



## Sonoma County Board of Zoning Adjustments STAFF REPORT

**FILE:** PLP05-0009  
**DATE:** May 26, 2022  
**TIME:** 1:05 PM  
**STAFF:** Blake Hillegas, Project Planner

### SUMMARY

**Property Owner:** Henry R. and Shelby L. Belmonte, Trustees of Henry R. and Shelby L. Belmonte AB Living Trust; Vittorio Belmonte and Maria G. Belmonte, Trustees of Belmonte Family Trust Cellars

**Applicant:** Henry Belmonte, VJB Vineyards and Cellars LLC

**Address:** 60 and 75 Shaw Avenue, Kenwood (formerly 9125 Highway 12)

**District:** First

**APNs:** APN: 050-275-028 and -052

**Description:** Request to modify an existing use permit and conditions of approval/mitigation measures to permit a commercial kitchen, expanded patio food service, new septic system, and 53 space off-site parking lot; delete an option to host special events and expand hours of operation; change the requirement to install a left turn lane on Highway 12 from a mitigation measure/condition of approval to a condition of approval; add mitigation to remove parking on Shaw Avenue; and modify a mitigation measure to accommodate a right turn lane on Shaw Avenue within the existing right of way.

**CEQA Review:** Subsequent Mitigated Negative Declaration

**General Plan:** Limited Commercial

**Ord. Reference:** Sec. 26-10-030 Table 10-1 and 26-26-140 B. Use Permit required in C1 (Neighborhood Commercial) for restaurants serving Alcohol and associated off-site parking lot

**Zoning:** C1 (Neighborhood Commercial), SR (Scenic Resource)



**RECOMMENDATION**

Adopt a resolution adopting the April 26, 2022 revised Subsequent Mitigated Negative Declaration and approving modifications to an existing use permit and conditions of approval/mitigation measures to allow a commercial kitchen, 3,125 sq. ft. patio food service with 144 patio seats (157 total seats), new 1,500 gpd septic system, new 53-space off-site parking lot, and public road improvements.

**EXECUTIVE SUMMARY**

The VJB wine tasting room and market place was initially approved in 2007 under use permit PLP05-0009 and began operation in 2012. The facility is permitted as a wine tasting room, and a food market with pre-packaged and prepared food items for on-site and off-site consumption. On-site food consumption was approved in an outdoor patio/picnic area with four picnic tables shown in a picnic area. Formal table seating was not delineated. A caterer's kitchen and barbecue were approved to support the market and up to 15 catered events. A full commercial kitchen was prohibited.

The 2007 use permit established standard operating hours for the market and tasting room from 10 a.m. to 4 p.m. The 2007 use permit included a mitigation measure requiring construction of a right turn lane on Shaw Avenue, and also required construction of a left turn lane on SR-12, but deferred that mitigation measure so that construction of the left turn lane was required before applicant could expand hours from 8 a.m. to 5 p.m. or host evening events up to 10 p.m. The applicant reported that construction of the left turn lane as specified in the 2007 conditions of approval was prohibitively expensive and legally impossible because it required the applicant to obtain additional right of way from adjoining property owners. As proposed and analyzed in the SMND, the proposed use permit modifications include deletion of the deferred authorization to expand hours of operation and host evening events. However, the applicant agreed to install a modified left turn lane design that would be accommodated entirely within the existing right of way, and has submitted a preliminary design to Permit Sonoma. Feasible means construction of the left turn lane without the acquisition of off-site right of way and generally consistent with the applicant's preliminary design dated November 2020, if approved by Caltrans.

After being granted final occupancy in 2013, the applicant added table seating with approximately 144 seats on the outdoor patio and began serving prepared food, including barbecued food. An outdoor pizza oven and kitchen were installed in 2013 with issuance of a building permit. The scope of work was described as adding a pizza oven and enclosing the patio barbecue. The construction plans for the barbecue enclosure and pizza oven did not clearly identify a commercial stove top. Furthermore, on-site parking was not provided as required by the use permit, and does not meet code requirements correlating to the current extent of food service seating area.

Since 2013, the applicant has operated out of compliance with the use permit by operating a commercial kitchen with patio food service with 144 table seats and failing to provide sufficient parking and exceeding the design capacity of the existing septic system. Additionally, the barbecue and pizza oven have been utilized daily, similar to the commercial kitchen. Also, occasionally the case good storage building and second level of the market and wine tasting room have been used for wine tasting and table food service. These two expanded hospitality areas are shown on the applicant's latest floor plan and do not comply with the 2007 use permit or proposal statement. At times the applicant has operated beyond the scope of the approved hours by opening the market before 10 a.m.

The current proposal requests modification of the 2007 use permit to formally recognize daily use of the 144-seat patio food service operation with a commercial kitchen, barbecue, and pizza oven. As noted above, it also requests elimination of the option to expand hours and host evening events and the related deferred mitigation requirement to construct a SR-12 left-turn lane. Instead, the current proposal includes creation of a modified left turn lane within the existing right of way, as feasible. The applicant also proposes to modify the right turn lane design requirement on Shaw Avenue by constructing it within the existing right of way rather than dedicating additional right of way and widening the road. To support this request the applicant has agreed to apply for Board of Supervisors approval to remove on-street parking from both sides of Shaw Avenue at SR-12, the north side of Shaw Avenue, from SR-12 to Clyde Avenue (one block), and along the north side of Maple Avenue along the property frontage.

To support the restaurant food service activity, the proposed project includes a 1,500 gallon on-site septic system and a 53-space off-site parking lot at 75 Shaw Avenue. The proposed 1,500 gpd septic system would accommodate a capacity of up to 313 wine tasting and food service guests per day.

**PROJECT SITE AND CONTEXT**

***Background***

On September 18, 2007 the Board of Supervisors approved a use permit for a retail market with a wine tasting room, food preparation for on and off-site consumption, a wine case storage building, and a one-bedroom bed and breakfast inn for VJB Vineyards and Wine Cellars. The following chart compares the project components approved in the 2007 use permit with how those components are developed or operating.

Land Use	Specific Use	Permitted in PLP05-0009	Operating and/or installed
Office	Administrative office	1,500 sq. ft. at 2 <sup>nd</sup> level	1,615 sq. ft. overflow tasting and food service area required to be utilized for administration or storage
Retail	Market  Food prep/caterer’s kitchen Storage and restrooms	750 sq. ft.  400 sq. ft. storage/caterer’s kitchen 342 sq. ft.	781 sq. ft.  400 sq. ft. caterer’s kitchen 342 sq. ft. restrooms  Note: see below hospitality bed and breakfast converted to permitted retail
Patio Area/ Dining	Table seating	3,705 sq. ft. outdoor– patio/picnic area with four picnic tables	3,125 sq. ft. delineated patio with 144 seats 275 sq. ft. patio kitchen
Wine Tasting	Tasting room	750 sq. ft.	833 sq. ft.
Wine Storage	Case good storage	1,800 sq. ft.	1,800 sq. ft. case good storage,

			with 900 sq. ft. seasonally used as table seating/tasting area
Hospitality	Bed and breakfast	1,000 sq. ft. (2-beds)	Converted to 1,087 sq. ft. retail spaces (currently gelato shop/ clothing store)
Parking	On-site standard On-site tandem On-street Off-site	37spaces 17 spaces 0 spaces 0 spaces	34 spaces 0 spaces 3 spaces
Special Events	N/A	15 evening annual events with SR-12 turn lane	0 evening events
Hours of Operation	Standard  Optional	10 a.m. – 4 p.m.  8 a.m. – 5 p.m./events to 10 p.m. with SR-12 turn lane	10 a.m. – 4 p.m.

The 2007 Use Permit authorized food such as prepared sandwiches, meats, salads and olives, as well as market place items such as sauces, olive oils, dressings and bread. The project description described the project as a place where visitors would pick up light meals as they visited other wineries or stay and enjoy a picnic in the courtyard. The use permit conditions of approval prohibited a commercial kitchen and restricted events to catered food except for use of the approved barbecue.

At the time the project was initially approved, the intersection of SR-12/Shaw Avenue already met warrants for a westbound left turn-lane due to traffic volumes. Noting that the project would add west-bound left turn movements at Shaw Avenue associated with events during the evening peak hour, the 2007 MND included mitigation requiring installation of a west-bound left turn lane at Shaw Avenue. However, as conditioned, the Board of Supervisors deferred that requirement and limited the hours of operation (to 10 a.m. – 4 p.m.) and prohibited evening events until the left turn lane is installed. The Board noted that the turn lane would be required before evening events could be held or the hours of operation could be expanded to 8 a.m. to 5 p.m. daily.

The approved bed and breakfast use has been converted to retail space (currently occupied by a gelato shop and clothing store), which are both permitted retail uses.

***Unpermitted Activity and Community Concern***

The VJB facility has been operating beyond the permitted scope of the approved use permit resulting in ongoing traffic and parking concerns for neighbors. Specifically, the following intensification/deviations from the use permit have occurred:

- 1) patio table seating (144 seats) vs. undesignated seating with 4 picnic tables shown on approved site plan
- 2) expansion of use without providing code compliant parking;
- 3) daily food service using full commercial kitchen, barbecue, and pizza oven;
- 4) intermittent second story tasting and table seating;

- 5) intermittent seating and tasting/food service within the case good storage building; and
- 6) operation beyond the scope of approved hours (opening the market before 10 a.m.).

The use permit compliance issues were raised by neighbors after final occupancy was granted in November 2013, but no formal complaints have been filed with Code Enforcement. An application for use permit modification was submitted in 2014, and since 2014 there have been numerous changes to the proposal.

On April 26, 2017, the Sonoma Valley Citizens Advisory Commission (SVCAC) voted unanimously to recommend denial of the use permit modifications mainly due to continued operation of unpermitted activities, lack of compliance with the use permit conditions of approval, and ongoing parking and traffic congestion in the neighborhood. Over time, the Valley of the Moon Alliance and several other residents submitted numerous comments regarding these concerns. Kenwood Fire has expressed concern with their ability to serve the area when congestion occurs and supports the proposed removal of on-street parking from a portion of Shaw and Maple Avenues as recommended.

**Area Context and Surrounding Land Uses**

The community of Kenwood is predominantly characterized by a variety of commercial uses fronting SR-12, with single family residential uses located behind the commercial frontage. VJB abuts the southwest side of the highway, the northeast side of Shaw Park, and retail uses to northwest and southwest. A single-family residence exists across Maple Avenue to the south. Single family residential uses adjoin the south and west sides of the proposed off-site parking lot, which is located across Shaw Avenue from the VJB facility.

Direction	Land Uses
North	Retail and single family residential
South	Retail and single family residential
East	Wine tasting room and single family residential
West	Retail wine tasting and restaurant

The proposed 53-space off-site parking lot at 75 Shaw Avenue is currently undeveloped and contains perimeter wood fencing. Two single family properties adjoin the proposed off-site parking lot.

**Significant Applications Nearby**

Nearby applications in Kenwood include a proposed cannabis dispensary at the Kenwood Shopping Center and a food truck and new dining area at 9255 Highway 12.

**Access**

Under the proposal, an existing two-way driveway access serving the facility will remain on Shaw Avenue. The existing Maple Avenue driveway, initially approved as an emergency vehicle access, has been informally approved for daily egress and as proposed that use would continue. An existing driveway serving the proposed Shaw Avenue parking lot would be modified to meet County design standards.

**Wildfire Risk**

The site is not within a Fire Hazard Severity Zone and is within a Local Responsibility Area served by the Kenwood Fire Department. However, the property and guests are still exposed to moderate fire risk due to the close proximity of moderate and high fire hazard areas located to the east and west. The site is within the foot print of both the Tubbs and Glass fire, but was not materially impacted. In case of emergency evacuation, the project would share primary evacuation routes in Kenwood, including SR-12 and Warm Springs Road.

**Water/Wastewater/Utilities**

The uses are currently served by public water and two existing septic systems, including a 607 gpd system serving the market, tasting room and food service operation and a 220 gpd system serving the gelato shop. As proposed, both of the existing septic system would be replaced with a 1,500 gpd septic system.

**PROJECT DESCRIPTION:**

The proposed project requests modifications to use permit PLP05-0009, including:

1. Formally authorize daily food service operation with the following components:
  - a. A commercial kitchen, barbecue, and pizza oven;
  - b. 144 patio dining seats, in addition to 13 seats in the tasting room;
  - c. Installation of a new 1,500 gpd septic system to replace the existing 607 and 220 gpd systems;
  - d. Increase maximum employees to 6 on Mon.-Thur., 9 on Fri., 16 on Sat.-Sun.; and
  - e. Construct a 53-space parking lot with fencing and landscaping at 75 Shaw Avenue.
2. Eliminate the SR-12 turn-lane mitigation measure as infeasible, but install a modified turn lane design within existing right of way, as feasible, and:
  - a. Eliminate special events from the use permit;
  - b. Eliminate the option to expand hours beyond 10 a.m. - 4 p.m.;
3. Modify the required right turn-lane on Shaw Avenue to within the existing right-of-way rather than widening Shaw Avenue, and remove parking on the northwest side of Shaw Avenue from SR-12 to Clyde Avenue and on the southwest side of Shaw Avenue the first 50 feet from SR-12;
4. Formally remove on-street parking on the northwest side of Maple Avenue;
5. Formalize allowed use of the Maple Avenue emergency vehicle access (EVA) for general egress.
6. Dedicate right of way along the SR-12 highway frontage to contribute to a future segment of the Sonoma Valley Trail.

As conditioned by the Department of Transportation and Public Works (TPW) the applicant is required to install a mid-block cross walk and sidewalks on Shaw Avenue linking the existing commercial facility with the proposed parking lot.

**Project History**

The table below summarizes key project milestones and events.

<b>Date</b>	<b>Project Event/Milestone</b>
03/08/2007	BZA approved VJB wine tasting room and market with on-site and off-site food consumption
10/09/2007	BOS approved project on appeal
11/08/2013	Final Occupancy granted.
2014	Verbal complaints received concerning parking and congestion on Shaw Avenue and the extent of patio dining.
06/26/2014	Application to modify use permit application submitted. Application requests recognition of patio food service and expanded hours for market; maximum of 16 employees; use of off-site employee parking; use of parking on Shaw frontage except near SR-12; removal of Shaw Ave. right turn lane; removal of SR-12 turn lane as infeasible, but eventual payment of fair share contribution; and opening Maple Ave. driveway for ingress/egress.
1/26/2015	Parking study provided.
01/07/2016	Application project description modified to add on-site and off-site parking. No expanded hours or special events.
05/30/2016	Application project description modified to expand hours and add 35-stall off-site parking lot at 89 Shaw Avenue; off-site parking agreements at Wellington Winery and dental office; alternative SR-12 shoulder widening; and egress, but no ingress on Maple Ave.
02/17/2017	Project description modified to add a new 53 space parking lot at 75 Shaw Avenue with landscape plan; maintain current hours 10 a.m.-4 p.m; and eliminate proposal for additional on-site parking.
4/26/2017	The Sonoma Valley Citizens Advisory Commission (SVCAC) recommends denial of the use permit modifications.
02/22/2018	Updated project description, site plan and seating plan. Draft Traffic Study (Feb. 2018). New 1,500 gpd septic system application submitted July 2017.
09/26/2018	Updated project description; provided civil plan for parking lot; added right turn lane on Shaw within right of way and pedestrian ways. Project plans still show shoulder by-pass on SR-12; submits Traffic Study dated May 31, 2018.
07/26/2019	Traffic Study July 2019/SR-12 Right of Way and standard turn lane exhibit provided.
03/12/2020	Scheduled for BZA, but continued at applicant's request due to proposed limitations on seating capacity and maximum number of guests and SR-12 left turn lane mitigation.
07/20/2020	Addendum to updated Traffic Impact Study, July 20, 2020, concluding that beside volume warrants, there were no operational deficiencies at SR-12/Shaw Ave.
12/11/2020	Project modified to include new northbound SR-12 left turn lane design as feasible.
08/03/2020	Scheduled for BZA, but continued at applicants request to make further adjustments to timing of improvements, seating capacity, and other proposed mitigation and draft COAs.
07/22/2021	Tentatively scheduled for BZA, but delayed due to applicant's request for continued refinement of draft COAs and mitigation measures (parking ordinance, septic monitoring, and timing).

### **General Plan and Area Plans**

The following General Plan and Area Plan policies are applicable to the project:

**Policy LU-20i:** Use the "Limited Commercial" and "Limited Commercial - Traffic Sensitive" categories for commercial lands in communities with urban services, including Boyes Hot Springs/El Verano/Agua Caliente, Glen Ellen and Kenwood. Require that new uses meet the following criteria:

- (1) The size, scale, and intensity of the use is consistent and compatible with the character of the local community,
- (2) Capacities of public services are adequate to accommodate the use and maintain an acceptable level of service,
- (3) Design and siting are compatible with the scenic qualities and local area development guidelines of the local area, and
- (4) Siting of structures is compatible with planned infrastructure improvements such as roadway widening and under grounding of public utilities.

**Policy CT-3t:** Require that bikeway improvements be included as part of all road maintenance or improvement projects along road segments with existing or proposed bikeways to the maximum extent feasible.

**Policy CT-3ss:** Where discretionary projects in Urban Service Areas and unincorporated communities are found to create additional demand for pedestrian travel, require the project to directly provide or participate in the funding of pedestrian improvements such as sidewalks, gap closures, steps, safety improvements, and/or trails that will improve pedestrian access to destinations located within 1 mile of the project site.

**Policy CT-3vv:** Provide high-visibility crosswalk marking at all intersections in Urban Service Areas, and wherever feasible countywide. Wherever possible, avoid mid-block pedestrian crossings, and where mid-block crossings are necessary, install signalization, refuge islands and signage warning vehicles to stop for pedestrians and watch for cyclists.

**Objective CT-4.1:** Maintain LOS C or better on roadway segments unless a lower LOS has been adopted as shown on Figure CT-3.

**Objective CT-4.2:** Maintain LOS D or better at roadway intersections.

**Policy CT-6g:** Require that new development provide project area improvements necessary to accommodate vehicle and transit movement in the vicinity of the project, including capacity improvements, traffic calming, right-of-way acquisition, access to the applicable roadway, safety improvements, and other mitigation measures necessary to accommodate the development.



**Zoning**

The table below summarizes the development standards that apply to the site as outlined in the Sonoma County Zoning Ordinance, the existing and proposed development, and whether the project is consistent with the Zoning Ordinance.

Standard	Ordinance	Existing Condition	Proposed Project
<b>Lot Area</b>	1 acre without sewer	1.52 acres for VJB facility	Existing .45 acre C1 lot for off-site parking
<b>Land Use</b>	Limited Commercial	Restaurant with alcohol sales	Restaurant with alcohol sales/parking lot
<b>Residential Density</b>	N/A	N/A	N/A
<b>Front Setback</b>	0 on Shaw/50' on SR-12 Design Review for parking lot	8' on Shaw/50' on SR-12	Same  20' landscaping
<b>Side Setback</b>	0 on Shaw/50' on SR-12 Design Review for parking lot	8' on Shaw/50' on SR-12	Same  7-8' landscaping
<b>Rear Setback</b>	0' Design Review for parking lot	170' from Maple Ave.	Same  7-8' landscaping
<b>Height</b>	35 feet	33' existing building	No change
<b>Lot Coverage %</b>	50%	20%	Same
<b>Parking Spaces (see further analysis below)</b>	78	34	87

**ANALYSIS**

**General Plan Consistency**

The site is in Limited Commercial General Plan land use designation, which accommodates limited retail sales and services for the daily self-sufficiency of local communities in keeping with their character:

The following discussion lists General Plan policies for permitting projects in the LC designation at this location, and provides staff analysis of the project’s consistency with these policies.

*LU-20j: Use the "Limited Commercial" and "Limited Commercial - Traffic Sensitive" categories for commercial lands in communities with urban services, including Boyes Hot Springs/El Verano/Agua Caliente, Glen Ellen and Kenwood. Require that new uses meet the following criteria:*

- 1) *The size, scale, and intensity of the use is consistent and compatible with the character of the local community.*

Staff comment: The current wine tasting and food service operation was intensified beyond the scope of the approved use permit and the design capacity of the existing parking lot and septic system, and the required right turn lane on Shaw Avenue has not been installed. This has led to frequent parking and traffic congestion in the area due to existing narrow travel lanes on Shaw Avenue, which are compromised when on-street parking occurs on both sides of the street. Fire has expressed concern with their ability to serve the area when congestion occurs and supports the proposed removal of on-street parking from a portion of Shaw and Maple Avenues as recommended.

The issue is whether the proposed modifications to parking, circulation and septic capacity can sufficiently address the intensity of use and address traffic/pedestrian circulation such that the use does not result in undue congestion or poor pedestrian and vehicular access. These issues are discussed further under (2) below.

- 2) *Capacities of public services are adequate to accommodate the use and maintain an acceptable level of service.*

Staff comment:

#### **Water**

Kenwood is served by Kenwood Village Water Company, a state regulated water system. The Kenwood Water Company would continue to serve the existing operation and no capacity issues have been identified.

#### **Septic**

While there is no record of a septic failure at the property, the existing design capacity of the 607 gpd system serving the food and wine tasting facility does not meet the design specifications to accommodate the current wine tasting and food service operation with 144 patio seats. The existing system was designed assuming 15 gpd for seven employees (105 gallons) and five gpd per person attending a catered event (500 gallons). Monitoring data indicates that average peak flows as high as 554 gpd are near capacity.

The project includes installing a new 1,500 gpd septic system to meet the design specifications for the existing food and wine tasting operation. These limitations are derived from the following standards and septic monitoring data: each employee is projected to generate a septic demand of 15 gpd per person totaling 240 gpd. Wine tasting customers are assigned flows of 3 gallons per person and customers using food services are assigned flows of 5 gallons per person. Assuming an even split of wine tasting customers (157) and food service customers (157), total design flows for both wine tasting and food services would be 1256 gallons per day and 1496 gallons when employee use is added. To help ensure compliance with septic capacity limitations, conditions of approval limit wine tasting and food service guests to a total of 313 per day and limit patio seating to 144, with total seating limited to 157.

### **Circulation and Transportation**

With the current proposal to eliminate the option to expand hours and host evening events, the applicant proposes deleting the mitigation/condition requiring installation of a SR-12 left turn lane, but instead proposes to install a modified left turn lane design entirely within the existing right of way, as feasible. Feasible means construction of the left turn lane without the acquisition of off-site right of way and generally consistent with the applicant's preliminary design dated November 2020, if approved by Caltrans. Staff supports the proposal, however, it is noted that the applicant's modified design will need several design exceptions to be granted by Caltrans. The applicant also proposes to remove parking on a portion of Shaw and Maple Avenues and install the required Shaw Avenue right turn lane within the existing right-of way rather than a newly dedicated right of way. Consequently, alternative mitigation is proposed, including processing a separate application for a no parking ordinance on a portion of Shaw Avenue and Maple Avenue to improve neighborhood circulation.

#### Removal of on-street parking/Shaw Avenue right turn lane

The Department of Transportation and Public Works has determined that with the removal of on street parking on a portion of Shaw Avenue, the required Shaw Avenue right turn land can be accomplished through restriping within the existing right of way. Under staff's recommendation, the applicant is required to submit a separate request for "no parking" restrictions on Shaw and Maple Avenues within 60 days of project approval. The parking ordinance requires Board of Supervisors approval, so the conditions of approval for this modified use permit will not be met until the parking ordinance is approved and implemented.

The following summarizes circulation modifications generally agreed to by the applicant and DTPW and Regional Parks.

1. Remove the requirement for a left turn lane on Highway 12 as a mitigation measure, but install the modified design left turn lane within the existing right of way, as feasible, due to the extent of restaurant food service.
2. Provide a right turn lane on Shaw Avenue within the existing right of way instead of widening the road to provide a right turn lane;
3. Remove on-street parking on the northwest side of Shaw Avenue between SR-12 and Clyde Avenue and on the southwest side of Shaw from SR-12 for 50 feet to reduce circulation conflicts and provide adequate width to accommodate the right turn lane.
4. Remove on-street parking on the south side of Maple Avenue along the project frontage.
5. Formalize permitted egress from the existing driveway on Maple Avenue.
6. Dedication of right of way along the project's SR-12 frontage to contribute to the planned future Sonoma Valley Trail.
7. Mid-block crosswalk and sidewalks.

#### Required crosswalk on Shaw Avenue

The Department of Transportation and Public Works is requiring the installation of a midblock crosswalk on Shaw Avenue to connect the proposed parking lot to the existing market and patio food service operation. The applicant initially opposed this requirement and had their traffic engineer address this issue in their traffic study dated July 17, 2019 (Exhibit U pg. 15). The study

indicates that pedestrians using the off-site parking lot at 70 Shaw Avenue should be able to find adequate gaps in traffic to safely cross between the parking lot and the VJB facility based on field observations, overall low volume of traffic, speed limit (25 mph), and good visibility between motorists and pedestrians. The study also indicates that pedestrian facilities, such as paved shoulders on Shaw Avenue should be provided, but that pedestrians wishing to cross directly between the parking lot and facility should be able to cross safely.

*As previously noted, General Plan Policy CT-3vv: calls for high-visibility crosswalk markings at all intersections in Urban Service Areas, and wherever feasible countywide. Wherever possible, avoid mid-block pedestrian crossings, and where mid-block crossings are necessary, install signalization, refuge islands and signage warning vehicles to stop for pedestrians and watch for cyclists.*

The site is not located within an urban service area, and therefore the application did not propose a crosswalk. However, the Department of Transportation and Public Works has determined that a mid-block crosswalk is necessary due to the size of the parking lot and seating capacity, and stipulated that the crosswalk be designed as a high visibility enhanced facility to include lighting, signing and pavement markings to be more apparent to motorists and safer for pedestrians.

Staff has determined that the use as proposed and conditioned, would achieve land use compatibility based on the construction of a new parking lot, septic system, noise attenuating fence, and traffic and pedestrian circulation improvements, including the removal of on-street parking from a portion of Shaw and Maple Avenues and installation of a crosswalk. Draft conditions of approval include the requirement for a mid-block crosswalk on Shaw Avenue.

3) *Design and siting are compatible with the scenic qualities and local area development guidelines.*

Staff comment: The existing buildings and required site improvements are compatible with the scenic character of the Highway 12 corridor and no new buildings are proposed. The proposed parking lot at 75 Shaw Avenue includes a detailed landscape plan to partially screen parked cars from Shaw Avenue and achieve design compatibility with the neighborhood. Installation of the septic system may remove vineyards, but the vineyard would be replanted and vines next to the road would be retained.

4) *Siting of structures is compatible with planned infrastructure improvements such as roadway widening and under grounding of public utilities.*

Staff comment: The proposed physical changes consisting of road improvements and a new parking lot and septic system are compatible with planned infrastructure improvements, such as the Class I trail system planned adjacent to Highway 12 from Santa Rosa to North Sonoma Valley. Regional Parks has requested and the applicant has agreed to dedicate 5 feet of right of way along the project's Highway 12 frontage to contribute to the future Class I facility. Existing and proposed site improvements would not conflict with the future trail or undergrounding of overhead electrical lines.

**Zoning Consistency**

The site is Zoned C1 (Neighborhood Commercial) which allows neighborhood serving retail businesses, including restaurants and offices. The proposed project does not include new buildings and existing buildings conform to height, setback and lot coverage requirements in the C1 zoning district. Restaurants serving alcohol and wine tasting rooms are permissible with a use permit. The VJB market, wine tasting room, and food service operation serves the Kenwood neighborhood and the regional tourist market. The proposed off-site commercial parking lot site at 75 Shaw Avenue is also zoned C1 and can be authorized to serve the VJB facility as a component of the use permit modification. The new parking lot would bring the existing food service operation with patio dining into conformance with zoning parking requirements. A draft condition of approval is proposed requiring a parking easement be recorded on 75 Shaw Avenue for the benefit of the VJB operation at 60 Shaw Avenue.

To grant the use permit, land use compatibility finding is required. As discussed under General Plan consistency, staff concluded that the size, scale and intensity of the use as conditioned, with 144 patio seats and 13 tasting seats, is compatible with the neighborhood due to limited hours of operation (10 a.m. to 4 p.m.), parking and circulation improvements, septic improvements, seating and capacity limitations, noise attenuation, and landscaping. The recommended maximum 144 patio seats and 313 daily food service/wine tasting guests is consistent with long standing peak operations and would comply with septic design requirements.

**Parking**

Fifty-four parking spaces were initially required in the 2007 Use Permit, including 16 tandem spaces for special events. The tandem parking spaces were not provided, leaving only 34 on-site parking spaces currently. Existing parking does not meet the Zoning Code parking requirements for the existing food service patio dining area.

The proposed 53-space parking lot at 75 Shaw Avenue would address this deficiency and provide a total of 87 parking spaces, which exceeds code requirements for all uses on site, including the 3,125 square foot patio area with 144 seats that is recommended. The table below summarizes the parking demand and proposed parking:

<b>Proposed Use</b>	<b>Area</b>	<b>Parking Ratio</b>	<b>Spaces Required</b>
Office	1,615 sq. ft.	1 per 250 sq. ft.	6
Retail and Tasting Room	3,718 sq. ft.	1 per 200 sq. ft.	19
Case goods	1,800 sq. ft.	1 per 2000 sq. ft.	1
Patio food service	3,125 sq. ft. (144 seats)	1 per 60 sq. ft. dining	52
<b>Total Spaces Required (down-scaled)</b>	N/A	N/A	78
Total Spaces Provided	N/A	N/A	Onsite: 34 Off-site: 53 Total: 87

While the off-site parking lot will cover parking demand for the proposed outdoor patio seating, it would not be sufficient for additional seating, such as in the case good storage building or the upstairs of the market building. Therefore, it is recommended that seating within these areas be removed. Once the supplemental customer seating is removed from these areas as recommended in condition of approval #63, staff supports the temporary transfer of existing patio seating to within 900 sq. ft. of the case good storage building during inclement weather provided a building permit is first secured to address a change in building code occupancy.

### ***Environmental Analysis***

Use permit PLP05-0009 was approved in 2007 with adoption of a Mitigated Negative Declaration (MND). The proposal is a modification to the existing project therefore a *subsequent* MND has been prepared in conformance with the California Environmental Quality Act Guidelines. The subsequent MND focuses on the increment of change and potential impacts from the proposed modifications compared to the baseline conditions existing at the time CEQA review for the use permit modification was initiated in 2014.

The SMND was initially circulated in January 2020, a revised SMND was circulated in July 2020, and a second revised SMND was circulated in June 2021. However, none of the documents were adopted, and there has not been a public hearing on or approval of the modified project.

This third revised SMND was updated and recirculated on April 26, 2022 to revise mitigation measures concerning the timing of transportation improvements, the “no parking” ordinance on Shaw and Maple Avenues, and address the septic monitoring requirements consistent with the OWTS Manual.

### ***CEQA Baseline***

The baseline for analysis in this SMND reflects the patio food service activity with 144 seats that existed in 2014. The 144-seat food service activity has been in operation since 2013 prior to initiation of the subsequent environmental analysis in late 2014. The Valley of the Moon Alliance and its counsel have submitted comments that this baseline is incorrect, and that the baseline should instead be the project as approved in the 2007 use permit. However, the normal rule is that the baseline for CEQA analysis is the physical conditions existing at the time CEQA analysis begins. Judicial opinions consistently interpret CEQA Guidelines section 15125(a) to mean that the baseline for CEQA analysis is the existing conditions, “even if the current condition includes unauthorized and even environmentally harmful conditions that never received, and, as a result of being incorporated into the baseline, may never receive environmental review.” (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 234 Cal.App.4th 214, 249, citing *Communities for a Better Environment v. South Coast Air Quality Management Dist.*, (2010) 48 Cal.4th 310, 321 and *Citizens for East Shore Parks v. State Lands Com.* (2011) 202 Cal.App.4th 549, 561. Accordingly, Permit Sonoma’s determination that the appropriate baseline was existing conditions at the start of the CEQA process is reasonable and supported by existing regulation and judicial interpretation. Within these parameters, the Subsequent MND for the project makes the following determinations.

### Revised Subsequent Mitigated Negative Declaration

Based on the project modifications new or modified mitigation measures are included to address a right turn lane and no parking on a portion of Shaw Avenue, and address potential noise and potential impacts to Tribal Cultural Resources. In addition, the prior SR-12 left turn mitigation tied to expanded hours and evening events has been deleted, for two reasons. First, the mitigation is mooted by the proposed elimination of the option to extend hours and hold evening special events. Second, the measure is legally infeasible because the cost burden to applicant was not proportional to the applicant's contribution to the need for a left turn lane; at the time the use permit was approved in 2007, the intersection of SR-12 and Shaw Avenue already met warrants for a westbound left turn-lane due to existing traffic volumes.

1. Noise. The proposed off-site parking lot has the potential to create noise impacts on adjoining residential properties. Therefore, mitigation is required to retrofit the existing fence to adequately attenuate noise.
2. Transportation and Circulation. As stated above, with the elimination of approved special events and option to expand hours, the SR-12 left turn mitigation measure is moot. However, the applicant proposes to install a modified left turn lane design as feasible and if approved by Caltrans. Other changes to mitigation measures include removal of a requirement to provide additional on-site parking and modification to the right turn lane mitigation requirement on Shaw Avenue, together with removal of parking on a portion of Shaw Avenue to accommodate the Shaw Avenue right turn lane within the existing right of way. Also, new center and edge striping and a new "stop" legend are required, which will assist in improving circulation and reduce congestion associated with parking on both sides of a narrow neighborhood street. Staff determined that these modifications are equally effective. Because removal of parking on Shaw Avenue requires a separate Board action an additional mitigation measure makes it clear that the permit conditions will not be met until the parking ordinance is adopted and implemented.
3. Tribal Cultural Resources. In response to a request from the Graton Rancheria, a condition of approval/mitigation measure is included that requires a tribal monitor be present for any ground disturbing activities associated with project modifications.

### Deletion of existing mitigation measures

Under CEQA, the lead agency has authority to require feasible mitigation in order to substantially lessen or avoid significant effects on the environment, but only to the extent "consistent with applicable constitutional requirements such as the 'nexus' and 'rough proportionality.'" (14 Cal. Code Regs., § 15041(a).) "Feasible" means "capable of being accomplished in a reasonable time, considering various matters, including legal factors." (14 Cal Code Regs §15364.) As discussed above, the applicant pointed out and County Counsel concurred that the burden of the existing left turn lane mitigation measure was not proportional to the project's contribution to the need for a left turn lane, and hence was not "consistent with applicable constitutional requirements" such as nexus and proportionality. Mitigation measures that are beyond the legal authority of the lead agency are legally infeasible. (Pub. Resources Code § 21004; 14 Cal Code Regs §15040.) Permit Sonoma has concluded that existing condition of approval #41 e. requiring a SR-12 left turn lane as a mitigation measure is legally infeasible and should be deleted.

## **NEIGHBORHOOD/PUBLIC COMMENTS**

### ***SVCAC and Valley of the Moon Alliance comments***

The Valley of the Moon Alliance (VOTMA) has submitted several letters in opposition to the project. In addition to its comments related to the CEQA baseline discussed above, VOTMA recommends that the applicant be required to comply with the scope of its original use permit and conditions of approval. VOTMA notes that the restaurant operation is similar to an ongoing special event and points out that the new commercial parking lot is necessitated by the unpermitted food service activity and should not be permitted. VOTMA also questions whether the project traffic studies have accurately addressed traffic impacts and requests that a left turn lane on Highway 12 be required.

On April 26, 2017, the Sonoma Valley Citizens Advisory Commission (SVCAC) considered the use permit modification. The SVCAC voted unanimously to recommend denial of the modified use permit due to the history of unpermitted activity, lack of compliance with the use permit, expanded food service, and ongoing parking and traffic congestion in the neighborhood.

Other neighborhood comments include letters supporting the proposed operation, as well as letters concerned with parking and circulation issues and the ongoing lack of permit compliance.

## **RECOMMENDATION**

Approve a resolution adopting the SMND and approving modifications to the existing use permit and conditions of approval/mitigation measures to allow daily use of a commercial kitchen, barbecue and pizza oven, recognize 3,125 sq. ft. of patio food service with 144 seats, and authorize a new 1,500-gallon capacity septic system, off-site parking lot, and public road improvements.

## **ATTACHMENTS**

- EXHIBIT A: Draft Conditions of Approval
- EXHIBIT B: Vicinity Map
- EXHIBIT C: Zoning Map
- EXHIBIT D: General Plan Map
- EXHIBIT E: Aerial Photo
- EXHIBIT F: Aerial Photo Context
- EXHIBIT G: Proposal Statement
- EXHIBIT H: Approved Site Plan 2007
- EXHIBIT I: Approved Floor Plan 2007
- EXHIBIT J: Proposed Seating and Dining Area/Site Plan (updated); Dimensions 4, Sept. 2019
- EXHIBIT K: Proposed Overall Site Plan/Off-Site Parking/Right Turn Lane BKF, Sept. 2019
- EXHIBIT L: Proposed Modified SR-12 Left Turn Lane Design; BKF Nov. 2020
- EXHIBIT M: Superseded Highway 12 Left Turn Lane/Right of Way Exhibit; BKF, Dec. 2019
- EXHIBIT N: Highway 12 Right of Way
- EXHIBIT O: Proposed Landscape Plan for New Parking Lot; MacNair Landscape Feb. 2017
- EXHIBIT P: Septic Site Plan; Dimensions 4 – June 2017
- EXHIBIT Q: Caltrans comments; January 2021



EXHIBIT R: Caltrans comments; October 2019  
EXHIBIT S: Caltrans comments; December 2018  
EXHIBIT T: WTrans Traffic Study Addendum; July 20, 2020  
EXHIBIT U: WTrans Traffic Study; July 17, 2019  
EXHIBIT V: Well and Septic Letter; June 2020  
EXHIBIT W: Butler on Septic; July 2020/Adobe and Dimension 4 Septic Letters, Feb. 2020  
EXHIBIT X: Septic and Waste Water Analysis with Table 11.1; Dimensions 4 – Oct. 2019  
EXHIBIT Y: Septic and Water Usage; Dimensions 4 – August 2019 and January 2016  
EXHIBIT Z: Butler Letter - Baseline Feb. 2017  
EXHIBIT AA: Butler Letter – CEQA and left turn lane infeasibility; July 20, 2020  
EXHIBIT BB: Butler Letter – Hours of operation; August 6, 2020  
EXHIBIT CC: Butler Letter – on turn lane/shoulder widening, events/hours, trail dedication; October 2020  
EXHIBIT DD: John Holdredge email left turn lane; July 2020  
EXHIBIT EE: SVCAC Minutes; April 26, 2017  
EXHIBIT FF: Valley of the Moon Alliance Comment Letters; July 8, 2021 and August 26, 2020  
EXHIBIT GG: Steve Volker letters on behalf of VOTMA; July 7, 2021 and August 26, 2020  
EXHIBIT HH: Recent Public Comments  
EXHIBIT II: Prior Public Comments <https://share.sonoma-county.org/link/TmLz6mgrl7U/>  
EXHIBIT JJ: Draft Resolution  
EXHIBIT KK: 2022 Subsequent Mitigated Negative Declaration with attachments  
2007 MND, Resolution and Conditions of Approval  
<https://share.sonoma-county.org/link/t1qonTeZ05Y/>