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Use Permit Exception to Conservation Regulations Application Packet

Hard Six Cellars Winery P16-00333 & Use Permit Exception to
Conservation Regulations P19-00315
Planning Commission Hearing October 16, 2019



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FILE # _____

NAPA COUNTY
PLANNING, BUILDING, AND ENVIRONMENTAL SERVICES
1195 Third Street, Suite 210, Napa, California, 94559 • (707) 253-4417

APPLICATION FOR USE PERMIT
EXCEPTION TO CONSERVATION REGULATIONS

FOR OFFICE USE ONLY

ZONING DISTRICT: _____ Date Submitted: _____
TYPE OF APPLICATION: _____ Date Published: _____
REQUEST: _____ Date Complete: _____

TO BE COMPLETED BY APPLICANT

PROJECT NAME: Hard Six Cellars
Assessor's Parcel #: 020-100-014, 020-300-071 Existing Parcel Size: 53.04 Acres
Site Address/Location 1755 S. Fork Diamond Mountain Road Calistoga CA 94515
No. Street City State Zip
Property Owner's Name: Martin S. Checov & Timothy J. Bause
Mailing Address: 2211 Leavenworth Street San Francisco, CA 94133
No. Street City State Zip
Telephone #: _____ Fax #: _____ E-Mail: _____
Applicant's Name: Wayne and/or Kara Fingerman
Mailing Address: 1755 S. Fork Diamond Mountain Road Calistoga CA 94515
No. Street City State Zip
Telephone #: _____ Fax #: _____ E-Mail: _____
Status of Applicant's Interest in Property: Property Owner/Easement Beneficiary
Representative Name: Donna Oldford
Mailing Address: 2620 Pinot Way St. Helena, CA 94574
No. Street City State Zip
Telephone # (707) 963-5832 Fax #: () E-Mail: DBOldford@aol.com

I certify that all the information contained in this application, including but not limited to the information sheet, water supply/waste disposal information sheet, site plan, plot plan, floor plan, building elevations, water supply/waste disposal system plot plan and toxic materials list, is complete and accurate to the best of my knowledge. I hereby authorize such investigations including access to County Assessor's Records as are deemed necessary by the County Planning Division for preparation of reports related to this application, including the right of access to the property involved.

Wayne Fingerman 4/11/10
Signature of Applicant Date
Print Name

Signature of Property Owner Date
Print Name

TO BE COMPLETED BY PLANNING, BUILDING, AND ENVIRONMENTAL SERVICES

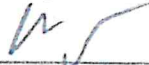
Application Fee Deposit: \$ _____ Receipt No.: _____ Received by: _____ Date: _____

INDEMNIFICATION AGREEMENT

Pursuant to Chapter 1.30 of the Napa County Code, as part of the application for a discretionary land use project approval for the project identified below, Applicant agrees to defend, indemnify, release and hold harmless Napa County, its agents, officers, attorneys, employees, departments, boards and commissions (hereafter collectively "County") from any claim, action or proceeding (hereafter collectively "proceeding") brought against County, the purpose of which is to attack, set aside, void or annul the discretionary project approval of the County, or an action relating to this project required by any such proceeding to be taken to comply with the California Environmental Quality Act by County, or both. This indemnification shall include, but not be limited to damages awarded against the County, if any, and cost of suit, attorneys' fees, and other liabilities and expenses incurred in connection with such proceeding that relate to this discretionary approval or an action related to this project taken to comply with CEQA whether incurred by the Applicant, the County, and/or the parties initiating or bringing such proceeding. Applicant further agrees to indemnify the County for all of County's costs, attorneys' fees, and damages, which the County incurs in enforcing this indemnification agreement.

Applicant further agrees, as a condition of project approval, to defend, indemnify and hold harmless the County for all costs incurred in additional investigation of or study of, or for supplementing, redrafting, revising, or amending any document (such as an EIR, negative declaration, specific plan, or general plan amendment) if made necessary by said proceeding and if the Applicant desires to pursue securing approvals which are conditioned on the approval of such documents.

In the event any such proceeding is brought, County shall promptly notify the Applicant of the proceeding, and County shall cooperate fully in the defense. If County fails to promptly notify the Applicant of the proceeding, or if County fails to cooperate fully in the defense, the Applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the County. The County shall retain the right to participate in the defense of the proceeding if it bears its own attorneys' fees and costs, and defends the action in good faith. The Applicant shall not be required to pay or perform any settlement unless the settlement is approved by the Applicant.



Applicant
4/11/18

Date

Property Owner (if other than Applicant)

Project Identification

SUPPLEMENTAL APPLICATION FORM
USE PERMIT EXCEPTION TO CONSERVATION REGULATION

1. Please explain the reason for the exception request.

The applicant has a winery use permit application pending with Napa County. Plan check comments received from the County requested verification that a fully-loaded fire apparatus/truck could maneuver the turn from Diamond Mountain Road to the subject project's driveway while maintaining a minimum of 4" vertical clearance between the ground and the lowest part of the truck. As such, the existing driveway must be re-graded to accommodate this requirement. This section of the parcel's access driveway lies within a 40 foot wide easement described in the Deed of Easement from Lee R. Kenyon to Joseph A. Flynn, et ux, Recorded April 15, 1977, in Book 1032 at Page 939 of Official Records of Napa County (See attached easement document). The easement crosses a portion of Napa County APN 020-300-071.

The lower portion of the existing access driveway, which will be the sole access to the proposed winery, is located within the setback of an unnamed creek. As such, a portion of the driveway to be re-graded is within the estimated 55 foot creek setback. This application is a request for exception from Napa County Code Section 18.108 Conservation Regulations in order to re-grade the driveway access to meet County Engineering and/or Fire comments related to minimum vertical carriage clearance.

The area of disturbance for the construction is approximately 30-35 square feet within the creek setback. The access driveway commences at the Cal-Trans right-of-way where it crosses a portion of the adjoining parcel 020-230-001 via an access and gate easement (attached to this application).

2. Are there any alternatives to the project which would not require an exception? Please explain.

There are no other alternatives given the fact this driveway provides the sole access to the winery site and grading a new road would cause an exception and be more environmentally detrimental given the naturally steep cross slopes/native vegetation. In addition, this portion of the access road lies within a 40 foot wide access easement across a portion of APN 020-300-071. Realignment of the access driveway is not an option.

3. Describe how the project can meet the findings described in Section 18.104.040 A (structural or road project), or Section 18.108.040B (agricultural project).

N/A

Section 18.108.040.A. Structural/road development projects

a. Roads, driveways, buildings and other man-made structures have been designed to complement the natural landform and to avoid excessive grading: (Please describe).

The purpose of the driveway re-grading is to provide adequate emergency vehicle access to the proposed winery and parcel. The re-grading has been kept to a minimum while providing suitable slopes to meet County Engineer and/or Fire requirements.

b. Primary and accessory structures employ architectural and design elements which in total serve to reduce the amount of grading and earthmoving activity required for the project, including the following elements:

- i. Multiple-floor levels which follow existing, natural slopes;
- ii. Foundation types such as poles, piles, or stepping level which minimize cut and fill and the need for retaining walls;
- iii. Fence lines, walls, and other features which blend with the existing terrain rather than strike off at an angle against it.

See comment in Section a. immediately above

c. The development project minimizes removal of existing vegetation , incorporates existing

vegetation into final design plans, and replacement vegetation of appropriate size, quality and quantity is included to mitigate adverse environmental effects.

A majority of the area to be re-graded is within an already disturbed area which consists of asphalt paving. A redwood tree will need to be removed as part of re-grading in order to provide access which meets County Engineering and/or Fire access.

4. Adequate fire safety measures have been incorporated into the design of the proposed development.

The purpose of the re-grading is to meet County Engineering and/or Fire comments related to providing adequate fire/emergency access to the proposed winery.

5. Disturbance to streams and watercourses shall be minimized, and setbacks shall be retained as specified in Section 18.108.025.

The installation of the two supporting pillars will occur only during the time period permitted by the Conservation Regulations (between April 15th and October 15th), will require a construction period of approximately two-three weeks. An erosion control plan will be submitted as part of the grading permit application prior to construction. The County road (Diamond Mountain Road) lies between the area to be re-graded and the top of bank. No disturbance to the creek shall occur. This is a request for a use permit exception to Section 18.108.025 for re-grading the driveway entrance within the creek setbacks described in said Section.

6. The project does not adversely impact threatened or endangered plant or animal habitats as designated by state or federal agencies with jurisdiction and identified on the county's environmental sensitivity maps.

It will be necessary to remove a single redwood tree and re-grade a small area of the existing road fill slope which will require removal of some ferns/vegetation.

Section 18.108.040.B. Agricultural projects, or Agricultural roads as defined by Planning, Building, and Environmental Services, Engineering Division

7. The erosion rate that results two years from the completion of the proposed agricultural development does not exceed the soil tolerance factor approved by the Natural Resource Conservation Service for the soil type, topography and climatic conditions in which the project is located; (Please attach a copy of the USLE worksheet used to determine the erosion rate).

N/A

8. Impacts on streams and watercourses are minimized, and adequate setbacks along these drainageways are or will be maintained.

N/A

9. The project does not adversely impact sensitive, rare, threatened or endangered plant or animal habitats as designated by state or federal agencies with jurisdiction and identified on the county's environmental sensitivity maps.

N/A

USE PERMIT EXCEPTION TO CONSERVATION REGULATIONS

APPLICATION CHECKLIST

1. Need to Sign Completed signed application
2. Need to Sign Completed supplemental application form
3. On cover sheet of civil drawings UP1.0 Site Location Map (on 7" by 7½" portion of a 7½-minute U.S. Geological survey topographic map)
4. On cover sheet of civil drawings UP1.0, 1.2, & 1.3 Complete Site Plan with all existing and proposed improvements shown, including structures, parking, roads, driveways, easements and leach field.
5. Included with UP packet Title Insurance Co. Certified List of All Property Owners within 300 feet of the subject parcel specifying name, address, and parcel number.
6. Included with UP packet Assessor's pages used in compiling property owners list.
7. Fees as part of overall UP Make checks out to the **County of Napa**. (*Amount to be determined at the pre-application meeting*).
8. N/A Pre-Submittal application review meeting with Planning Division Staff (Date: _____)
9. N/A Additional information that may be required by Planning Division.
10. N/A Erosion Control Plan only for agricultural projects (vineyard conversions, etc.)

11. Submit a couple of copies of the road easement documents (attached to email from A. Simpson.

APPLICATION REVIEW PROCEDURES

USE PERMIT EXCEPTION TO THE CONSERVATION REGULATIONS

A use permit for an exception to the Conservation regulations must be approved by the Zoning Administrator or the Planning Commission prior to development on slopes greater than 30% or for agricultural use within designated stream setbacks, as described in the Conservation Regulations, Section 18.108 et seq. of the County Code. Development may not begin until all necessary permits have been obtained, including any building or grading permits.

NOTE: The Use Permit application is not complete until all the information listed on the checklist is submitted for review.

The Use Permit applies to the land, not to the property owner. Therefore, once a Use Permit is approved for a given parcel of land, any new owner may operate under the same Use Permit pursuant to the conditions under which it was approved.

THE INFORMATION THAT YOU PROVIDE IN THE USE PERMIT APPLICATION, INCLUDING THE SUPPLEMENTAL APPLICATION AND EROSION CONTROL PLAN WILL PROVIDE THE BASIS FOR THE EVALUATION OF YOUR APPLICATION, INCLUDING ENVIRONMENTAL REVIEW. THE INFORMATION WILL ALSO BE USED AS A BASIS FOR THE ESTABLISHMENT OF CONDITIONS OF APPROVAL.

Application

1. The attached application and supplemental information forms require that you provide some basic information as well as a detailed erosion control plan for the proposed project. Prior to submittal, the applicant must schedule a pre-application meeting with a representative of the Planning Division to determine whether or not the proposed project can meet the minimum standards and requirements of the Conservation Regulations. When the application is submitted, a filing fee is collected to cover the costs of processing and analysis time, legal advertising, field investigations, and similar matters.
2. Within 30 days of receiving an application, the Planning Division will review the materials submitted to make sure that all the items listed on the application completeness checklist have been provided. Each item submitted will be reviewed for accuracy and completeness. In addition, an initial environmental review of the project will be undertaken. If all pertinent items on the checklist have been provided, each item supplied is complete and accurate, and no additional environmental data is needed, the application will be deemed complete. All applications accepted for processing will be referred to applicable County and public agencies for review, recommendation, and conditions. If the application is incomplete the applicant will be informed as to what additional materials, information and/or studies are needed to make the application complete. Upon submission of all the materials requested, the application will be found complete and distributed for review and comment.

Processing Time Limits

3. Use Permit applications are subject to processing time limits pursuant to California Government Code Section 65950. Generally, upon a determination by the County that

the application is complete, the County is required to take action on a Use Permit within 180 days unless an environmental impact report (EIR) is required pursuant to the California Environmental Quality Act of 1970 et seq. If an EIR is required, the permit must be approved or denied within 1 year.

Environmental Assessment

4. After any application has been accepted as complete, an assessment of the project's potential impact(s) on the environment will be conducted. If the Planning Division determines, based on that assessment, that the project is exempt from further environmental review, the project will be scheduled for a noticed public hearing. If the project is located in any recognized environmentally sensitive area or has other potentially significant environmental impacts, one or more detailed studies may be required to determine the extent of these impacts. If it is determined that significant environmental impacts could result from the project, the applicant will be required to prepare an environmental impact report (EIR).

Public Hearing

5. Upon completion of the environmental assessment for the project and preparation of the appropriate environmental document (i.e., categorical exemption, negative declaration, or EIR), the project will be scheduled for a noticed public hearing before the Zoning Administrator or Planning Commission. The purpose of the hearing is to receive public testimony, evaluate the appropriateness of the environmental determination made by the Planning Division, determine compliance with County regulations, and either approve or deny the project. A notice of public hearing containing a brief description of the project and the date, time, and location of the hearing will be published and mailed to all property owners within 300 feet of the project site, 10 days prior to the scheduled hearing.
6. At the public hearing, the report and recommendation of the Planning Division is presented. The applicant and project proponents are given an opportunity to present testimony in support of the Use Permit. Opponents to the request are given an opportunity to express their reasons why the environmental determination is not appropriate or why the Use Permit should not be granted. At the close of the hearing, the Zoning Administrator or Commission will consider the request, the Planning Division Report, and the testimony received during the public hearing and take formal action to approve, conditionally approve, or deny the Use Permit.

Appeal

7. Following action on the project, there is a 10 working day appeal period before the use permit becomes effective. During this period, the decision of the Commission or Zoning Administrator may be appealed to the Board of Supervisors by a County department, the applicant, or project opponents by filing a written appeal on a form provided by the Department, including payment of an appeal fee that varies with the length of the public hearing that has been held on the project. Once a proper appeal has been filed, a public hearing on the appeal will be set within 90 days. At the conclusion of the public hearing, the Board will either approve, deny, or modify the decision or action being appealed. Reconsideration of the Board's action can be sought if a request for reconsideration is filed within 30 days of the Board's decision.