

VANNUCCI MOMSEN MORROW

Attorneys at Law
An Association of Sole Practitioners

Philip M. Vannucci
Brian S. Momsen
308 S School St., 1st Fl.
Ukiah, CA 95482
Phone: 707.462.0900
Fax: 707.462.0906
Email: pvannucci@vmm-law.com
Email: bmomsen@vmm-law.com

Colin Morrow
The Penny Farthing Building
45060 Ukiah St, 2nd Fl.
P.O. Box 1214
Mendocino, CA 95460
Phone: 707.380.1070
Fax: 707.234.8025
Email: cmorrow@vmm-law.com

December 13, 2024

Lake County Board of Supervisors
255 N Forbes Street
First Floor
Lakeport, CA 95453
Moke.Simon@lakecountyca.gov
Bruno.Sabatier@lakecountyca.gov
Eddie.Crandell@lakecountyca.gov
michael.green@lakecountyca.gov
Jessica.Pyska@lakecountyca.gov

RE: UP 22-24 Rancho Novoa
Applicant: Amy and Juan Novoa
Project Location: 5680 Blue Lakes Rd. Upper Lake, CA
Hearing Date: December 17, 2024

Dear Board of Supervisors:

This law office represents the applicants Amy and Juan Novoa and requests that this letter be made part of the administrative record regarding the above referenced permit application.

The Novoas are longtime local residents and landowners who for over two years now have endured an expensive and comprehensive permitting process in an attempt to fulfill their dream of owning a small commercial campground and event site adjacent to Blue Lakes. They have faced fierce opposition from existing campgrounds on the lake which have been operating for decades, have influence in the community, and in some instances even influence over Building and Planning Staff.

The Novoas had a hearing date scheduled for last January before the Planning Commission. On the eve of this hearing, the Planner who had been assigned their application for over a year was suddenly replaced with a new planner who unilaterally took the matter off calendar claiming that the application required further CEQA review. Thereafter, the Novoas paid for further studies and jumped through additional hoops for months with no hearing date

even scheduled until they hired this office to demand a public hearing pursuant to the Permit Streamlining Act.

The Novoas finally received a public hearing before the Planning Commission on October 10, 2024- over 26 months after they submitted their permit application, but not before Planning Staff recommended two new conditions of approval to which, as discussed below, the Novoas object. The Novoas did not receive a fair hearing from the Planning Commissioners. One Commissioner blatantly voted against the project for subjective, personal reasons whereas two others had concerns that were not supported by substantial evidence in the record including a comprehensive Mitigated Negative Declaration and professional studies which conclude that the project will not cause any environmental impacts that cannot be mitigated to levels of insignificance.

The Board of Supervisors now has the opportunity to right these wrongs by granting the Novoas appeal of the Planning Commission decision. Does this Board support the property rights of local landowners who wish to put their property to its highest and best use in a manner consistent with its zoning, or does it simply want to cater to the “not in my backyard” complaints of neighboring businesses? Does this Board wish to stimulate the local economy and recreation at one of the County’s most beautiful sites or preserve the stagnant status quo? These questions will be answered at this hearing and the Novoas respectfully request their appeal be approved after the Board considers the following points and facts.

THE PROJECT

The application for Major Use Permit UP 22-24 as amended is for a private campground with 16 campsites and a special event venue for weddings and private gatherings. The campsites would be private by appointment only from April through October.

As shown in the aerial photograph attached as “FIGURE 1-VICINITY MAP” to the Staff Report, the project area is a small already graded and flat subset of the overall 27-acre parcel to the west of Blue Lakes Rd. The remaining acreage is steep and heavily wooded. The overall 27 acres has some undeveloped lake frontage on the east side of Blue Lakes Rd.; however, the project area is well uphill and west of the lake itself.

The parcel shares a common boundary running roughly northwest to southeast with the Narrows Resort to which the project area is fairly close. Otherwise, the project area is not close to other dwellings or commercial campgrounds/resorts.

ENVIRONMENTAL REVIEW

The Initial Study and Mitigated Negative Declaration for this project was prepared and circulated for Public Review from May 10, 2023 to June 9, 2023. A noise study was completed for the project as a result of public comments received from adjacent property owners. The noise study found that the County noise standards are met with certain mitigation measures and that any impacts would be less than significant. The Novoas also paid for a biological study including a second phase demanded by Building and Planning Staff in 2024 that again concluded any impacts from the project were either less than significant or could be mitigated to less than significant levels. The Novoas, at the request of Staff, also paid for a water analysis prepared by a hydrologist which concluded that an existing well on site will adequately serve the project.

On the subject of wildfire and access, the applicants were required to update their access driveway and create an emergency vehicle turn around. The project is restricted to 40 vehicles at any one time and will utilize a local shuttle service for additional guests. No parking is allowed on Blue Lakes Rd. Even though this is routinely done by the Novoa's neighbors including the Blue Lakes Resort. Several mitigation measures (WILD-1 through WILD-7) are set forth in the project's Initial Study including the prohibition of campfires on red flag warning days.

No items of archaeological or cultural significance were found during a professional survey. Nevertheless, mitigation measures including Tribal monitoring are recommended in the Mitigated Negative Declaration.

As a result of these studies, the Novoas reduced the planned phases of their construction from three phases to two, and removed previously planned components such as trails, a disc golf course and a playground,

The Mitigated Negative Declaration found that the project would have either no environmental impact or a less than significant impact in the areas of aesthetics, agriculture and forestry, air quality, energy, geology and soils, greenhouse gas emissions, hydrology and water quality, land use and planning, mineral resources, population/housing, public services, recreation, and utilities/service systems.

The initial Staff Report prepared for the Planning Commission Hearing that was scheduled for January 2024 recommended approval of the project with enumerated conditions and mitigations that were acceptable to the Novoas. The Staff Report was revised prior to the October 10, 2024 hearing to include two additional conditions which are objectionable as discussed in more detail below.

OBJECTIONABLE CONDITIONS

Lake Access: Section 4 of the Staff Report prepared for October 10, 2024 Planning Commission addresses this issue. Neighbors questioned the Novoa's legal right to access the lake even though their parcel has lake frontage. Staff did weigh in on these complaints and considered any dispute to be a civil matter. However, Staff did add a condition of approval that the Novoas' guests could not use a recently constructed stairway to the Lake that is not yet permitted even though the Report admits lake access and this portion of the property are "not part of the project (use permit)."

Section 4 of the Staff Report implies that the guests will be able to use the subject stairway once the Novoas get a retroactive building permit. However, the Staff took a different stance at the October 10, 2024 hearing with the Planning Director stating on the record that even if the stairs are permitted, guests will not be allowed to use them because there has been no CEQA study regarding lake access.

This is counterintuitive. If lake access and the area of the subject parcel were never part of the project or use permit application, then what is the County's legal basis for conditioning approval of the permit on strict conditions in this area? It should be noted that a stairway existed at the same location when the Novoas submitted their permit application in 2022. The recent construction replaced the older, similar stairs. Actual conditions constitute the appropriate baseline for environmental review, even where those conditions have never been subject to CEQA review. *Center for Biological Diversity v. Cal. Dept. Of Fish & Wildlife* (2015) 234 Cal

App 4th 214, 248. A stairway to the lake existed in substantially the same form as the new stairs and was used by the Novoas and their guests when the application was filed. This was the “baseline” under CEQA. Staff’s assertion that further CEQA review is required on this use is ridiculous. Obviously, if the stairs are permitted and safe the Novoas have a right to let their invitees access the whole of their property

Use as a Campground- Even though the Novoas application is for a campground *and* a special event venue, Staff is now taking the position use of the 16 campsites can only be attendees of a booked special event. In other words, on days when there is no special event on site such as a wedding, the Novoas could not rent campsites to patrons, even by advanced reservation.

Again, Staff’s reasoning was that there has been no CEQA study regarding the use of the campsites by people who are not attendees of a special event. This is not true, however. As stated in the Staff’s Summary enclosed herewith (“Form F”) “Lastly, several sections within the Initial Study have been revised to reflect accurate analysis and impacts related to a campground, which was previously mistakenly analyzed as a public, year-round campground.” So, not only were impacts of a campground studied, but even the impacts of a year-round campground that is open to the public whereas this project is only open from April through October and can only be booked through private reservation. Even if limited to April through October, the Roadway Analysis in the Mitigated Negative Declaration contemplates 80 road trips and eight shuttle trips every day even if there is no event.

It is self-evident that occasional use of the campsites through private reservation that are not invitees to a special event such as a 250 person wedding, will have less of an environmental impact than on an event day with more people. Further environmental study is not required if there is no evidence in the record that a change in the project would lead to new or more severe impacts. *San Diegans for Open Government v. City of San Diego* (2016) 6 Cal App 5th 995. From the Novoa’s point of view, non-event goers using campsites is not a change in the project, but even if it were, far greater impacts of a 250-person event each day from April through October have already been studied.

IMPROPER BASIS FOR PLANNING COMMISSIONERS’ VOTES

Commissioner Price stated at 4:03:35 (2:04:53) of the video recording on the County website that her reasons for not supporting the project were that she has visited the Blue Lakes and fears that a project like this would negatively affect her “solitude” and “tranquility.” She also mentioned that Clear Lake would have a better “vibe” for a project such as this one.¹

Commissioners Chavez and Brown stated that they might support the project if it were just a campground and did not also contemplate special events but provided no other reasoning or basis for voting against the project.

Land use decisions such as the instant minor use permit application that apply existing standards like zoning ordinances to a specific real property and are determined by facts specific to that parcel are treated as “quasi-judicial” or adjudicatory in nature. *Horn v. County of Ventura* (1979) 24 C 3d 605, 613-614 While granting or denying the permit application is in the discretion of the Board of Supervisors, California law does set forth procedural due process requirements and

¹ Commissioner Hess criticized this reasoning at 4:05:50 (2:06pm) of the recording.

other limitations on the decision makers such that they cannot base their decisions on their own personal whim. Specifically, the property owner applying for a use permit is entitled to a fair hearing with unbiased decision makers who do not prejudicially abuse their discretion. A prejudicial abuse of discretion is established if the decision makers do not proceed in a manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. California Code of civil Procedure Section 1094.5(b)

A decisionmaker is biased if he has prejudged the specific facts of the case or harbors prejudice for or against any of the parties. A commitment to a certain result by a decision maker (perhaps, even a tentative commitment) can be held too violative of the permit applicant's procedural due process rights. *Breakzone Billiards v. City of Torrance* (2000) 81 Cal. App. 4th 1205, 1236

A decision maker also violates the applicant's due process rights if he considers evidence and information outside of the record. *Vollstedt v. City of Stockton* (1990) 220 Cal. App. 3d. 265, 272-276.

An abuse of discretion is established if a court determines that the agencies' findings are not supported by substantial evidence in light of the whole record. Code of Civil Procedure Section 1094.5 (c) "Substantial evidence" includes fact, a reasonable assumption predicated on fact, or an expert opinion supported by fact. "Substantial evidence" is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to or are not caused by physical impacts on the environment. The existence of a public controversy over the environmental impacts of a project shall not require the preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment. [See *McCann v. City of San Diego* (2021) 70 Cal App. 5th 51, 86]

In this case, as pointed out by Commissioner Hess, Commissioner Price based her decision on her personal experiences at Blue Lakes and her subjective opinion of whether this project fits the tranquil "vibe" she seeks on these visits. She did base her decision on any substantial evidence in the record, perhaps because the evidence in the record based on scientific study shows that the project will not impact aesthetics, and any noise impacts can be mitigated to levels of insignificance.

Commissioners Chavez and Brown apparently would support an application for a campsite that does not include special events but failed to articulate how just campsites would create a lesser or different effect on the environment? They never addressed the fact that the only substantial evidence in the record based on scientific study (as opposed to generalized complaints from neighbors) concluded that even if large events were held continuously from April through October, that the project would still not cause any significant negative environmental impacts. Not to mention that the application was for a campground!

CONCLUSION

The mere fact that a project is controversial or even unpopular in the local community are not valid reasons under CEQA to deny a permit application. There must be substantial evidence in the record supporting the conclusion that the project will cause negative environmental

impacts that cannot be mitigated though conditions of approval to a level of insignificance. That is simply not the case here. For example, none of the project opponents have produced their own scientific, professional noise study to counter the conclusions reached in the study attached to the Staff Report. There have only been generalized complaints about possibilities coming from competing business owners and their friends. Such complaints do not rise to the level of “substantial evidence” under CEQA.

After spending over two years and tens of thousands of dollars in the permitting process, the Novoas deserve better treatment than what they received from the Planning Commission. They respectfully request that the Board follow the rule of law, and approve their project based on the scientific and professional studies contained in the Mitigated Negative Declaration. The Novoas should have the same opportunities to make their lakefront property productive as their neighbors enjoy.

Very truly yours,

VANNUCCI MOMSEN MORROW

BY: *Brian S. Momsen*
BRIAN S. MOMSEN

cc: Mireya Turner, Director
Michele Irace, Principal Planner
Mr. Novoa and Ms. Hewitt
Lloyd Guintivano
Brown, Batsulwin
Field, Maile
Hess, John
Perez, Everardo Chavez
Price, Christina