Inn/Spa/Restaurant; activity-related impacts at the Inn from the expanded public accessibility to the Inn/Restaurant as a result of the parking changes; increased commercial activity, and night lighting, noise and visibility impacts associated with the elimination of the southern roof and substitution of a new terrace/bar and observation deck in that location, and other architectural design elements for the Inn (open corridors around the open central restaurant courtyard, sliding doors on the south-facing meeting rooms and bar room to proposed adjacent terraces); visibility and possible slope stability impacts resulting from the relocation of various cottages; and unknown impacts associated with the proposed new support building northeast of the valet parking area. Given the passage of time as The Resort project has languished, VOTMA also raised questions about the possible presence of California Endangered Species (Northern Spotted Owl [added in 2016 to the California Endangered Species list] determined to have nesting habitat 1.3 miles away in 2003) and the current declining health due to the prolonged (now 4 years and counting) drought (posing a growing need for

future tree removals) of the forest envelope cover, on and off-site and between the project site and State Route 12.

The Staff Report does not mention *any* of those issues, other than the impact of the relocation of 26 parking spaces to the northeast portion. Exhibit B to the DRC meeting packet contains the August 26, 2016 response of the Open Space District Staff on that issue. In that letter, the District Staff noted *potential* issues relating to tree health in the area of the new parking lot and requested the opportunity to review that proposed relocation in more detail. No further information is provided in the packet as to any subsequent District Staff review and/or clearance; nor is there any information provided about whether the District Staff was *even advised* that the October 2, 2016, revised proposal *further expanded* the northeast parking lot by nearly 150% to contain 67 parking spaces (i.e., a 40-space increase) *and* that a *new support building* was proposed for the area northeast of the new parking lot. A 150 percent increase in parking spaces is a substantial change resulting in a significant environmental impact. VOTMA notes that drawing L0.03 shows that the new parking lot will require the removal of approximately *68 trees*, and that the new support building will require removal of approximately *13 additional trees*. *Removal of 80 trees is a substantial change* resulting in a significant environmental impact.

3. The DRC failed to consider the possible environmental impacts of the Tohigh design changes.

In the course of exercising discretion in approving Tohigh's revised design, the DRC violated CEQA. As a result, the DRC failed to follow the procedure required by law and lacked substantial evidence to support its discretionary approval of the revised project design.

Not surprisingly, since the Staff Report did not identify most of the proposed changes, and did not undertake any apparent assessment of the environmental impacts of those changes, and Staff instructed the DRC at the outset of the hearing that the DRC was not engaging in discretionary action in rendering its design review decision, the design review hearing did not involve any meaningful Committee discussion (except as noted below relating to questions by DRC member Wurtz) or deliberation about the impacts of the proposed design revisions.

The DRC's complete failure to meaningfully address the impacts of the design changes adopted is perhaps best reflected by DRC member Wurtz's futile efforts to probe in this area.

At the outset of the October 19 hearing Committee member Wurtz asked for clarification about the "support building" proposed for the northeast edge of the site, adjacent to the new 67-space parking lot. He specifically asked whether that structure was in the adopted building layout. Staff responded that the buildings shown as the site plan in the EIR and the Use Permit were "conceptual" in nature. Staff implied that the DRC had the ministerial authority to adopt building

relocations and a site layout plan that did not conform to the configurations and design reviewed during the EIR process, even as reflected by the posted story poles in 2002-3.

Later during the hearing, DRC member Wurtz raised the issue that several cottages in the western peninsula area had been relocated down-hill by approximately 50-60 feet. His comments addressed visual impact issues, tree removal impact issues (according to his assessment approximately 50 trees would be eliminated that are adjacent to and below the 2004 project layout for those cottages, thus jeopardizing intended screening of those buildings from State Route 12), and pony wall visual issues resulting from the building relocation. He noted in a document he handed around that his comparison of the project plan as adopted in the EIR/Use Permit (EIR, Exhibit 3.0-10) and the Tohigh final revised plan presented at the hearing reflected that a number of project buildings across the site were located in different places than those identified during the EIR and use permit process. DRC member Wurtz commented that in his experience, a project design being reviewed and approved would be expected to track the project layout in the approved EIR and use permit.

That comment dropped into a void. Other DRC members did not express concern over the relocation of the cottages on the western side or the impact of the 50 trees removed as a result. No concern was expressed as to the extent to which that relocation and associated tree removal would or could compromise the ability of the forest to block the view of the The Resort from State Route 12. The Chair reiterated several times during the hearing, including in reference to the tree removal impact of the building relocation commented on by member Wurtz, that the DRC did not have the jurisdiction to assess or incorporate such impacts in their decision-making process. Yet the DRC purported to approve those changes and their impacts.

Similarly, in its October 18 comments, VOTMA addressed the potential environmental impacts associated with the removal of large numbers of trees in the area of the concentrated new parking area. At the hearing and in its comments, VOTMA also raised the issue of the change in impact from distributed parking (approved 2004 design) to aggregated parking (Tohigh 2016 final proposed design), as that would impact the use of the Inn for public parties, events and other activities. The DRC's position was that it did not have jurisdiction to address those sorts of issues that might result from any of Tohigh's proposed changes in the project's design.

The DRC's repeated shifting between its position that the environmental impacts of design changes were *not* within its jurisdiction, given its ministerial function, and its position that the building locations were just "conceptual" in nature and therefore the DRC *could* relocate buildings at its discretion, or indeed *add* structures not in the design layout approved in 2004 at all, was both confusing and deeply troubling.

In the example of the assessment of the tree impacts associated with the revised proposed design, the “no jurisdiction” approach adopted by the DRC is just factually wrong. Condition 99 *specifically obligates* the DRC by name to assess the location of buildings on the site in terms of tree removals and to implement the requirement that as many trees on the project site *as possible* are retained “in order to minimize the visual impacts of the inn/restaurant/spa buildings.” Condition 99c requires the DRC to also see to it that “existing trees in the area between the inn/spa/restaurant and State Route 12 *shall be preserved to the maximum extent possible to provide a screen* and minimize the amount of the building that can be seen from State Route 12 west of Adobe Canyon road.” That sort of Condition hardly seems like a directive for a narrowly focused ministerial approval process that ignores environmental effects.

Similarly, in the context of reviewing the night-time “lantern effect” of the proposed Inn design (including eliminating the overhanging south facing roof and substituting a roof terrace/observation/bar area) as viewed from State Route 12, DRC member Wurtz appeared to be suggesting that there needed to be additional information provided (which Tohigh’s architect then offered to provide at a *subsequent* session), while others showed passing concern about whether the Inn would be able to be seen at night for any significant length of time. Again, Condition 101 specifically requires the DRC to evaluate “prior to building permit issuance” the exterior lighting “in order to minimize light pollution impacts” and to ensure that “escape of light to the atmosphere shall be minimized.” That required evaluation never took place.

That Tohigh would even come to a design review hearing completely unprepared to simulate how its new proposed design (including its new roof top terrace and bar which undoubtedly would have one of the *best bar views in the Sonoma Valley*) would look in the early *evening* and at *night* (e.g., just before the restaurant/bars closed at midnight) from State Route 12, is almost incomprehensible. It was troubling enough that Tohigh did not present a physical model or 3-D simulation of how much (or little) The Resort will be visible from high use locations in the Sonoma Valley (e.g., across the Valley looking north) and from State Route 12 during the *daylight*. VOTMA had requested more precise visual renderings in its initial August 26 comments. From VOTMA’s perspective, some forbearance on this issue might be understandable at the EIR stage; it is completely unacceptable where the DRC is being asked to approve a design for purposes of immediately proceeding to a *building* permit.

Perhaps in part due to Tohigh’s failure to produce information and Staff’s failure to ask for it, the DRC seemed unwilling to engage in any meaningful assessment of the environment impacts that could result from the design changes it ultimately accepted *in toto* as proposed by Tohigh. As such, the record is devoid of any substantial evidence considering the presence or absence of any potential significant environmental impacts from the Tohigh revised design that the DRC approved. Consideration of such impacts is necessary to support the discretionary

decision to adopt the Tohigh proposed revisions; the absence of that consideration is fatal to the validity of the DRC decision.

From VOTMA's perspective this lack of attention to impacts was particularly troubling in regard to the creation of mass parking lots close to and alongside the entrance of the Inn, the proposed changes in design of the Inn – the single large pool with a very large decking area, the creation of an entirely new roof top terrace/bar with a killer view, the sliding doors outside from the meeting rooms and bar room on the first floor – [see, e.g., the bird's eye view of The Resort shown on the front page of the August 1, 2016 Kenwood Press depicting a sprawling outdoor use of the meeting rooms – DHR16-0006, drawing A0.0] and the almost certain impacts of those changes on use types and volumes of public customers at all hours of the day, and resulting traffic impacts. VOTMA asked the DRC to reflect on the apparent change in “use vision” these design changes suggested. VOTMA pointed out that despite Tohigh's updated vision statement that focused on the over-night “guest” experience (see, pg. 1 of 5), in fact, Tohigh's revised design is plainly designed to generate greatly increased *public* business from non- staying guests such as, for example, patrons of its expanded Restaurant. VOTMA does not believe that approach is consistent with the original applicant's vision.

On that point, VOTMA quoted, with incredulity, Tohigh's revised vision statement that “[T]here are no proposed changes to the approved traffic or usage.” That would apparently mean that on any given Sunday afternoon/evening from noon until midnight, Tohigh does not *now* anticipate that in any hour it will have more than 7 cars (or approximately 17 people at an average of 2.5/car) in any of its parking lots being used by “non-guest Restaurant Patrons” (see, EIR, Exhibit 5.2-40; showing estimated ranges from 0 to 7 cars per hour parking on site over that 12 hour Sunday period). But that could not possibly be true, since Tohigh has now *expanded* its Restaurant to include a rooftop terrace/bar, *open until midnight*.

Although the Chair seemed to acknowledge the principle that the approved project layout and design will affect the use and impacts on the area, in the end the DRC showed no willingness to actually analyze how the various design changes the applicant was proposing that were clearly different from the adopted layout in Exhibit 3.0-10 of the EIR could significantly impact the environment. No revised trip generation numbers were requested or evaluated by Staff or the DRC in the context of adopting the wholesale revision of project parking. Instead the DRC simply restated several times that it did not have jurisdiction to consider impact issues as part of design approval. VOTMA thus finds itself left with the disturbing and obvious question that since this is likely the last discretionary action left for this project, when would those issues be considered? Surely a 2004 EIR that is more than a decade old and that forecast traffic on State Route 12 only through 2012 cannot be adequate for purposes of the discretionary review needed of proposed revisions to a project seeking review and approval in 2016.

This project has been largely idle for more than a decade. The applicant proposed a revised project design in late July and has apparently been revising that proposal since. The Staff has treated the environmental review of the design as a closed issue and has not conducted a CEQA assessment update, despite the passage of time and the change in circumstances, design and known new facts. The DRC, apparently based in part on the advice of Staff, has taken the position that it does not have jurisdiction to evaluate the impacts of those requested changes in project design relative to those analyzed in a 2004 EIR for the different project as then laid out.

The result of this failure to inquire is that the DRC lacked necessary compliance with CEQA and has no evidentiary record to support its discretionary decision to accept and adopt, *in its entirety*, Tohigh's proposed revised layout and design. The Planning Commission should reverse the DRC's approval and return this matter to the DRC with the direction that any subsequent DRC action must be preceded by appropriate CEQA compliance under Public Resource Code section 21166 and Guideline section 15162. Once Staff has completed the required subsequent environmental review, and the public has had the opportunity to comment on that review, the DRC would then be in a position to evaluate whether the proposed design changes should be adopted, after explicitly considering those environmental issues identified as being potentially impacted by the revised design.

That directed subsequent review should specifically include

(1) water use impact from the pool expansions and other design modifications (including, significantly, analysis of the 3.1 acre feet/yr (*one million gallons of water per year*) increase in water use shown in Condition of Approval #59 (compare the Condition #59 allowance of 19.4 acre/ft/yr water use for "the site" with the EIR's *far lower estimate of water use* for the inn/spa/restaurant site of 16.3 acre/ft/yr from The Resort well in the EIR—Exhibit 5.5-4, page 9.0-73. Note also, that Condition #60 for the Winery portion of the project also uses the 19.4 af/yr limit for "the site," implying that "the site" is the *entire* Winery/Resort project, i.e., that the well for the Inn/Spa/Restaurant has a 16.3 af/yr limit);

(2) *daytime* and lantern effect *nighttime* visibility impacts (using 3-D multi-angle simulation) resulting from changes to Inn architectural design (roof terrace) and lighting and activity use associated with revised parking lot framework;

(3) revised trip generation impacts due to the changed parking and changes of use;

(4) parking-related tree and habitat impacts from aggregation of parking into two new 67- and 27-space parking lots;

(5) assessment of all environmental impacts associated with *new* support building at northeast edge of site;

(6) visibility impacts of *relocation* of cottages down-slope and *removal* of scores of additional trees at as yet undisclosed locations as a consequence of all building relocations; and

(7) compliance with Final Conditions of Approval as discussed below .

B. If the DRC review and approval jurisdiction was properly limited only to ministerial acts, as Staff asserted, then the DRC lacked the authority to adopt and approve the specific substantive project design changes proposed by Tohigh.

The PRMD Staff repeatedly advised the DRC that its review and approval of the Tohigh proposed design was not a “discretionary” action. In adopting the Tohigh revised design proposal that *substantially changes* elements of the project design layout from that specifically adopted by the Board of Supervisors in 2004, the DRC exceeded its authority to ministerially approve Tohigh’s design proposal.

The “Final Conditions of Approval and Mitigation Monitoring Program Use Permit: Inn/Spa/Restaurant: Sonoma County Inn” that the Board of Supervisors adopted in 2004 delimit the size, uses and location of The Resort that the DRC has authority to approve. Condition 84 reads as follows:

“The use shall be constructed and operated in conformance with the proposal statement prepared by Common Ground Land Planning Services, dated December 2000, with Amendment #1 dated August 15, 2001 and Addendum #2 dated February 2002, *and the inn/spa/restaurant site plan included in the project EIR prepared by Nicholas Berman Environmental Planning dated May 2003 except as modified by these conditions.*” (Emphasis added)

The DRC’s decision to depart from the size, uses and location of The Resort as approved by the Board of Supervisors exceeded its authority to approve only minor, ministerial design features of this project, as discussed below.

1. The DRC exceeded its ministerial authority by adopting a Tohigh design that revised virtually every parking space on the project site from that analyzed in the EIR and considered by the Board of Supervisors (BOS) when it approved the use permit in PLP01-0006 in 2004.

The DRC adopted the posture at the hearing that its jurisdiction was limited essentially to reviewing the landscape design, the outdoor and indoor open air walkway downward lighting design and other similar lighting, design and landscape issues relating to design principles, standards and objective measurements (e.g., materials, colors, lighting technology, architecture). The Chair repeated several

times that the DRC could not consider impacts on use from design changes or related concerns about environmental issues. The DRC thus acknowledged that its function was entirely ministerial.

In view of that constrained framework, the DRC plainly exceeded its authority in approving a project design that literally changed *every single parking space location* of the 102 spaces on the project site compared to the EIR Exhibit 3.0-10 “layout” of the Inn/Spa/Restaurant (EIR-pg 3.0-19). If the DRC insists on defining its purpose and function as a ministerial one, then it must live within the specific building and facilities location layout as adopted by the Board in 2004, as stated in Condition 84.

The DRC may not, as it did on October 19, approve significant changes from the design that it is charged with administratively confirming and then refuse to consider the impacts of the significant design changes it has approved. VOTMA was not successful in its efforts to persuade the DRC to consider the impacts of aggregating the parking distributed across the entire site, as shown in Exhibit 3.0-10, into two massed parking areas (27-space lot now adjacent to the front entrance and 67-space in a valet parking lot close to the front entrance) and 8 spaces at the Spa. Exhibit 3.0-10 shows *no parking* adjacent to the front entrance or at the Spa, and virtually *all other parking* distributed adjacent to the scattered cottages on the site (Ex 3.0-10 does show an 11-space parking area to the northeast of the motor court). Tohigh’s revised parking plan for The Resort *completely revises* the location of the parking on the site. This revised plan and its impacts were not evaluated in the EIR.

VOTMA considers this revision to be a very significant change to the vision and use of the Inn/Spa/Restaurant, *because it allows and encourages a far greater level of “public” use of the Inn, and more severe car light and noise impacts* on the forest habitat to the northeast. If the DRC believes that it does not have the authority to consider the impacts of that proposed significant project design change, then by the same token, the DRC lacks the ministerial power to approve those same changes. DRC has thus exceeded its authority and abused its power by approving that *complete* revision of the parking layout adopted in 2004 and included in the Use Permit as Condition 84.

2. The DRC exceeded its ministerial authority in authorizing the relocation of cottages on the project site, and particularly those on the western peninsula where the effect was to remove additional trees, relocate the buildings downslope and potentially visually expose those buildings to State Route 12.

DRC member Wurtz questioned Staff and the applicant on the apparent relocation of cottages on the western peninsula of the project site. Member Wurtz handed out an overlay comparing the locations of buildings on the Exhibit 3.0-10 layout (consistent with story poles established at the time) with those shown on Tohigh’s revised design layout.

The applicant's consultants acknowledged that one or more cottages had been relocated downslope and that a number of trees (50 or so according to member Wurtz) were scheduled for removal as a result. The applicant's argument that on an *overall* project basis the new revised proposal had a net reduction in trees removed was cogently met by DRC member Wurtz's rejoinder that the total number of trees removed was not as important as *where* the trees were *located* that were to be removed under the revised plan. In this case the trees appear to be in a key area affecting potential visibility from State Route 12 and also potentially exposing the buildings' pony walls to view.

The applicant's visual consultant attempted to assure the DRC that based on his putting a blue tarp in a tree in the affected area and viewing it from several vantage points from the distance, he was comfortable that the buildings would most probably not be visible. Putting aside why in that instance *alone*, the DRC was willing to consider the potential impact of the proposed design change (but was not for purposes of the parking restructuring, the pool relocations, the change in roof-line, or other areas), the DRC is still left again to explain what authority it had to accept a change in the location of structures from that shown on the Exhibit 3.0-10 layout in carrying out its *ministerial* design review function. It appears DRC exceeded its authority.

3. The DRC exceeded its ministerial authority in authorizing the inclusion of a new "Support Building" on the site design plan.

Staff confirmed in response to an inquiry from DRC member Wurtz that the "support building" located to the northeast edge of the site beyond the new valet parking lot was not included on the Exhibit 3.0-10 layout. The applicant has provided little information about the function, size, and facility capability (water, electrical, sewage disposal etc) of the building. Slides X1-X5 of the 10/04/16 design plans show that it has five windows, an enclosed yard, a generator enclosure and a space for parking and charging 4 electric carts.

The applicant has not addressed noise, light, drainage, equipment, vehicle storage, hazardous waste (battery storage), repair facility functions, wastewater disposal, personnel or other issues associated with this support building, let alone the actual proposed design. Staff's statement that the design layout for the purposes of the EIR was just a "conceptual" approach is inconsistent with the wording of Condition of Approval #84, which does not use the term "conceptual." Even if Staff's premise that Condition 84 was merely a "conceptual" approval were somehow plausible, the inherent ambiguity of a conceptual approach does not by itself empower the DRC to ministerially approve the placement and design for an entirely new building that is proposed for the outer edge of an entirely new 67-space parking lot, all at the edge of the project site and adjacent to the forest habitat. DRC has exceeded its ministerial authority in including that building in the approved project design.

4. The DRC exceeded its ministerial authority in authorizing the substitution of a large new zero edge infinity pool at a relocated spot at the southern edge of the project site adjacent to a down-sloping contoured plateau.

Tohigh's revised site design substitutes a large infinity pool with a south-facing lateral zero-edge drain flow for two smaller conventional pools that were shown in Exhibit 3.0-10. This design change presents several impact issues: Both the length and volume of the larger pool and the larger deck surface surrounding it, along with the southern water drain flow of the infinity design could present potential slope stability and failure issues, as well as seismic issues dissimilar from the original two static pools it replaces. No doubt the large pool deck would be a popular location for public day use, or day and night parties, if Tohigh was considering attempting to expand to that use. No indication is given whether the 2500 cubic yards of cut and/or the 500 cu yds of fill disclosed in the design application for the Inn/Spa/Restaurant will occur in or around this area. Infinity pools are more water-use intensive (more evaporation) and more energy intensive (more energy use for pumping) because the water level must be kept at a precise elevation. It is not clear that any of these issues were evaluated in the EIR for the original configuration. In any event, the new infinity pool would clearly be a significant new design feature of The Resort (see, bird's eye view of The Resort on first page of August 1, 2016 Kenwood Press). This significant design modification of the pool layout previously adopted by Condition of Use #84 exceeds the scope of the DRC's authority to ministerially approve this project.

5. The DRC exceeded its ministerial authority in authorizing a new pool at the Spa.

Condition of Approval #83 provides that "the Spa facility includes six hot tubs and several small pools." Exhibit 3.0-10 of the project EIR, dated May 2003, prepared by Nicholas Berman does not appear to show a single large exterior pool for the layout of the Spa. The revised project design departs from these limitations. It includes a new large pool that poses water use issues that were not evident pre-drought and pre-groundwater regulation when the EIR was prepared. Approval of this new pool exceeded the DRC's ministerial authority.

6. The DRC exceeded its ministerial authority in authorizing the south roof of the Inn to be eliminated and replaced with a new activity space in the form of a terrace/observation deck/bar, which has every probability of becoming the most popular bar with the best view in the northern Sonoma Valley.

Exhibit 3.0-10 clearly shows an overhanging roof on the southeast facing side of the Inn. That same exhibit does show some sort of very small terrace on a portion of the northwest facing side of the Inn. Tohigh explained the decision to eliminate the south roof and replace it with a terrace/bar hot spot as one driven by the desire to

eliminate the dark green roof on the south that might possibly be visible from State Route 12 near Landmark Vineyards. VOTMA observes that the exchange offered is likely instead to create far greater visual impacts. The new terrace/bar will *add* to the overall nighttime lantern effect of the Inn, *which total effect has not yet even been analyzed for its visual impacts*. The traffic generated by the bar with the best view in the area will likely be significant. The absence of an overhanging – and light-blocking – roof on the south side (and on the northern inside-facing garden court) will allow more light to stream up and reflect from the south side of the Inn from the meeting and dining rooms below (and from the inside garden court up into the night sky). Removal of this roof and its noise-dampening benefits likewise creates nighttime noise impacts that the previous EIR never considered. Those impacts are not inconsequential as this new activity space may be used to host crowds, music and partying. None of this was contemplated in the EIR, since there was no such activity space designated for that area. The DRC did not have the discretionary authority to open up this space for these light- and noise-spewing activities, and certainly not without first analyzing their significant new impacts under CEQA.

C. In approving the Tohigh revised project design the DRC failed to conduct the thorough review of the forest envelope and lighting impacts required by the Final Conditions of Approval and Mitigation

1. The DRC failed to address the revised design’s significant tree-removing impacts.

In its written and oral comments before the DRC on October 19, VOTMA addressed the important function served by the forest area surrounding The Resort site. That forest is functionally the design envelope critical to sheltering The Resort from visibility from the surrounding area. The health and sustainability of the forest and woodlands area surrounding the site are critical to the ability to provide that visual and auditory screen.

Condition of Approval #99 specifically charges the *DRC* to “receive, review and approve” the revised site plan building plans and grading plans, sign plan, elevations, and colors and materials for compliance with Conditions 99a-99e, prior to building permit issuance. Condition 99 requires that in order to reduce 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, the site plan must adopt measures “retaining as many trees on the project as possible.”

Condition 99c is even more explicit. It provides that “Existing trees in the area between the inn/spa/restaurant and State Route 12 *shall be preserved* 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.” (Emphasis added.)

The area where the new 67-space parking lot is being relocated and where the support building is to be located appears to be within the zone of concern for visual impacts. No questions were asked or comments made by the DRC about the 80 trees that are being removed to make way for the valet parking lot and the support building. The DRC's failure to even recognize, let alone analyze, this significant impact does not constitute substantial evidence that the Tree Removal and Retention Plan, as thus eviscerated, "retains as many trees as possible" and assures that trees in the visual zone "are being preserved to the maximum extent possible."

The Open Space District Staff asked questions about the relocation of parking spaces that highlight the inadequacy of the DRC's non-existent tree protection efforts. The District Staff inquiry came at a time before Tohigh revised the parking plan *again* to load even more spaces in the new parking area and add the support building. There is no indication in the publicly-available record that the District was even notified of this further revision, nor that District Staff ever signed off on the parking relocation, let alone advised of the revised proposal to further expand the number of spaces in the lot as well as to locate the support building in that same area. The EIR was never revised to provide this necessary information to the District, despite its responsible agency function.

Tohigh's arborist did provide a tree condition summary and its tree survey report to the DRC at the hearing. But it does not appear that the DRC had the opportunity to review the survey in advance (copies were handed to the DRC at the hearing). The Staff Report refers to a "Tree Removal and Retention Plan" and invites the DRC to provide "recommendations or changes" and "to approve it if they agree with the plan." The tree survey and the Removal and Retention Plan have not been made available to the public. Other than DRC member Wurtz's questions about the removal of 50 trees on the western peninsula to allow for the relocation of cottages, no DRC member addressed any tree issues. No specific approval of the Tree Removal and Retention Plan occurred as far as VOTMA is aware.

Finally, despite the clear concern in condition 99c about effective screening in the area *between* the project site and State Route 12, it appears that the arborist's tree survey and assessment extended *only* to the area immediately within the project site, looking toward – not from – State Route 12. The report apparently did not look at tree conditions on property also owned by Tohigh outside of the Inn/Spa/Restaurant project site.

In view of the 4-5 year drought that has hit the Sonoma Valley and the likelihood it will continue, the DRC had an obligation to inquire as to the condition of the larger forested area that constitutes the full envelope required to screen The Resort site. If trees in areas critical to maintaining the overall screening effect are dead, diseased or dying and will need to be removed (whether on the project site or immediately adjacent to it) those removals will affect the screening potential of the forest. A picture taken at the present point in time, before that removal action has been undertaken, cannot represent what the actual screen potential will be once those

trees are eliminated. In view of the 12 years that have passed since the 2004 EIR, and the intervening drought conditions, the DRC was obliged by Condition #99 to ascertain the impacts of the revised design's new tree removals. Absolutely no information was presented to the DRC to show that Condition 99c would be satisfied.

In summary, the DRC's review never asked, let alone answered, the right questions. Tohigh's consultants did present information that showed that the actual number of trees to be removed on the project site under the revised plan declined from the count in 2004. But that ignores the relevant issue. As DRC member Wurtz observed, for visual screening purposes, the number of trees removed (or retained) on the site is less important than the *location* of the trees removed or retained. The Staff Report, the consultant's report, and the DRC's actions do not acknowledge and address this critical distinction.

2. The DRC failed to address the revised design's significant impacts on light and glare.

Conditions 100 and 101 charge the DRC to review the landscaping plan for visual screening and for minimizing light pollution impacts. The lighting plans "require . . . [that] c. Escape of light to the atmosphere shall be minimized." But these conditions remain ignored.

Visual lighting impacts are most important at night. Just because a building can barely be seen in the day under natural light from State Route 12 does not mean that the same building would not stand out dramatically at night with a dark forest as a backdrop. So it is with The Resort and its lantern effect.

The DRC failed to require Tohigh – or the DRC's own Staff – to provide any simulation of how The Resort as now revised will "appear" from State Route 12 at night with its buildings emitting light in virtually every direction. The Inn hours are 6 am until midnight, 7 days a week. When asked about the "lantern effect" of the current roof terrace design, Tohigh's consultant did not think it would be significant since the light would be indirect. Tohigh's architect offered to provide a night lighting simulation at a later date. The offer was neither accepted nor rejected. What was clear, however, was that Tohigh assumed that whatever light that was allowed to escape to the atmosphere had in fact been minimized.

The key question for the DRC, however, was never answered: would The Resort be visible from State Route 12 at night, and to what extent? The DRC approved the Tohigh revised proposal without undertaking the assessment required to ensure *both* that the light escaping to the atmosphere from the project design was minimized *and* that the ability to see The Resort from SR 12 was also minimized by the revised design proposed. The DRC should have withheld its approval of the design plan until information had been presented that would answer both questions.

D. In approving the revised project design the DRC failed to account for employee parking on the Inn/Spa/Restaurant project site.

The DRC may not remove for separate, later piecemeal analysis one site element of the Winery project layout, which project is not covered by Application DRH16-0006, to satisfy the need for employee parking for the Inn/Spa/Restaurant. Under CEQA Guideline section 15378, “project” is defined as “the whole of an action,” and includes all aspects of the activity being proposed, not just that portion currently being approved.

At the Sonoma Valley Citizens Advisory Commission meeting on September 28, 2016, Tohigh was asked where employee parking was to be located in the proposed project design. Tohigh was not able to answer that question.

Subsequently, Tohigh indicated that the parking would be located at the Winery portion of the PLP01-0006 project. That portion of the overall project approved in PLP01-0006 is subject to a separate set of conditions: “Conditions of Approval and Mitigation Monitoring Program Use Permit: Winery: Sonoma Country Inn.” Tohigh has not filed for design review of that portion of the project. Exhibit 3.0-15 of the EIR (pg 3.0-26) shows the layout of a “Staff Parking Area” of 60 spaces at the Winery site. That area appears to be in oak woodland with a number of trees that will be required to be removed. But that part of the project will, like the balance of the project, have drainage, visual, circulation, noise and other issues that need to be analyzed, and appropriate mitigation measures designed and developed. And, those impacts will intersect with the need to accommodate the employee parking design so that it fits in with the winery events parking and the “Staff and Maintenance” one-story building nearby the staff parking.

VOTMA is unable to determine at this point whether Tohigh intends to revise the staff parking, in the same fashion as it did for the Inn/Spa/Restaurant parking for The Resort. At this point Tohigh has segmented that consideration by presenting for piecemeal approval only The Resort portion of the overall PLP01-0006 project. Tohigh is essentially asking the DRC to ignore potential uncertainties associated with the development of the Winery portion of the project, and by implication the 60-space staff parking to be located on that separate site, and sign off on a design for construction and operation of The Resort that does not account for necessary employee parking on a stand-alone basis within the Inn/Spa/Restaurant project site.

When VOTMA raised this segmentation issue at the DRC hearing, Staff interjected that the lot had already been completed. DRC member Wurtz later clarified that what appears to have been constructed was only the 12-vehicle trailhead parking lot to accommodate use of the public trail contemplated in the PLP01-0006 use permit. Condition of Approval #80 for The Resort confirms that this parking lot was required to be constructed at the time of construction of the project access road. The Conditions for both the Inn/Spa/Restaurant and the Winery do not address

independent DRC action approving the employee parking site proposal out of context with the overall design layout plan for the Winery site as a whole. That latter application is not now before the DRC.

The DRC has failed to address and PRMD Staff has failed to clarify the steps and approvals required for the staff parking lot and whether that lot can be constructed separately and before the other site approval for the Winery has been filed and approved. In view of that, at this time VOTMA concludes that the project design as approved for The Resort does not provide adequate parking to cover the guests and staff contemplated by Tohigh. The DRC failed to address this shortcoming. The DRC approval should be reversed because it did not address this critical issue.

E. Conditions of Approval 107, in conjunction with Public Resources section 21166 and CEQA Guidelines section 15162, require a full environmental review of the redesigned and modified Resort project in light of the substantial changes to the project that will result in a substantial increase in severity of previously identified effects.

Substantial changes with respect to the circumstances under which the project is being undertaken, and new information of substantial importance, show that The Resort, with the design as revised, will have significant effects not discussed previously and/or substantially more severe than previously examined in the 2004 EIR.

More than a decade has passed since the EIR prepared in PLP01-0006 was certified. More than 15 years have passed since some of the fieldwork that supported that EIR was conducted. During the time The Resort has languished, the circumstances under which the project was formulated and the project layout and design now proposed by Tohigh have changed in significant ways.

The Sonoma Country Inn was envisioned in 2001 by Auberge Resorts as more of a quiet retreat/inn facility hidden in the forest at the foot of Hood Mountain. It was located in a Sonoma Valley that at the time was more rural and rustic and where traffic was at times objectionable, but not almost impossibly congested as it is too many times today. The concept of a self-contained inn/spa/restaurant was oriented toward paying guests staying at the inn. The public was allowed to use the restaurant and spa, *but estimated public usage was minimal*. Parking was distributed across the grounds of the inn/spa and located adjacent to the 19 cottages that fanned out from the main inn. The accompanying Winery was the public face of the project, where wine tasting, weddings and other permitted public and private events were conditionally allowed.

In late 2014 Tohigh acquired the Sonoma Country Inn project. The overall vision for the project is less clear today as a result. Partly that is because Tohigh has decided to pursue the Inn/Spa/Restaurant part of the overall project separate from the Winery part of the project. Partly that is reflected also in the design for the

Inn/Spa/Restaurant that Tohigh submitted as its final revised proposal for DRC review.

Good design is a window into intended use. So has it been with the evolution of Tohigh's proposed design under application DHR16-0006. Tohigh's initial proposed design filed in July 2016 made significant design changes in the layout adopted for the original vision of this part of the project in 2004 (EIR Exhibit 3.0-10). The significance of the changes showed up not so much in wholesale structural revisions as it did in new structures/features that *reconfigured and altered probable uses and their impacts*.

The July 2016 design added a wedding meadow for the Inn, even though weddings had previously been minor, "as allowed," events at the Winery. The July 2016 design consolidated two smaller pools below the Inn into one very large zero-edge infinity pool, with expanded deck space surrounding the pool. The July 2016 design stepped back the upper floors of the south face side of the Inn (the side facing out toward the new large infinity pool) and added terraces at each level. A flat and long rectangular lawn space was added to the area just beyond the first floor terraced area and the new pool. The two meeting rooms ("for use by guests and community and civic groups" as described in the "Proposed Project" description in the Conditions of Approval) are shown in the architect's rendering as spilling seating out onto the first floor terraces and space beyond; so also for the "pool bar." The restaurant area on the second floor provides garden dining in an open-to-the-sky inner courtyard, a private dining area, a general dining area, and a lounge. The latter three areas have terraces that appear suitable for outdoor dining or other event activities. The south roof on the top floor has been eliminated entirely; in its place is a terrace running the entire length of the south wall with a raised observation area, a bar and three separated seating areas. The July 2016 design for the Spa shows a gym, a yoga space and a new outside pool that would likely function as a lap pool, along with several very small pools. The Spa and Main Inn Building/Restaurant are open to the public for recreation and dining. Finally, to provide the parking essential to fully utilize all the aspects of the expanded use potential for the Inn and Spa, the July 2016 proposed design *partially centralized* parking by moving parking spaces from the western side of the site to a new small (22 space) east valet parking lot and adding a 16-space parking lot west of the entrance. A support building was also added to the back of the smaller front lot.

The October 4, 2014 (date of drawings) final proposed design refined the parking reorientation even further and eliminated the wedding meadow (plus made other smaller changes – e.g., added observation platform on the roof terrace). Under the revised parking framework the smaller lot at the entrance was expanded to a 27-space lot immediately adjacent to the west side of the front entrance/auto court, and the smaller east valet parking lot was expanded to a 67-space lot that runs adjacent to the northeast edge of the front entrance and across the northeast side of the site. The two large lots would be serviced by valets. (Tohigh represented to the DRC that cars entering the auto court would be serviced by valet parking; it is not

clear that would be the case for cars going to the Spa.) Finally, the support building was moved from the west front area to the area immediate behind the large 67-space lot.

As a result, all parking in the final design was *consolidated* to three areas – 8 spaces at the Spa, 27 spaces in the lot west of the front entrance, and the 67-space main valet lot. All parking that had been adjacent to the cottages was eliminated. This has the effect of allowing Tohigh to “harvest” unused parking across the site that previously would have been adjacent to the 19 cottages. By harvesting all parking Tohigh is able to support increased patronage at the restaurant dining areas, the lounges/bars on the three floors, and *to support larger events* in the two meeting rooms or elsewhere on the site. This is a significant design and operational change. In theory the valet harvesting structure would also allow at some point in the future cars to be relocated for space sharing between the Inn and the Winery.

As stated at the DRC hearing, VOTMA acknowledges that the architecture of the Inn is clean and it could certainly function in this design as a guest-oriented central hub for The Resort. But, as VOTMA also noted, the concentration of all parking (the EIR layout Ex 3.0-10, showed parking distributed across the site, but for the most part adjacent to the 19 cottages), combined with the design and layout of the pool, spa, lawn court, terraced open air space dining from the second floor dining areas, expanded areas outside of the first floor bar and meeting rooms, and the open roof terrace/bar also are consistent with a significant change in the circumstance under which the project was initially approved. Simply stated, Tohigh’s business model seems to have shifted to accommodate a much larger *public venue* vision and reorientation. That is what VOTMA is concerned about – that the then-quiet Auberge resort model has been superseded by a business vision that both retains the Inn/cottage concept for staying guests, and expands the overall revenue potential by creating a heavily advertised public breakfast/lunch/dinner/after-dinner restaurant/lounge paradigm, with a public gym/yoga/lap pool model grafted on top.

To be clear, VOTMA is not faulting Tohigh for seeking to take advantage of the currently approved public restaurant operating hours probably unheard of in the rest of the Sonoma Valley (6am to midnight, 7 days a week). Tohigh made a business deal that cost it \$40 million and it wants to recover its investment. We get that.

But Tohigh also accepted risk in that business deal – that its more public-oriented revenue model was inconsistent with the project as proposed and in light of the circumstances then existing when it was considered and approved. Tohigh took the risk that it would be *allowed* to in fact realize those revenues, despite the fact that to do so will substantially increase the traffic and trip generation that this revised vision would require and necessarily generate. Tohigh’s risk is compounded by the fact that it would be trying to convert the vision and public use intensity fully 12 years later than had been assumed under the use permit issued in 2004, and in the

face of anger and push-back from local residents who are already fed up with the traffic and congestion that has become Sonoma Valley circa 2016.

The environmental impacts associated with this change in the project must be addressed under PRC section 21166 and CEQA Guideline section 15162. As provided in those sections, if an applicant significantly changes a project after an EIR was prepared, or the circumstances under which the project was undertaken change, or new information that could not have been known at the time becomes available (certainly due to the passage of 12 years), and the effect is that new impacts not previously discussed emerge, or the impacts that were assessed become substantially more severe, the permit approval process changes. In that case, the *assurance* otherwise provided by PRC section 21166 --that if an EIR has been completed “no subsequent or supplemental environmental impact reports shall be **required**” – *drops away*. In 2016 the change in circumstances of this project, coupled with the change in Tohigh’s project design and the change in facts/information (cumulative development, traffic, drought, overconcentration of events) since 2004 trigger the requirement that The Resort project is now subject to further environmental assessment before any design review can be completed.

That new information is now available that could not have been available in 2004 seems self-evident. Among other things we now have new information in the form of 1) dramatically worsened traffic conditions, 2) a 4 year drought (which undoubtedly has also affected the health the forest envelope and habitat in and surrounding the site) and new urgent pressure to sustainably manage and use precious groundwater resources in Sonoma Valley and statewide; 3) significant cumulative new project development on this portion of State Route 12 and pending and proposed plans for massive increased development in this corridor; and 4) overconcentration of winery and other event facilities in Sonoma Valley. These circumstance and conditions preclude the County, acting through the DRC, from granting the final discretionary approval for this project, using the stale 2004 EIR as the purported still-credible basis for the mandated environmental review that such discretionary action requires.

There is no doubt that this required updated environmental review necessarily extends to the entire project covered by the PLP01-0006 use permit. Full environmental review is required for the proposed modifications, alterations and expansions of use authorized by the Use Permit. The passage of time likely alone would have produced that result; the proposed design and use changes submitted by Tohigh further reinforced and confirmed that requirement.

CONCLUSION

For the above reasons, VOTMA requests that the Design Review Committee’s Record of Action of October 19, 2016 be vacated and the application be returned to PRMD Staff with direction to undertake a full review of 1) the environmental effects of the final project design changes proposed in application DHR16-0006, and 2) the new

and increased impacts of the Inn/Spa/Restaurant portion of the project approved in PLP01-0006, due to the changed circumstances and new information that have emerged over the last 12 years the project has languished that now render the 2004 EIR stale.

Respectfully submitted,

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