



filed via e-mail

September 18, 2023

Sonoma County Board of Supervisors
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email: PlanningAgency@sonoma-county.org

RE: DRH21-0010 VOTMA Appeal from PC Action 09-07-23

Dear Supervisors,

The Valley of the Moon Alliance (VOTMA) appeals to the Board the Planning Commission's (PC) Action on September 7, 2023 denying VOTMA's appeal from a Design Review Committee (DRC) action approving the Design of the Kenwood Ranch Winery (KR Winery) project and adopting Addendum #2 to the 2004 Environmental Impact Report (EIR) for the KR Winery project. That 2004 EIR also addressed impacts associated with the Kenwood Ranch Inn/Spa/Restaurant (KR I/S/R).

As outlined in VOTMA's written and oral comments in the referenced proceeding (which documents and statements are incorporated here by reference) Addendum #2 to the 2004 EIR is not supported by substantial evidence as related to specific wildfire risks and collateral effects. Those impacts include the impact and impairment that evacuation of the KR Winery and KR I/S/R patrons and employees would have on Sonoma Valley fire evacuation plans in the event of another 2020 Glass Fire scale.

Addendum #2 is also the wrong procedural vehicle to assess wildfire impacts not previously assessed. Addendums do not address important new issues about significant effects on the environment.

Addendum #2 also lacks substantial evidence in the record to support the conclusion that the risk of debris flow damage onto the KR winery project area, and generated from the Glass Fire at the KR I/S/R is low to insignificant.

Finally, Addendum #2 lacks substantial evidence to support the conclusion that the new alternate evacuation road proposed to be developed on the westly adjacent Graywood Ranch Subdivision (indirectly under common control with the KR Winery and KR I/S/R) and integral to KR Winery/KR I/S/R evacuation plan has "independent utility," and does not need to be considered in connection with the KR Winery and KR I/S/R "voluntary" evacuation plan as set forth in Addendum #2 and the associated documents incorporated by reference.

VOTMA requests that after hearing this appeal the Board remand the Design Review and Addendum #2 back to the PC for consolidated review of fire issues, the evacuation plan impact on Sonoma Valley wildfire evacuation, and the associated effects of the proposal for the new road for evacuation. VOTMA also requests that the Board find that in view of the significant new issues raised as a result of the Glass and Nuns Fires, and increased wildfire risk generally, that were not addressed in the 2004 EIR, the proper CEQA procedural vehicle for publicly surfacing the required changes would be a subsequent EIR or a supplement to the 2004 EIR. Addendums are limited to minor technical changes.

1. Public Resources Code Section 21166(b) and CEQA Guideline 15162 Provide the Board the Authority Here to Reevaluate the 2004 EIR and Addendum #2 relating to the KR Winery and Wildfire Exposure and Impacts in Sonoma Valley.

At the PC hearing on September 7, there was clear uncertainty as to the scope of the PC's authority to delve into the details, shortcomings and impacts of the KR evacuation plan that was tendered as a "voluntary" action in the Initial Study (I/S) that Permit Sonoma utilized to fashion Addendum #2. That concern was not warranted.

Public Resources Code Section 21166(c) addresses CEQA reconsideration of certified EIR's, and reads as follows:

"When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

...
(c) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revision in the environmental impact report."

CEQA Guidelines Section 15162 (Cal.Code Regs. tit.14 Section 15162) provides interpretative guidance on how PRC Section 21166(c) should be applied. It reads in pertinent part:

(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:

...
(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects."

VOTMA states the obvious in noting that the existence of the Nuns Fire in 2017 and the Glass fire in 2020, both of which affected the KR project site (with the 2020 glass fire severely incinerating the forest surrounding the KR I/S/R and directly burning through the KR winery project site) together represent a substantial change with respect to the circumstances under which the KR projects are being undertaken and involve new significant environmental effects at the project site and within the Sonoma Valley.

Indeed, Addendum #2 acknowledges that reality: “The 2004 EIR was proposed prior to inclusion [in 2018] of wildfire impacts as a standalone topic of consideration in CEQA Guidelines, and impacts of wildfire were not considered.” (Addendum #2, pg.35; DRH21-0010 Attachment 5 in PC documents, pg. 35 of 43)

VOTMA acknowledges that under Guideline 15162(c), the reconsideration authorized under GL 15162(a)(2) would only apply where “further discretionary on that project is required. The Design Review required under the Conditions of Approval for the KR Winery constitutes that necessary qualifying discretionary review. As such, this Board can and should evaluate whether activities proposed at the KR Winery and the fire evacuation plan “voluntarily” proposed by KR to evacuate patrons and employees has a new significant environmental effect on the Sonoma Valley and Highway 12 evacuation plans.

2. Addendum #2 does not Supply Substantial Evidence that the KR Winery Project would not have New Significant Environmental Effects or a Substantial Increase in the Severity of any Wildfire Effect that Might have been Peripherally Mentioned in the 2004 EIR.

CEQA Guidelines, Appendix G Section XX “Wildfire”, adopted in 2018, provides four criteria that are now a required assessment in an EIR where the project is located in or near state responsibility areas or lands classified as very high fire hazard severity zones. The KR Winery project’s location would qualify as such. Attachment #2 fails to adequately assess 3 of the 4 criteria set out in Section XX-Wildfires.

a) Criteria XXa) asks would the project: “Substantially impair an adopted emergency response plan or emergency response evacuation plan?”

Addendum #2 relied on the Fehr & Peers “Travel Time Assessment Report” (TTAR) contained in the lengthy I/S funded by KR Winery. That report indicated a worst case delay impact from the KR Winery evacuation plan of between 15-30 minutes.

VOTMA raised several issues with that report:

- undercounting the potential number of people required to be evacuated;
- failure to study the evacuation impact if all evacuation occurs via Campagna;

- failure to do a VMT study (or even a LOS study) to support the report;
- reliance on SCTA's 2019 model that does not incorporate Hanna or SDC.

KR Winery's reluctance to undertake a current traffic study using VMT, as now required under CEQA, is perplexing. So also is the following Addendum #2 statement:

"[I]n the context of current conditions and for the proposed design, the EIR traffic analysis is still valid and adequately reflects 'future' traffic conditions that have not been realized. Current and projected information relating to traffic on Highway 12 does not contradict the EIR's evaluation or create new or more severe environmental impacts." (Addendum #2, pg. 14)

The combined effect of these omissions and the reliance on obviously old project information severely undercuts the validity of the TTAR and Addendum #2 that relies on it. Any assessment of the impact of the KR Project (the plan appears to contemplate the I/S/R at least also complying with the plan for evacuating restaurant and spa patrons, but not, at least initially, any Inn guests) on a 2020 Glass Fire scale as it effects Sonoma Valley ability to successfully and timely evacuate that completely ignores the impacts of the Hanna and SDC SB330 pending projects has little credibility and certainly does not qualify as substantial evidence.

b) Criteria XXc) asks would the project "Require the installation or maintenance of associated infrastructure (such as roads...) that may exacerbate fire risk or that may result in temporary or ongoing impacts on the environment?"

Here Addendum #2 and the I/S dodge the issue of the impacts the new proposed alternate road would have on highway 12 during an emergency evacuation. The TTAR assumes that 40% of the total traffic offsite (800-900+ people) would evacuate using the new alternate road running through the Graywood Ranch and snaking back east along Highway 12 to exit on to Highway 12 just several hundred yards west of the current Campagna exit. (Map attached)

LL03-0079/MJS01-0002 authorized creation of the 6 residence lots in the Graywood Ranch subdivision. Ingress/egress for those lots was specified to be via Campagna Lane and no other exit was authorized for development. Given this, it is hard to see the justification that there is independent utility for the road proposal, but for its use during wildfire evacuation. Clearly, Grading Permit GRD22-0174 and any other associated permits/approval for the new evacuation road should be consolidated with and incorporated into the evaluation of Addendum #2 and review of the significant effects of the proposed evacuation plan.

c) Criteria XXd) asks would the project "Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?"

In terms of geology and soils, Attachment #2 states that "The 2004 EIR did not

assess impacts related to post-wildfire conditions, however, the EIR did analyze impacts related to landslides, slope stability, flooding and drainage in a general sense... and provided mitigation measures. Addendum #2, pg. 26. Again we see an acknowledgment in Attachment #2 itself that issues raised and addressed are new issues not previously considered in the 2004 EIR. These are not minor technical changes.

The remainder of the discussion in that section refers to 2017 and 2018 studies by Bauer relating to the Nuns Fire and consultations with the County. The discussion tries to tie up all the loose ends with the statement that “Damage from the Nuns fire to the projects site’s vegetation and soils and a possible resulting increase in debris flow potential is not caused by the proposed design change for the Phase I Resort [the KR I/S/R] and the Phase II Proposed Winery and therefore is not a CEQA impact of those changes.” Addendum #2 follows that with the statement that Bauer, in his 2018 study, “concludes that the risk of debris flow damage onto, and generated from, the Phase 1 Proposed Resort is low to insignificant provided that the site is graded and improved with suitable erosion control issues in accordance with the approved project plan and conditions of approval.”

Setting aside the issue that it was quite clear over the last 2022 winter period that the erosion control measures on the Phase I Resort were *far from adequate*, the Addendum #2 approach to compliance with Criteria XXd) is far from adequate as substantial evidence to answer the question posed in criteria XXd).

As VOTMA observed in its comments objecting to the proposed issuance of building permits for the Phase I Resort, Bauer appears not to have done a post-Glass Fire review of the soils and geology affected by the Glass fire, either on the I/S/R site or on the Winery site. Since it is the scale and scope of the Glass Fire that has inflicted the substantial changes which occurred with respect to the circumstance under which the KR projects were being undertaken, the obligation to reconsider the 2004 EIR, as applied to the KR Winery that was still subject to discretionary action, is not simply tied to the Design Review changes. Beyond that, Addendum #2 in other areas evaluated the impacts of the Glass Fire, e.g., biology and animals, with several special voluntary mitigation conditions adopted. But nowhere in Addendum #2 is there an assessment of the post Glass Fire Soil and Geology, and the potentially new fireflow erosion and debris effects wrought by that fire. Absent that post Glass Fire assessment, Addendum #2 is again fatally defective in its ability to provide the substantial evidence to support its adoption as complying with CEQA’s now highly focused requirements relating to wildfire effects. The Board should not let these sorts of gaps in required CEQA analysis go uncorrected.

Summary

The Glass Fire brought with it “new significant environmental effects” that need to be reviewed and that were not reviewed in the 2004 EIR. Further, the byproduct of the Glass Fire in terms of a dramatically increased focus on the viability of speedy and safe evacuation using Highway 12 as the primary corridor means that there is a substantial increase in the severity of previously identified significant effects from the KR projects generally and the KR Winery specifically, (traffic and transportation congestion/capacity effects on Highway 12).

Addendum #2 is attempt to bypass PRC 21166 and Guideline 15162(a)(2). It is the wrong vehicles because it does not deal with minor technical changes, but addresses new issues not previously assessed. Even then, it makes an incomplete attempt to respond to the new CEQA Wildfire Criteria. But it’s a crabbed effort to tie everything in that Addendum to Design Review changes, while linking its reviews and revisions by rolling the detailed analysis of some post fire effects out in the 400+ page Initial Study as a deft attempt at avoidance.

In the end though, there is simply no justification for not fully engaging in a thorough analysis of the impact that the wildfire evacuation of this combined project would have on the Sonoma Valley and all those who use and rely on Highway 12 for safe exit in trying times. Building another road to get the employees and patrons of the KR projects out on a priority basis, and locating it so as to likely create its own traffic jam at its dual exit points hundreds of yards apart, is a problematic proposition that will affect other evacuation efforts across Highway 12 and related arteries. Failing to take into account in the evacuation modeling the two largest housing/hotel pipeline projects pending in Sonoma Valley that will spill thousands of residents, employees and guests onto Highway 12 in a wildfire evacuation is a significant omission, and surely constitutes an inadequate assessment from a CEQA perspective.

VOTMA asks the Board of Supervisors to step in, apply its learned experience over the last seven years about the need for priority to be given to evacuation effects of major projects located on narrow 2 lane highways, and then send this matter back to the Planning Commission for a thorough review of the analytical gaps identified in proposed Addendum #2 to the now dated 2004 EIR.

Respectfully submitted.

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