



August 16, 2019

Blake Hillegas  
Planning Supervisor  
Permit Sonoma  
County of Sonoma

Re: PLP05-0009: Revised Referral-July 26, 2019

Dear Mr. Hillegas,

The Valley of the Moon Alliance (VOTMA) submits its comments in response to Permit Sonoma's (PS) July 26, 2019 referral in the referenced use permit amendment proceeding. That proceeding was initiated more than 4 years ago by applicant VJB Vineyard and Cellars (VJB). These comments represent the 9<sup>th</sup> set of comments VOTMA has submitted in this proceeding. VOTMA again urges that PS deny the application and instead require VJB to come into compliance with the Conditions of Approval (COA) of its existing use permit.

The tortured history of this proceeding is a case study of the abusive consequences of the failure to have a meaningful active enforcement

program to ensure that COAs are followed and complied with by applicants who are granted *conditional* use permits. Applicant VJB's continued, knowing and willful evasion of compliance, and its decision to actually continue operating its tasting room facility and associated "marketplace" in open disregard of the existing COAs, warrants a severe reprimand from PS, a denial with prejudice of the underlying application (and all amendments), and a prompt order to conform all its operations to the four corners of the COA or face an order terminating its use permit. The time for PS to act is long overdue.

VOTMA will not recount yet again the numerous gaps and shortcomings in VJB's application and its supporting analyses. We are tired of pointing out, for example, that VJB was never authorized to prepare on site, using a commercial kitchen that was specifically not authorized in the COA, various sandwiches in what its frontage sign describes as a "deli" and that its efforts to insert the word "sandwiches" (to go along with pre-packed foods) after the fact into the revised COA is an transparent attempt to receive post hoc authorization to undertake a use that it has, in fact, been conducting for more than 7 years, including for the last 4 years this application to amend the use permit *to allow it to do what it is already doing*, has been pending. Our prior comments cover these issues in detail.

For its part, PS is or should be fully aware of all of this record as well as the public objections to the proposed amendment voiced in prior public meetings. We suspect that PS is painfully aware of the SVCAC's admonishment of PS' failure to take timely and responsible enforcement action re VJB's COA violations. That consensus frustration

level surfaced during a hearing it conducted more than two years ago on this same VJB application (at the end of which the SVCAC *unanimously* recommended that the application *not* be approved).

While VOTMA will not replay VJB's past and ongoing transgressions, it does have comments on where we are at the present with respect to this application. After providing some necessary background for context, we will state those positions bluntly and to the point. As to other issues already addressed in prior comments, we incorporate them by reference here.

## **1. The Revised W-Trans Traffic Study Uses Stale Data, Remains Incomplete, and Fails to Address Critical Issues Raised by the GHD Peer Review Assessment**

### **A. Background**

The crux of VOTMA's objection to the proposed amendment is simple: VJB proposed to operate a tasting room that had a marketplace as an adjunct with several other buildings for somewhat undesignated use (e.g., wine storage building). The marketplace was allowed to provide prepackaged food. No commercial kitchen was requested or approved under the use permit. No deli was authorized. The main building had a tasting room area and a marketplace area. There was a patio with four or so picnic tables indicated. No outdoor pizza area or outdoor barbeque area was proposed.

VJB sought permission in the initial application to hold some special events. Because the left turn from west bound SR 12 on to Shaw did not have a designated turn lane and thus created a potential traffic safety/congestion issue, the use permit conditioned the initiation of those special events on construction of a left turn lane. That left turn lane has not come to fruition.

What has emerged, however, is a highly successful lunch and wine pairing enterprise (which seems likely to have quite exceeded any current tasting room activities on a daily basis, and, for that matter, the total attendance per day that any of the 10 special events that were in limbo would have produced). The VJB “marketplace” prepares, on site in its commercial kitchen, individual made-to-order sandwiches, among other things, and at its outdoor oven and grill, pizza and barbequed foods.

VJB’s owner and applicant, Henry Belmonte, testified at the SVCAC hearing more than two years ago (May 26, 2017, and prior to un-permitted creation of the new Shaw Ave parking lot across the street) that on a summer weekend **day**, VJB would serve between 300 and 700 customers. A good portion of those dining customers undoubtedly make the left hand turn from SR 12 on to Shaw Ave that the attendees to the 10 special events **per year** would have been making but for the use permit condition that suspends those events until the left-hand turn lane was in place and in safe operation. VJB has achieved the coveted status of conducting what now amounts to essentially at least one special event *every day*.

There is a rich irony that at least during the weekends in the wine tasting season (and likely daily, both in and out of season) the traffic generated by the hand-made sandwich deli, and the pizza and barbeque operations far exceeds any level of traffic that would have been generated had VJB complied with its conditions of approval from the outset and commenced the allowed special events.

To divert attention in this application from the real issue here—full compliance with the existing conditions—VJB has instead tried to focus on disputing that the traffic situation is really that bad and is so impactful on Kenwood, and/or that if there is a traffic problem VJB has solved it by building enough parking spaces on-site- and off-site across the street where its amended application **proposes** to construct new parking (now already functionally done), such that the cars of all the hundreds of customers that frequent VJB on a daily basis for their pizza, sandwiches and BBQ lunches and dinners can now all be accommodated. In VJB's view everything is just fine.

Not surprisingly, and just to make sure that there is no traffic problem, VJB has now also graciously offered that it will voluntarily relinquish the right to conduct all of the conditionally authorized special events; of course, as part of that offer it also requests that the left turn lane requirement to turn on to Shaw Avenue also be extinguished. VJB's gesture of kindness rings hollow.

With that background, VOTMA turns to the latest iteration of the W-Trans' most recent revised "updated" traffic impact study (TIS) supporting the VJB use amendment.

## B. The W-Trans July 17, 2019 Updated Revised Traffic Impact Study Uses Stale Data

### 1. Baseline Issue

VOTMA and VJB/W-Trans have had a difference of opinion on the baseline traffic data that should be used to assess the proposed amendments that change the use permit conditions to allow VJB to lawfully undertake what it has been doing unlawfully (i.e., not consistent with the permit conditions) for the last 7 years so. VJB takes the position (and the W-Trans study reflects that position) that even if VJB is violating its terms of condition, for purpose of assessing the traffic impacts of the amendments the “baseline” traffic conditions used should be those as currently exist.

VOTMA takes the position that the baseline should be the conditions as would exist if the Applicant was operating in compliance with all conditions. The principle VOTMA applies is that an applicant who consciously ignores the conditions that would limit use should not be rewarded by treating all existing conditions made possible by ignoring the conditions (here traffic and trips generated) as if they were consistent with the uses for which the amendment was being sought.

At a minimum, any valid traffic study should use these alternative approaches that present two different framings of the “baseline” for comparison purposes. VJB has refused to tender any such comparative

baseline assessment. PS should either order that VJB do so, or ask its Peer Review assessor to address that issue.

## 2. Stale Data Issue

VJB and VOTMA's differences notwithstanding, VOTMA notes that the traffic counts used in the revised "Updated" traffic study remain the counts taken on Thursday, September 21, 2017 and Saturday, September 16, 2017. Those counts were characterized by W-Trans as reflecting the Plus Project conditions (i.e., the baseline plus the project as proposed) ("The actual counts obtained on Thursday, September 21, 2017 and Saturday, September 16, 2017 were therefore used to represent "Plus Project" conditions." W-Trans at pg 11)

VOTMA has two problems with this observation and the resulting "updated" traffic study just submitted. First, the numbers are almost 2 years old at this point in time. Traffic conditions have continued to evolve and deteriorate. W-Trans 2019 "update" relies on no updated traffic counts.

Second, and more important, subsequent to September 21, 2017 (the last count recorded), VJB has developed the 75 Shaw parcel as a functional (although not paved etc.) parking facility and has been using it to generate additional customers and thus more traffic. In this latter context it is significant to note that contrary to its representation in the amended application that the 75 Shaw parcel would be used "exclusively" for VJB's tasting room/marketplace etc. facility, no sign to that effect was or is located at the front of the functional lot specifying

that limitation. As such, it is reasonable to assume that the lot has both served to increase parking (and business revenues) for VJB as the operator of the applicant facility (APN 050-275-028), but also for the independent café and tasting room facilities at APN 050-275-051), both of which VOTMA understands are owned by the Belmonte family (owners of VJB).

The development of the functional parking facility at 75 Shaw appears to have occurred sometime in 2018. In its most recent comments on the VJB application, filed on October 16, 2018, VOTMA specifically noted to PS that the 75 Shaw parking lot was in operation. VOTMA believes it likely the lot was in operation as early as April 2018. So, it has been generating revenue for VJB (and its associated businesses) and traffic for SR 12 and the Kenwood community for two spring/summer/early fall seasons now.

For reasons unknown, VJB either did not inform W-Trans of this changed circumstance or they reached an understanding that it was either unnecessary or inappropriate to include the traffic and trips generated by this newly operational project facility, and to reflect those impacts in the revised and “Updated” W-Trans Traffic Impact Study, dated as of July 17, 2019.

It is unfortunate that VJB chose to again hide the ball on traffic impacts. Admittedly, it is rare that a project under amended use permit consideration has the opportunity to actually measure the impacts of a critical element of the project, since it is not lawful to initiate the use prior to approval of the use permit. Be here, consistent with its history,

VJB had done what it pleased, notwithstanding whether that conduct is actually “permitted.”

It is also regrettable that PS, having been informed of the development and operation of the new lot did not require W-Trans to actually update from 2017 its data so that its “Updated Traffic Impact Study” reflected actual conditions in and around the VJB site after its so-called “solution” to the traffic problem was in place (but note again, this is not a solution to the broader underlying problem-- to the unlawful deli use that generates all that traffic).

For this stale data reason alone, the “Updated” W-Trans Traffic Study” should be rejected and be precluded from substantive consideration in evaluating the amended application. Since the primary winery tasting season is well under way, VJB should be required to resubmit a more current study based on both early season assessments of use (May-June) and later season data (August-September). VJB should be required to include multiple mid-week data days and well as multiple week-end data days (e.g., Friday-Sunday), including during one or more prominent Sonoma Valley winery ag promotional event periods.

As an alternative to the data gap, VJB could share its daily customer counts for both wine-tasting and lunch/dining activities generated by the marketplace/deli and the outdoor food preparation facilities for a prior specified period of time. Such information might be more useful than the broad range of 300-700 customers per day represented by VJB at the May 2017 SVCAC hearing.

Either way, the “Updated” W-Trans TIS contains fatal data gaps that renders its characterization of the TIS as an “update” a malposition.

C. The Updated W-Trans TIS Does Not Meaningfully Assess Future Conditions in SR 12 That Will Adversely Impact Traffic and Congestion Conditions in and Around the Project Site.

Under CEQA the W-Trans TIS must not only assess current (pre-project) traffic conditions and plus project conditions, it must also assess cumulative impacts from other known or proposed projects as well as projected future conditions.

VOTMA has pointed out this requirement in its prior comments. Yet W-Trans persists in giving glancing acknowledgement, let alone serious attention, to this issue. It essentially positions the VJB project in an isolation box and adds an imagined “growth factor” as a proxy for general future conditions. This blinders approach to traffic impact studies throughout Sonoma Valley is a persistent problem designed to understate individual project impacts in the cumulative context of ongoing expansive development. This analysis gap is particularly troubling in an area the Board of Supervisors has already identified as an area of over-concentration of winery and other events, as is the case for the Kenwood area of Sonoma Valley.

In this instance, W-Tran’s TIS makes no meaningful effort to even identify known or proposed projects that may or will significantly affect SR 12 traffic in the broader immediate Kenwood/Sonoma Valley area (Melita Road to Madrone Road area). The W-Trans TIS thus ignores the

additional complications in the future relating to ingress and egress from SR 12 to Shaw Avenue, beyond those already obvious under existing conditions (i.e., as of September 2017 or August 2019).

The project examples that should have been considered are numerous: Elnoka 750-unit senior housing project; the Oakmont Memory Care project; the Sonoma Country Inn project; the cannabis use permit project for Kenwood Village; the Kenwood Vineyards tasting room project; the proposed building expansion project in the east parking lot of Kenwood Village, among others. W-Trans' TIS is completely silent on these various potential project impacts on SR 12 traffic in and around the area of the VJB project site, even as it rebuffs the obvious need now for a left turn lane from SR 12 (west) to Shaw.

PS can and must push back on this overly narrow view of traffic impact analyses. The best W-Trans can come up with is an exceedingly obtuse statement that for a proxy of future conditions it was relying on the Sonoma County gravity demand model as maintained by the Sonoma County Transportation Authority, using comparisons between 2010 and 2040. W-Trans does not indicate which versions of the model it was using for its calculations. As PS is aware, there are significant data gap (currency of data sets and days of week captured) problems with the SCTA model that are planned or in the process of being rectified/upgraded. W-Trans needs to supplement its discussion of "Future Conditions" to indicate whether it has captured the most recent updates of the model runs and how it substitutes for day and update gaps that still remain that could significantly alter the

cumulative traffic flows and congestion conditions currently forecast by the SCTA.

E. The W-Trans TIS Continues to Downplay the Significant Issues Associated with the Absence of Left Turn Lanes Westbound on SR 12 at Shaw and Maple and Otherwise Fails to Address Critical Issues Raised by the GTD Peer Review Study

W-Trans acknowledges that volume warrants support a left turn lane on SR 12 west at Shaw, but essentially argues that there really have not been problems on an actual collision basis to support such a lane. Apparently near-misses, of which Kenwood residents recount there are many, don't count. A left hand turn Lane on SR 12 west at Shaw is needed to address an existing and growing safety concern caused by VJB's success and it is unacceptable for VJB to continue avoiding its responsibility for putting one in. Instead of the 15 events that the original permit said warranted this left hand turn lane, every weekend is an event now at VJB – the site and its activities are more traffic intensive than 15 events, yet VJB continues to obfuscate and avoid dealing with a recognized safety problem of its own creation.

The GHD January 25, 2019, Peer Review document does not concur with the W-Trans effort to down-play the need for a left turn lane onto Shaw, and rejects the alternative of creating a go-around zone on the north side of SR 12 at Shaw. In GTD's words, that approach "would introduce new roadway departure hazards." (GTD at p. 7) Also, the "telephone pole" on the north side of SR 12 near Shaw is an excuse VJB

uses to avoid its responsibilities, and it's not an insurmountable obstacle, especially as there are no power lines on that pole.

Beyond a different take on the left turn lane, GTD finds other issues that it believes require further attention in the TIS. Unlike W-Trans, GTD believes that a safe pedestrian path of travel should be provided from the 75 Shaw parking lot parcel to the project site, particularly if the proposed lot is to accommodate ADA stalls.

GTD also questions whether the now-stale September 2017 traffic counts even adequately captured "on-street parking activity" at the time the counts were recorded. Presumably that would apply to both Shaw and Maple, since by opening the back gate to egress, it is conceivable, if not likely, that patrons to the project site and employees will begin to park (if they haven't already) on the Maple Street side of the adjacent park. GHD picks up this same point on pg3 in the discussion on "Transportation Setting." Since W-Trans has not conducted any traffic counts since the GHD Peer Report was issued in January 2019 it seems almost certain that this analysis gap has not been addressed.

Finally, GHD seems to have some concerns about the feasibility of the approach to creating a right turn onto Shaw from east bound SR 12. W-Trans does not address that issue.

VOTMA appreciates that PS called for a Peer Review of the W-Trans TIS. It is apparent that W-Trans either largely disagreed with some of the key points/assessments contained in the GHD Peer Review Assessment

or chose to simply ignore them. Either way that should give PS some pause as to whether the W-Trans TIS is adequate to support a recommendation that the transportation impacts of the application have been adequately identified and addressed.

## **2. The VJP Proposal to Create a Commercial Parking Lot at 75 Shaw Constitutes a Separate Action on a Separate Parcel and May Not Be Shoehorned into the Pending Application as to PLP05-0009.**

The fact that the Belmonte family owns parcels APN 050-275-051 (corner lot with separate café and 2 commercial tasting rooms in two buildings), parcel APN-050-275-052 (75 Shaw, site of current unauthorized functional parking lot not restricted exclusively to VJB project site) and parcel APN 050-275-028 (VJB project site), does not permit PS to make substantive modifications to the use permits of each site under the auspices of resolving the use permit amendments of the VJP as initiated via PLP-05-0009.

The question whether the use of 75 Shaw parcel as a parking lot per se is appropriate (regardless of exclusivity) is a matter properly subject to an application as to that parcel for that particular use. If the proposed use is allowed after all relevant permitting/planning processes have been completed, the owner may then elect to sign an exclusivity arrangement as to that permitted use with the owner or lessor of an adjacent parcel. The latter arrangement does not short-circuit the requirement that PS conduct the appropriate assessment relating to the underlying use of the 75 Shaw parcel—as a commercial parking lot. Referrals to appropriate agencies, adjacent neighbors and other

affected by the proposed use, as well as the collateral impacts of such new use, must still be undertaken and have not been.

To a lesser extent that same principle would apply to the proposal to exclude parking on the east side of the eastern-most building on parcel APN 050-275-051. Would the spaces lost as a result of the conversion of those spaces into a buffer for the right turn zone implicate the present allowed uses of either building on that parcel? Parking in that area is quite congested and limited as it is; would the loss of those spaces alter or reopen any COAs associated with the existing uses? Would there be other impacts to assess? None of those issues have been identified, let alone addressed, in the current application.

As troublesome as these questions are, they highlight once again that the core problem here is that the uses authorized under the use permit for the VJP project site have not been complied with and the resulting traffic and parking overspill is directly related to the failure of PS to enforce the clear conditions that VJB is currently violating. Establishing a 53-vehicle parking lot on an adjacent parcel (across the street from the project site) does not solve the underlying misuse of the project site which has generated all that traffic and parking demand.

The applicant almost certainly knows this to be true. It is up to PS to also finally acknowledge the source of the problem and correct it at the source, rather than work around the problem by creating yet more parking opportunities, from which the applicant is perfectly happy to receive financial benefits, to the detriment of the rest of the community.

Thank you for the opportunity to provide comments. Please include these comments in the project file

Kathy Pons  
President VOTMA

Cc: Supervisor Gorin  
Commissioner Carr  
Commissioner Fogg  
Director Wick  
Deputy Director Nevajda  
Henry Belmonte