



## LAW OFFICES OF TINA WALLIS

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May 9, 2018

Patrick Streeter,  
Senior Planner  
City of Santa Rosa  
Planning & Economic Development Department  
100 Santa Rosa Ave., Room 3  
Santa Rosa, CA 95403

RE: Oakmont of Emerald Isle Appeal

Dear Mr. Streeter:

The purpose of this letter is to respond to the March 26, 2018, appeal of the City of Santa Rosa's ("City") Design Review Board's ("DRB") final design review approval for the Oakmont of Emerald Isle Project.

Background

The City's Planning Commission adopted a Mitigated Negative Declaration ("MND") and approved a Conditional Use Permit ("CUP") and Hillside Development Permit ("HDP") for the 49-unit assisted living facility on November 30, 2017. The County posted a Notice of Determination under CEQA<sup>1</sup> on December 7, 2017. The staff report to the Planning Commission analyzed a potential "overconcentration of community care facilities" and found that due to the unique nature of the site, setback . . . surrounded by vegetated slopes and a golf course, and the clustered nature of the development, any impacts that might result from the overconcentration condition are negligible." The fact that another community care facility would be 640' away did not change staff's recommendation. After considering staff's recommendation, the Planning Commission approved the conditional use permit. Neither the CUP, HDP nor CEQA resolutions were appealed.

The project next went to the DRB for preliminary design review on January 4, 2018. The DRB adopted Resolution No. 18-972 granting preliminary design review approval. This resolution was not appealed. On March 15, 2018, the project returned to the DRB for final design review approval, which was granted.

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<sup>1</sup> "CEQA" stands for California's Environmental Quality Act.



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### The Appeal

On March 26, 2018, two individuals appealed the March 15, 2018, final DRB approval on eight different grounds: (1) the DRB failed to consider the consequences of overconcentration of community care facilities in in this location; (2) the DRB ignored investigations related to the Tubbs Fire that occurred in October of 2017; (3) the November 30, 2017, MND was inadequate; (4) the DRB failed to make a finding that the project's impact to emergency evacuations analysis was sufficient; (5) there is no evidence supporting the DRB's finding that the proposed project is consistent with the General Plan, zoning, and other requirements, including studying whether the project is consistent with the 2016 City of Santa Rosa Local Hazard Mitigation Plan and the 2009 Urban Wildland interface Fire Area Map; (6) there is no evidence supporting the DRB's finding that the proposed project would not have a negative effect on surrounding properties; (7) the DRB's finding that the proposed project is not detrimental to the public health, welfare and safety is not supported by evidence; and (8) the City should have held a second neighborhood meeting, after the project allegedly changed.

### Response

Since the issues raised in the appeal are substantially similar or repeat each other, this response will group the appeal's allegations into five categories: (A) overconcentration; (B) adequacy of the MND; (C) investigations related to the Tubbs fire; (D) neighborhood meeting requirements; and (E) findings related to the public health, safety, and welfare.

First, the *Planning Commission* may deny a use permit for a community care facility because a new facility will create an overconcentration that cannot be mitigated or reduced through conditions of approval. (Santa Rosa City Code § 20-42.060(C)(2).) Thus, the issue of "overconcentration" is a land use issue within the Planning Commission's authority and not within the DRB's purview. The Planning Commission acted on the use permit on November 30, 2017. The City's code allows anyone to appeal a Planning Commission decision to the City Council within ten days of the Commission's decision, or until December 11, 2017, in this matter. (Santa Rosa City Code §§ 20-62.020(E) & 20-62-030(1).) Since the Commission's approval, including relying on staff's analysis that this facility would not result in an overconcentration of community care facilities, was not appealed within ten days as the code requires, this claim is forfeited.

Second, any challenges to the adequacy of the MND were also forfeited because they were not challenged in the time and manner required by law. The City's code allowed anyone to appeal the Commission's adoption of the MND within ten working days of adoption. (Santa Rosa City Code § 17-04.030(C).) The City also posted a Notice of Determination for the MND on December 7, 2017, which started a 30-day period to challenge the MND with a lawsuit. No lawsuit was filed



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and the MND is now presumed to be valid. (Pub. Res. Code, §21167.2.) Thus, the MND is final and unassailable and cannot now be challenged; any challenges to the MND were waived because the time to bring them passed. The DRB's findings in the final design review proceeding only confirm that the project underwent CEQA compliance and did not re-open the MND to challenges.

Third, investigations in any way related to the Tubbs Fire are also beyond the purview of the DRB and the DRB has no jurisdiction over them. Since the DRB has no jurisdiction over these claims, they must be excluded from the appeal.

Fourth, the City's only requirement for a neighborhood meeting is for a pre-application meeting; the Tubbs Fire did not and could not trigger another, mandatory neighborhood meeting. The changes to the project included changing the project from a one-story, 49-unit skilled nursing facility to a two-story, 49-unit assisted living facility. Because of the design of the one-story facility, this change *reduced* the height of the structure by one foot. Nothing more was required.

Finally, both the Planning Commission and the DRB previously made findings that the project will not be detrimental to the public health, welfare, and safety. In addition to this, the MND, which must be presumed to be valid, expressly studied whether the project would expose "people or structures to risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands" and found a less than significant impact. The appellants waived this issue by failing to appeal the MND and all prior approvals.

Nevertheless, the applicant will address the merits of this challenge. Vern Losh, a retired fire professional, with over 30 years of experience, and the former head of the Sonoma County Department of Emergency Services, personally went to the project site and surrounding area on April 18, 2018. Upon reviewing the project and surrounding areas, Mr. Losh concluded:

After extensive review of all available documents and testimony of Santa Rosa Fire officials it is the conclusion of the author that the Emerald Isle project does not substantially increase the risk of wild fire to the site or the community of Fountain Grove. Further as indicated by the submitted plans and documents the project will meet all current building codes, fire codes, and vegetation management practices as required by the City Fire Marshal, State of California, and Community Care Licensing. The codes required in the high fire severity zones of the WUI areas of the city provide for construction requirements that are significantly resilient to wildland fires.



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While there are no guaranties during significant fire-storm, construction meeting current State and Local fire and building codes will dramatically increase the survivability of all buildings constructed in the WUI areas of the City. The evacuation standards meet current codes and in fact the City of Santa Rosa has more restrictive standards in the WUI area and this project still meets those standards.

It was noted in Planning Department documentation that the appellant indicated that fire safety is a concern. There was no evidence discovered during this research to indicate that this project has any significant consequence to public safety and health.

Ms. Losh's report is substantial evidence supporting the City's findings that the project will not deleteriously impact the public health, welfare, and safety due to its location in the Urban Wildland Interface Area or because of existing evacuation routes. Mr. Losh also reviewed the 2016 City of Santa Rosa Local Hazard Mitigation Plan and the 2009 Urban Wildland Interface Fire Area Map and concluded that the project is consistent the plan. A complete copy of Mr. Losh's April 2018 Report and his CV are attached to this letter.

The applicant respectfully requests that the City deny this appeal because most of it claims were forfeited and the remaining claim which was also forfeited, is meritless. Please feel free to call me at (707) 595-8681 if you have any questions about this letter.

Very truly yours,

Tina M. Wallis  
Law Offices of Tina M. Wallis, Inc.

Enclosures:

1. May 2018 "Oakmont Emerald Isle Hazard Assessment" from Vern Losh & Associates
2. CV for Vern Losh

# **Oakmont Emerald Isle Hazard Assessment**

**May 2018**

**Prepared by Vern Losh  
Vern Losh and Associates**

## **PREFACE**

This assessment was requested by the Applicant of the Emerald Isle project located in the Fountain Grove area of Santa Rosa California. The assessment is intended to have four fundamental applications, as follows:

First, it provides a background of the proposed development project from a fire perspective including location, fire history, and weather.

Second, it will outline the current building construction standards required by state and local building and fire codes.

Third, it will provide information based on a site visit, document review, and Planning Commission meetings, agendas video, and minutes.

The information compiled for this report was gathered from a literature review, professional journals, on-line information, periodicals, the author's library, and interviews of fire service experts.

## **PROPOSED DEVELOPMENT**

The Emerald Isle development is located in the Fountain Grove area of Santa Rosa that was established in 1972. The Fountain Grove Golf and Country Club, the Fountain Grove Lake, residential development and a community care facility surround it.

It is located in the northeastern part of the City in an area designated by the City Council as a "Wildland Urban Interface Fire Area" (WUI). This designation was adopted February 24, 2009 based on the recommendation of the Chief of the Fire Department. The ordinance requires that all development comply with certain sections of the Public Resources Code, Government Code and other local requirements for more fire resilient construction materials. Approximately 30% of the is community is located in Santa Rosa's WUI zone.

## **FIRE HISTORY**

The most significant fire on record in the area of Emerald Isle was the Tubbs Fire of October 2017. Another fire in the area was the Hanley Fire in September of 1964. The fire burned almost 56,000 acres from Calistoga to the area of Sutter Hospital in Santa Rosa. Like most significant fires in Sonoma County the Tubbs and Hanley fires occurred during the fall and it were reported to be driven by hot, dry north and east winds.

## **WEATHER**

The weather in Sonoma County is typical of a Mediterranean type climate. This climate includes long hot summers with minimal amounts of moisture. This climate provides ideal conditions for wildland fires. There is an average of 29 days per year where the temperatures exceed 90 degrees. This is typically in late summer and early fall.

## **BUILDING CONSTRUCTION**

There has been a dramatic change in building standards in the last 10 to 15 years for construction in Wildland Urban Interface (WUI) areas of California. These changes have been a direct result of findings from several major fires in the State. The changes have been incorporated in to building and fire codes on a local and state level.

All construction for the Emerald Isle development will comply with all current building standards as adopted by the State of California and the City of Santa Rosa for WUI areas. This includes but not limited to: interior fire sprinklers, ignition-resistant building materials, protected vents and gutters, enclosed roof eaves and roof eave soffits, fire resistive doors and windows, and ignition-resistant decking material.

New construction using code approved ignition-resistant materials and sealed eaves with reduced ladder fuels and cleared defensible space survived better than new construction in areas with less restrictive building codes in many of the recent fires in California.

## **FIRE HAZARDS OF SANTA ROSA**

The fire threat in Santa Rosa can be largely attributed to the climate, vegetation types (fuel), and topography. Fire hazard reduction can be accomplished by reducing the amount and types of fuel in a given area.

Far and away the most dangerous of the fuel types are those dominated by brush or shrubs. Shrubs and/or brush fuels have similar characteristics. These plants will burn rapidly with high intensities under severe burning conditions. Fires late in the growing season (fall) have the greatest intensities and spread rates under strong winds and when the live fuel moistures are at their lowest. From the flames come burning embers which can ignite homes and other vegetation. All of these factors results in a setting where aggressive defensible space clearing requirements are necessary.

Properties with greater fire hazards will require more clearing. Clearing requirements will be greater for those lands with steeper terrain, larger and denser fuels, and fuels that burn with great intensity.

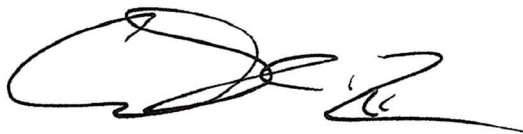
## **DISCUSSION CONCLUSION**

After extensive review of all available documents and testimony of Santa Rosa Fire officials it is the conclusion of the author that the Emerald Isle project does not substantially increase the risk of wild fire to the site or the community of Fountain Grove. Further as indicated by the submitted plans and documents the project will meet all current building codes, fire codes, and vegetation management practices as required by the City Fire Marshal, State of California, and Community Care Licensing. The codes required in the high fire severity zones of the WUI areas of the city provide for construction requirements that are significantly resilient to wildland fires.

While there are no guaranties during significant fire-storm, construction meeting current State and Local fire and building codes will dramatically increase the survivability of all buildings constructed in the WUI areas of the City.

The evacuation standards meet current codes and in fact the City of Santa Rosa has more restrictive standards in the WUI area and this project still meets those standards.

It was noted in Planning Department documentation that the appellant indicated that fire safety is a concern. There was no evidence discovered during this research to indicate that this project has any significant consequence to public safety and health.



Vern Losh, Principal

Vern Losh and Associates

## REFERENCES

Wikipedia

California Chaparral Institute

U.S. Forest Service database

UC Cooperative Extension, Pyro-phytic vs. Fire Resistive Plants, 1998

Wildland Urban Interface Fuel Risk Assessment: City of Santa Rosa, California, Fire Management Concepts Inc. 2004

City of Santa Rosa Local Hazard Mitigation Plan

National Advanced Resource and Technology Center, Tucson, Arizona

BEHAVE Fire Modeling System

Lake County Community Wildfire Protection Plan

Living with Fire in Sonoma County, Fire Safe Sonoma



## Internet Resources

City of Santa Rosa (Fire, Planning, Building)	<a href="https://www.srcity.org">https://www.srcity.org</a>
California Code of Regulations	<a href="http://www.leginfo.ca.gov/calaw">www.leginfo.ca.gov/calaw</a>
Cal-Fire (CDF)	<a href="http://www.hhhhhcdf.ca.gov">www.hhhhhcdf.ca.gov</a>
California Fire Alliance	<a href="http://www.cafirealliance.org">www.cafirealliance.org</a>
California Planning Information	<a href="http://www.calpin.ca.gov">www.calpin.ca.gov</a>
California State Fire Council	<a href="http://www.firesafecouncil.org">www.firesafecouncil.org</a>
Code Development and Fire Safe Planning	<a href="http://www.osfm.fire.ca.gov/regulations">www.osfm.fire.ca.gov/regulations</a>
Federal Emergency Management Agency	<a href="http://www.fma.gov">www.fma.gov</a>
Fire Hazard Planning	<a href="http://www.opr.ca.gov">www.opr.ca.gov</a>
Hills Emergency Forum	<a href="http://www.hillsememergencyforum.org">www.hillsememergencyforum.org</a>
Laguna Fire Safe Council	<a href="http://www.lagunacoastfiresafecouncil.org">www.lagunacoastfiresafecouncil.org</a>
National Fire Plan	<a href="http://www.fireplan.gov/reports">www.fireplan.gov/reports</a>
National Fire Protection Association	<a href="http://www.nfpa.org">www.nfpa.org</a>
National Interagency Fire Center	<a href="http://www.nifc.gov">www.nifc.gov</a>
National Wildfire Coordinating Group	<a href="http://www.nwcg.gov">www.nwcg.gov</a>
Urban Wildland Interface Fire	<a href="http://www.ccfip.ucop.edu">www.ccfip.ucop.edu</a>
U. S. Fire Administration	<a href="http://www.usfa.fema.us/fire">www.usfa.fema.us/fire</a>
Wildland Fire Lessons Learned Center	<a href="http://www.wildfirelessons.net">www.wildfirelessons.net</a>
Wildland/Urban Interface Fire Assessment	<a href="http://www.wildfirelessons.net">www.wildfirelessons.net</a>

## Vernon A. Losh II

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PO Box 1980, Healdsburg, CA 95448 Email:

Home: 707.431.1994

Cell: 707.540.2929

[vlosh@aol.com](mailto:vlosh@aol.com)

### **BIOGRAPHY**

Chief Losh started his fire service career in 1974 in Placer County with the South Placer Fire Protection District. With South Placer Chief Losh held every rank from firefighter to Battalion Chief.

In 1992 he became the first fulltime Chief of the City of Lincoln, California.

In 1995 Chief Losh came to Sonoma County as Deputy Chief/Fire Marshal for the Department of Emergency Services.

Chief Losh was promoted to the position of Director of the Sonoma County Department of Emergency Services in 1999.

From 2000 to 2005 Chief Losh also served as the Chief of the Rancho Adobe Fire Protection District through an administrative contract.

Chief Losh retired from Sonoma County in November of 2008. At retirement he became a volunteer Battalion Chief for the Healdsburg Fire Department offering his background and experience to his local community.

He has been involved with developing fire codes and ordinances for several government agencies. In Sonoma County alone he was involved with several fire code adoptions that included the Fire Safe Standards and requirements of the Public Resources Code for all of unincorporated Sonoma County.

Chief Losh has an emergency response history that spans four decades. That history includes responding to hundreds of incidents involving structure fires and wildland emergencies. He has responded to major wildland urban interface incidents throughout California as an engine Captain and a Strike Team leader responsible for multiple engines and crews.

His education in emergency management includes being one of first twelve people certified in the State of California as a Fire Chief, has completed the Executive Fire Officer Program at the National Fire Academy, and is designated a Chief Fire Officer by the Commission on Chief Fire Officer Designation.

He is currently serving his third term as a director for the California State Firefighters Association (CSFA), past Chair of the CSFA Volunteer Committee, past president of the Northern California Firefighters Association, past President of the Sonoma County Fire Chiefs Association, past President of the Sonoma County Department Heads Association, and over 30 years as a volunteer for Red Cross including past Board Chair for the American Red Cross-Sonoma/Mendocino County Chapters.

In addition to the above, Chief Losh is affiliated with the International Association of Fire Chiefs and the Volunteer Combination Officers Section, California Fire Chiefs Association, Fire Districts Association of California, California Fire Muster Association, National Fire Protection Association, and a Life Member of the Placer County Chief's Association and the South Placer Firefighters Association.

## **EXPERIENCE**

<b>Healdsburg Fire Department</b> Battalion Chief	November 2008 to present
<b>Sonoma County Department of Emergency Services</b> Chief / Department Director	June 1999 to November 2008
<b>Rancho Adobe Fire Protection District</b> Fire Chief	June 2000 to December 2005
<b>Sonoma County Department of Emergency Services</b> Acting Department Director	February 1998 to June 2000
<b>Sonoma County Department of Emergency Services</b> Deputy Chief / Fire Marshal	March 1995 to February 1998
<b>City of Lincoln</b> Assistant Director of Public Safety/Fire Chief	April 1992 to December 1993
<b>South Placer Fire District</b> Battalion Chief 1987 to 1992 Personnel Chief 1987 to 1992 Fire Marshal 1977 to 1990 Company Officer 1977 to 1987	1974 to 1992

## **BOARDS AND EDUCATIONAL INSTITUTIONS**

<b>Redwood Empire Dispatch Joint Powers Authority</b> Committee Member/Joint Powers Authority (JPA)	2002-2008
<b>Santa Rosa Junior College</b> Member/Chair of the Fire Service Technology Board	1995 to 2010
<b>Santa Rosa Junior College</b> Adjunct Instructor	1995 to present
<b>National Fire Academy</b> Adjunct Instructor	1995 to present
<b>Community College Fire Service Instructor</b>	1985 to Present

## **CERTIFICATION**

Chief Fire Officer-Commission on Chief Fire Officer Designation

California State Certified Fire Chief

California State Certified Chief Officer

Executive Fire Officer-National Fire Academy

## **MEMBERSHIP IN ASSOCIATIONS**

American Red Cross-Sonoma/Mendocino Chapters-Past Board Chair

Sonoma County Fire Chiefs Association-Past President

Sonoma County Department Heads Association-Past President

California State Firefighters Association-Northern Director

Past Chair-Volunteer Committee for the California State Firefighters Association

International Association of Fire Chiefs – Volunteer/Combination Officer's Section

Northern California Firefighters Association-Past President

California Fire Muster Association

National Fire Protection Association

North Bay Official's Association

Healdsburg Kiwanis Club

## **REFERENCES**

Chief Doug Williams, Rincon Valley Fire District

707.696.7500

Mr. Jim Ford, former Director for the Rancho Adobe Fire District

707.484.1688

Chief Ronny Coleman, Retired State Fire Marshal and Deputy Director of the California Department of Forestry and Fire Protection (Cal Fire)

916.799.5363

Paul Kelley, Former 4<sup>th</sup>. District Supervisor, County of Sonoma

707.953.5166