

February 24, 2016

Blake Hillegas  
Planner III  
Permit and Resources Management Department  
Sonoma County

Re: PLP05-0009 VJB Vineyards and Cellars-February 3, 2016 Referral

Dear Mr. Hillegas,

The Valley of the Moon Alliance (VOTMA) submits comments on the latest iteration of VJB Vineyards and Cellars' (VJB) efforts to modify its October 9, 2007 Use Permit issued in PLP05-0009. VOTMA believes that the application for use permit modification circulated by PRMD on February 3, 2016 is deficient in that it 1) avoids and obscures whether the existing uses are consistent with the 2007 Final Conditions of Approval or are in violation thereof, and 2) insufficiently assesses whether the apparent continuing and future uses and proposed modified conditions would be in the public interest or would instead increase (rather than reduce) the legitimate public safety concerns associated with the increasing overuse of the 60 Shaw compound in the context of the surrounding community and traffic on Highway 12. VOTMA outlines those concerns below.

#### Overview of VOTMA Concerns Relating to Project Modifications

Much of this ground has been covered in VOTMA's previous comments. VOTMA's July 16, 2015 comments on the June 24, 2015 referral are the most recent example. Based on the two public meetings that occurred on April 2, 2015 and referenced in those comments, it seemed to VOTMA that the more probable outcome of PRMD's ongoing review of the VJB project would have been an enforcement action against VJB relating to the impermissible scope of the current use. Yet no formal action was taken either on the prior application for modification or the issues raised at the April 2<sup>nd</sup> meetings.

Instead, we now are confronted with yet another different application for modification of the use permit. The new application 1) drops the prior requests (August 5, 2014; June 24, 2015) to expand operating hours, 2) offers up a willingness to temporarily eliminate the now contingent right to conduct "special events" if the left turn lane to Shaw from Highway 12 condition is eliminated from the permit conditions, 3) offers to dedicate to CalTrans an "additional" easement along the project's frontage on Highway 12 to accommodate a one-half section of a potential left-hand turn lane from highway 12 onto Shaw in the future, 4) nowhere uses the term "restaurant" to describe the proposed uses to be authorized, but instead is carefully worded to request that the use permit acknowledge/recognize/clarify (i.e., allow) the outdoor seating area and indoor and

outdoor kitchens *currently being used* for food (prepared on site as well as pre-packaged) and wine service be officially sanctioned uses; 5) allows the Maple Avenue exit to be used for customer vehicle egress and not just for emergency access purposes; 6) allows VJB to be relieved of the requirement to construct a right-hand turn pocket from Shaw and to instead dedicate only the most northern two parking spaces on Shaw for that use; 7) allows VJB to convert some backup septic areas and vineyard land into a close-ended parking lot expansion and to otherwise establish off-site parking arrangements for customers and employees; and 8) proposes various other conforming modifications to the conditions.

VOTMA appreciates that VJB is offering to undertake actions that will avoid further adverse congestion and traffic/safety impacts by not seeking to expand its operating hours. Similarly, VJB's efforts to find alternative parking away from the project for employees and customers is a positive proposal to relieve some of the existing adverse traffic and circulation issues at the project.

VOTMA believes that the "max-use" approach pushes the use envelope of the project past a reasonable point. PRMD should evaluate this request for retroactive forgiveness from a holistic use, traffic and circulation perspective, and only be approved if it is made subject to sensible controls and limits on use, combined with ongoing monitoring of compliance. If some broad use (i.e., at or below current operations) is formally allowed, VJB should be subject to patronage capacity limits and should be required to track the numbers of patrons and vehicle trips generated. Self-reporting compliance by VJB and annual reevaluation of impacts by PRMD should be mandated. PRMD should condition any use permit in a way that reserves the ability of PRMD to modify conditions to address unacceptable cumulative impacts not yet foreseeable. It bears remembering that the existing use of the facility has already exceeded the point of becoming a nuisance to the community (as reflected at the April 2015 meetings) and has had a negative impact on traffic and circulation through the heart of Kenwood

#### Need to Clarify Permitted Uses and Events

PRMD's attention should start with a review of what the 2007 Use Permit allowed by way of marketplace and wine tasting activities. The Use Permit does not define what food service is permitted in a "market place," including for example, whether only *pre-packaged* sandwiches or food may be sold.

Condition 14 required that plans and specifications for any retail food facility be submitted to the Health Services Department before any building permit was issued and that PRMD receive a compliance approval letter from Health Services. Condition 26 required that VJB "obtain and maintain all required Food Industry Permits from the Sonoma County Environmental Health division if required for wine tasting activities and special events. *No other food service was requested or authorized by this*

*permit.*” (emphasis added). Condition 39 states in part “with the exception of barbequed food, only catered may be offered to the guests at special events. A commercial kitchen is not permitted.”

Condition 80 allows modification, alteration, and/or expansion of the use authorized, based on *prior* review and approval, and notes that changes may require a new or modified Use Permit and additional environmental review. PRMD should identify in its staff report whether any such requested changes were made in writing in advance and received documented approval. Even for *minor adjustments*, Condition 86 requires a documented approval letter from PRMD. VOTMA requests that PRMD address and document the extent and nature of any such approval for this Use Permit.

Beyond the question of what food use activities were permitted under the VJB 2007 Use Permit, is the issue of what constitutes a permitted event and how a “special event” is defined and distinguished. Conditions 58 and 59 address these questions in part. As stated there, events are “associated with and accessory to the wine tasting room and market place.” VOTMA frankly cannot determine whether the evolution of the dining options offered presently in the form of the oven pizzas, the barbequed food, the hand-made sandwiches and other food available at the short order deli—essentially the restaurant service offered—is associated with and accessory to the wine tasting room and market place, and thus an ongoing special event not yet permitted. Does use of the “outdoor open and partially enclosed picnic/patio/dining areas” (Proposal Statement, pg4) constitute an ongoing outdoor special event? Does that answer change where there are pre-scheduled arrangements with party buses and vans for dining and wine tasting? Certainly activities such as the 2015 “Mobsters & Lobsters” event seem out of bounds. But what is in-bounds and what is the absolute limit of use allowed under this Use Permit, now, and as proposed to be modified? Whatever else this application process accomplishes, it is critical that PRMD delineate specifically what events VJB may conduct at the project in the future, both by nature of activities and numbers of visitors. The Use Permit should contain explicit definitions of all relevant terms.

VOTMA appreciates that these questions may be perplexing to VJB and perhaps PRMD. Perhaps they were in fact evaluated in the initial application process. (If so, that should be documented in the PRMD report). They are important because the nature of the food service allowed to be offered and the extent to which VJB’s business model is essentially an ongoing series of “events” will define what is a permissible level of use of the facility. Right now VJB has a very large physical facility that it is understandably trying to put to maximum use. That means that the wine case storage building now has barrels stored in it (see Condition 71) and also functions as a second tasting room with a separate entrance to Shaw Avenue. The wine tasting room and market place building has a large private up-stairs tasting area that is accessible only to “wine club” members. Is that approximately 1500 sq ft space (which is not included in the January 5, 2016 dimensions 4 engineering use area total calculation) a special event area? The outdoor picnic/patio/dining areas

present a similar issue depending on use. VOTMA's perception is that the reason VJB is now willing to offer to relinquish the conditional right to conduct 15 special events per year is because it is already conducting events on site that are as large or larger than a so-called separate "special events" would generate.

VOTMA's intent in raising these questions is simply to raise the point that what VJB was permitted to function as in 2007 (a wine tasting room and a market place, with some limited special events accessory to those activities) and what VJB is today (functionally a wine tasting compound/restaurant/delicatessen/pizza oven/BBQ place) seem significantly different. VJB should be commended for a successful business plan. That said, VJB needs to be held accountable for its conscious evolution beyond the apparent permitted uses and for the traffic, parking, circulation and other issues that have resulted. Had this business plan been clearly articulated at the outset with expected numbers of customers and types of food service, the planning and environmental reviews likely would have been different (e.g., required grease traps to cover "kitchen" waste) and the conditions applied would likely have been different (e.g., limits on the size of the project structures and numbers of patrons at any point in time).

VJB's proposal to create 23 more parking spaces adjacent to the existing 37 spaces raises a variety of issues. VOTMA assumes that CalTrans and the County Department of Transportation will be independently assessing the feasibility and impacts of this proposal.

The parking lot expansion will occupy much of the northeast corner of the project. One issue to assess is the impact of the cars parked on that corner on sight distance requirements for Highway 12. That would include cars turning right at Maple Ave from Highway 12 as well as cars turning left or right *on to* Highway 12 from Maple Avenue. Since VJB is proposing that the entire parking lot be allowed to empty out onto Maple as egress from the project, the potential safety implications caused by higher numbers of patrons entering Highway 12 from that point seem apparent.

The relationship of the parking lot expansion to right of ways on both the Highway 12 frontage and the Maple Ave. frontage need to be carefully mapped. All property lines, centerlines and edge of pavement should be shown correctly. The dimensions 4 engineering drawing in the application does not seem to correctly show the Highway 12 centerline stripping and it is not clear whether the property lines and applicable right of way distances are correct. The drawing reflects "approximate" property lines. PRMD should ensure that VJB's information is more precise and that CalTrans and the County Department of Transportation have affirmatively engaged in detailing and reconciling the competing rights of way and traffic safety considerations at this project site. That would include rights of way under review for purposes of the proposed Sonoma Valley bicycle path across this frontage. PRMD should verify that VJB's proposed plans do not encroach on existing public rights of way.

PRMD should assess the impact of having 6 of the 23 spaces being located in the area apparently used now or reserved for septic mounds. The dimensions 4 engineering letter dated January 5, 2016 indicates that the Class 1 PD septic system is designed for a maximum flow of 607 gallons per day, based on 7 employees (15gal/day) and 100 guests (5gal/customer). Although employees are said to now use another system, VJB has provided no information about how many guests per day it is now hosting.

Despite dimensions 4 engineering's assurances that the system on average over the last few years utilized less than 50% of capacity, VOTMA's impression is that it is not uncommon for VJB to be hosting more than 70 people *at any one time* on a warm weekend noon period. Although the water usage figures given by dimensions 4 engineering include irrigation of vegetation, the average gallons per day (30 days) from May through October 2014 was around 750 gpd. PRMD should require VJB to provide accurate updated customer and water usage and septic usage numbers to allow it to assess whether the mound relocation proposed to facilitate the parking lot expansion will compromise the integrity of septic system in the future. This points again to the need to consider absolute limits on customer capacity for the project.

#### Comments and Concerns On VJB's Proposed Modifications to Conditions of Approval

To its credit, VJB has been specific on the conditions it wishes to have amended. VOTMA will respond specifically to those requests.

1. CEQA Baseline—The appropriate CEQA baseline for the requested modifications should not be the “conditions as they presently exist on the property” as VJB proposes. To the extent that VJB has exceeded the scope and permitted uses authorized by the Final Conditions of Approval of the Use Permit, the baseline is limited to the conditions as would exist consistent with the limits of those Conditions of Approval. VJB may not bootstrap its expansive development and use of the project to establish a high existing condition baseline if those actions exceeded the Use Permit. The CEQA baseline issue goes directly to the authorized nature of the market place and wine tasting activities and the events associated with and accessory to the wine tasting room and market place.

2. Requested Condition Modifications—Consistent with Conditions 80-86, the Use Permit may be brought “into conformity with actual practices at the project site which resulted from past administrative authorization” only where the requirements (including those requiring documented written preapproval) stated in those conditions have been fully satisfied. VJB and/or PRMD should provide such documentation as part of the application process.

3. Condition 41a—VOTM has not seen Mr. Nutt’s July 10, 2014 letter. Assuming the letter is as represented, it would be necessary to assess whether the “minor use permit modifications” referenced in the W-Tans April 3, 2014 “Focused Traffic Analysis “ are exceeded by the “Requested Project Modifications” outlined on pages 3-4 of the January 2016 VJB Proposal Statement. In addition, Condition 41a requires a minimum storage length of 100 feet. VJB is offering to create a turning space of only two parking spaces in length on the east side of Shaw. County Department of Transportation should provide an assessment of whether significantly shortening that space is appropriate in light of the broader scope of use of the project proposed and the increased traffic and vehicles currently using the site.

VJB provides no rationale for eliminating the right hand lane obligation imposed by Condition 41a, and substituting in place a “fair share” requirement via the last sentence in the proposed amended condition.

4. Conditions 41c,d and e—VJB’s offer to relinquish the rights to special events and longer hours in return for the elimination of the obligation to construct the left turn lane onto Shaw Avenue is vacuous. VJB knows that it cannot host special events or longer hours unless the left turn lane is built. Since it claims that building that lane is not possible at this time, it is giving up nothing by way of a mature right in return for being released of an obligation to construct the left turn lane. PRMD should pass on this “offer.”

More to the point, by already currently operating its project in excess of the permitted uses (for which it now seeks modification to allow) VJB has made no showing that the traffic and circulation concerns that prompted the requirement in the Use Permit for the left turn lane onto Shaw in anticipation of higher special event uses, are not already present. The special events have a maximum of 100 persons in attendance. VJB’s current outdoor picnic/patio/dining areas already provide seating for close to that number of customers. The ongoing uproar over the VJB operations and associated parking and traffic problems relate to the *current* use levels at the facility. There is no obvious rationale to support the conclusion that the need for the left turn lane is overstated and that the current safety issues at the intersection would be abated in any regard if VJB relinquished its contingent rights to longer hours and special events (which, again, only mature if the lane were to be constructed).

Conditions c, d and e are protective of the public safety and interest and are beneficial. Eliminating them would not be “minor adjustments” under Condition 86. VOTMA notes in addition that on page 10 of the Proposal Statement VJB appears to contemplate at some point that a left turn lane will be completed.

Finally, VJB’s offer to dedicate to CalTrans an *additional* easement along the project’s frontage on Highway 12 to accommodate a one-half section of left turn lane should

CalTrans decide to improve the entirety of Highway 12 through Kenwood with three lanes is interesting but requires assessment by CalTrans. There should also be clarification by VJB of its offer in the sense that it is VOTMA's impression that there is already an existing public right of way easement across the property frontage (e.g., for the Sonoma valley bike lane). VJB should clarify whether it is contemplating an *additional* easement beyond that already existing.

5. Condition 47—The creation of an additional parking area spur on the project, as proposed, could cause circulation to deteriorate. The County Fire Chief and the County's Department of Transportation should assess whether the prior recommendation to open Maple Avenue to customer vehicle egress is likely to adversely affect the ability for emergency vehicles to easily access the site under that changed parking expansion framework. CalTrans should assess whether the addition of the parking spur will adversely affect the sightlines from Maple Avenue and Highway 12. Will customers be precluded from parking on Maple Avenue at the park and entering the project on foot from the Maple Avenue vehicle exit?

6. Condition 49c—see comment on Condition 41a.

7. Condition 57—VJB provides no background to support this modification. If VJB has not performed the necessary improvements some explanation should be provided as to why that failure occurred and why an additional 24-month grace period is appropriate. VOTMA wants to see this situation resolved sooner.

8. Condition 59—Condition 59 relates to special events and requires no change. If and when VJB seeks to conduct special events then a change might be considered. VJB's proposed changes essentially eviscerate the existing condition.

The reality is that VJB is attempting to use the proposed changes to this "special events" condition as a make-whole provision to change the Use Permit to authorize the use of a deli kitchen for making sandwiches and providing other food, and for the provision of pizza from the oven area for all customers, whether or not associated with special events. This request is the camel's nose under the tent edge.

The issue VOTMA is concerned with is whether the broad implications of granting VJB the blanket food serving authority it seeks have been properly considered. Does approving the proposed replacement language of Condition 59 essentially make VJB a restaurant or deli or other food serving facility without limitation? This is the same issue that is confronted when winery tasting rooms seek commercial kitchen status and the ability to provide food service. How are these activities appropriately limited so that the traffic, parking congestion and other environmental impacts are considered and mitigated?

VOTMA believes that VJB is determined to fully utilize its overbuilt facility and that from its perspective providing more parking is an adequate response and remedy to any concerns. VOTMA believes that there should be limits to permitted uses like VJB's, just as there are capacity limits to restaurants and elevators. At the very least there should be a process to have that discussion, rather than just let VJB build it and then plead for forgiveness when the numbers of those that will come to eat swamp the capacity of the neighborhood, jam the county roads and adversely impact the agricultural and rural character of the County. That is why VOTMA is providing these comments.

VOTMA estimates that VJB can presently accommodate more than 100 diners and even more wine tasters at any point in time. VJB proposes no limits on how congested its use of 60 Shaw Avenue can be. It says it wants the proposed amendment to Condition 59 in order to "bring Condition 59 into conformance with actual improvements now located on the project site," (Proposal Stmt, pg 8) even though Condition 59 relates to "special events."

VOTMA suggest that Condition 59 be left alone. If PRMD wishes to authorize VJB to function as more than a "market place and wine tasting room" then 1) fashion a new condition that addresses that function, 2) evaluate what an acceptable number of customers would be appropriate for the site over a given period of time, in light of septic limits, parking, traffic, circulation, noise, smells and so forth and then 3) approve the use with some controls on occupancy and the ability to reevaluate/modify that over time if needed. But don't just give VJB a free pass because it has already overbuilt its facility and begun using it beyond its permitted uses.

9. Condition 62—see comment on Condition 47.

10. Condition 63—This condition should address whether access to the wine case storage room where wine tasting occurs should be allowed from Shaw Avenue.

11. Conditions 82 and 83—Assuming that Conditions 41c,d & e are not modified, there is no basis to eliminate conditions 82 and 83. The review of actual operations and efforts to move toward scheduling of special events are principles that should be retained in use permit conditions generally. As indicated earlier, on page 10 of the Proposal Statement VJB apparently has not ruled out the possibility of special events.

VOTMA regrets that these comments are so lengthy. But VOTMA believes that it is well past time to discuss specific conditions and issues that must be addressed on a detailed basis for the Use permit modification. VJB appropriately made that initial effort in that regard and VOTMA hopes that its comments in turn will help move this process forward to an acceptable resolution.

Thank you for the opportunity to provide comments. VOTMA is available to discuss these comments at PRMD's discretion.

Very truly yours,

Kathy Pons, President of the Board  
Valley of the Moon Alliance