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Recommended Findings

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

**PLANNING COMMISSION HEARING – OCTOBER 16, 2019
RECOMMENDED FINDINGS**

**Hard Six Cellars Use Permit
Application Number P16-00333-UP, Use Permit Conservation Regulation Request
Application Number P19-00315-UP & Exception to Road and Street Standards
1755 South Fork of Diamond Mountain Road, Calistoga, California
APN #020-100-014**

ENVIRONMENTAL:

The Planning Commission (Commission) has received and reviewed the proposed Mitigated Negative Declaration pursuant to the provisions of the California Environmental Quality Act (CEQA) and of Napa County's Local Procedures for Implementing CEQA, and finds that:

1. The Planning Commission has read and considered the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (MMRP) prior to taking action on said Mitigated Negative Declaration and the proposed project.
2. The Mitigated Negative Declaration and MMRP is based on independent judgment exercised by the Planning Commission.
3. The Mitigated Negative Declaration and MMRP was prepared and considered in accordance with the requirements of the California Environmental Quality Act (CEQA).
4. There is no substantial evidence in the record as a whole, that the project will have a significant effect on the environment provided that measures to mitigate potentially significant impacts to biological resources and transportation/traffic are incorporated into the project approval.
5. There is no evidence, in considering the record as a whole that the proposed project will have a potential adverse effect on wildlife resources or habitat upon which the wildlife depends.
6. The site of this proposed project is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5 and is not within the boundaries of any airport land use plan.
7. The Secretary of the Commission is the custodian of the records of the proceedings on which this decision is based. The records are located at the Napa County Planning, Building & Environmental Services Department, 1195 Third Street, Second Floor, Napa, California.

EXCEPTION TO ROAD AND STREET STANDARDS:

The Commission has reviewed the attached described Road and Street Standards (RSS) Exception request in accordance with Road and Street Standards Section 3 and makes the following findings:

8. The exception will preserve unique features of the natural environment which include, but are not limited to, steep slopes, heritage oak trees, or other trees of at least 6"dbh and found by the decision-maker to be of significant importance, but do not include man made

environmental features such as vineyards, rock walls, ornamental or decorative landscaping, fences or the like.

Analysis: Strict application of the requirement to improve the existing driveway, including its connection to the South Fork of Diamond Mountain Road, to current standards will result in mass grading on steep slopes in excess of 50 percent as well as grading outside of the 40-foot wide easement. Granting of the exception will minimize impacts to biological resources. As discussed in the Biological Resources section of the Initial Study/Mitigated Negative Declaration, all potential biological resources related impacts will be less than significant with implementation of mitigation measures and with approval of this exception. This exception has been reviewed by the County Engineering Services Division and Fire Marshal who have determined that the request will preserve unique features in the natural environment and recommend approval.

9. Grant of the Road and Street Standards Exception will provide the same overall practical effect as the Standards do in providing defensible space, and does not adversely affect the life, safety, and welfare of the public or persons coming to the property.

Analysis: The County Engineering Services Division and Napa County Fire Department reviewed the request and conducted a site visit on April 25, 2018. Engineering staff, as well as, Fire Department staff recommend approval of the requested road exception, subject to recommended conditions in their memo of July 17, 2019 and September 4, 2017, respectively. The proposal has been determined to meet the same overall practical effect of the RSS while protecting the life, safety and welfare of the public by providing horizontal and vertical vegetation management, installation of a new caution sign on Diamond Mountain Road to notify drivers of the driveway intersection, vegetation clearing to improve the line of sight to and from the driveway, and improvement of all portions of the driveway not identified in the Road Exception Evaluation to meet commercial standards as defined in the NCRSS.

PLANNING AND ZONING ANALYSIS:

EXCEPTION TO CONSERVATION REGULATIONS:

10. Roads, driveways, buildings and other man-made structures have been designed to complement the natural landform and to avoid excessive grading.

Analysis: The purpose of the driveway re-grading is to provide sufficient emergency vehicle access to the proposed project. Proposed re-grading has been minimized while providing suitable slopes to meet County standards.

11. 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: a) multiple-floor levels which follow existing, natural slopes; b) foundation types such as poles, piles, or stepping levels which minimize cut and fill and the need for retaining walls; c) fence lines, walls, and other features which blend with the existing terrain rather than strike off at an angle against it.

Analysis: The proposed driveway re-grading is designed to minimize grading while conforming to County standards regarding emergency access. Planned grading generally conforms to the existing terrain.

12. The development project minimizes removal of existing vegetation, incorporates existing vegetation into the final design plan, and replacement vegetation of appropriate size, quality and quantity is included to mitigate adverse environmental effects.

Analysis: Most of the area to be re-graded is within a previously disturbed area which consists of asphalt paving. As shown on the project plans, a redwood tree will need to be removed as part of the proposed re-grading to provide adequate emergency access to the site.

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

Analysis: The reason for the driveway re-grading is to provide sufficient emergency vehicle access to the proposed project site. Required fire protection water storage tanks, fire pumps, and turnaround areas will also be installed. Project plans have been reviewed by the Fire Marshal who recommended approval.

14. Disturbance to streams and watercourses shall be minimized, and the encroachment if any, is the minimum necessary to implement the project.

Analysis: Encroachment with the stream setback is limited to the area required to improve the roadway to County standards utilizing primarily the previously disturbed area. The installation of two supporting pillars will occur only between April 15 and October 15 and will require a construction period of approximately two to three weeks. Diamond Mountain Road lies between the area to be re-graded and the top of bank. No work within the creek will occur.

15. 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.

Analysis: Natural habitats within the project site boundary include the following, in general order of extent: fresh emergent wetland (associated with the onsite man-made pond), montane hardwood-conifer, annual grassland/ruderal, mixed chaparral, and redwood. Two special-status plants are present within the study area that are listed by the California Native Plant Society (CNPS): Calistoga Ceanothus (*Ceanothus divergens* CNPS List 1.B.2) and Napa False Indigo (*Amorpha californica* var. *napensis* CNPS List 1.b.2). These plants do not have State or Federal Listing but are listed by the CNPS (Special-Status Plant Survey Hard Six Cellars 1755 S. Fork Diamond Mountain Road, Calistoga, CA 94516, 2018). Avoidance of all special-status plants may be impractical so a mitigation plan would need to be developed as discussed further in mitigation measure BIO-1 (COA 6.12.a in Attachment B) which addresses special-status plants. An assessment for Northern Spotted Owls was conducted and determined that the closest known Northern Spotted Owl territory is located just over a half-mile from the project area. Site topography would ensure that noise from the project's construction activities would not disturb the Northern Spotted Owl within their activity center. The project is located in unsuitable Northern Spotted Owl habitat and would not alter any Northern Spotted Owl habitat (Hard Six Cellars Project, 2016). Sensitive animal species which could occur on the project site include special-status birds and the western pond turtle (Fingerman Property 1755 S. Fork Diamond Mountain Road, Calistoga, Napa County, 2016). The implementation of mitigation measures 6.12.a (special-status plants), 6.12.b (special-status bird species), and 6.12.c (western pond turtle) would reduce

potentially significant impacts to a level of less than significant. If any placement of fill within the fresh water marsh of the pond identified in the *Delineation of Potential Jurisdictional Waters Fingerman Property, Calistoga, Napa County, California*, is proposed, consultation and permitting must be obtained from the U.S Regional Water Quality Control Board and California Department of Fish and Wildlife prior to and during the construction as required by mitigation measure BIO-4 (COA 6.12.d in Attachment B).

16. An erosion control plan, or equivalent NPDES stormwater management plan, has been prepared in accordance with Section 18.108.080 and has been approved by the Director or designee.

Analysis: A Stormwater Control Plan for a Regulated Project has been prepared in accordance with Section 18.108.080 and approved by the Director or designee.

USE PERMIT:

The Commission has reviewed the use permit request in accordance with the requirements of the Napa County Code §18.124.070 and makes the following findings:

17. The Commission has the power to issue a Use Permit under the Zoning Regulations in effect as applied to property.

Analysis: The project is consistent with the Agricultural Watershed (AW) zoning district regulations. A winery (as defined in the Napa County Code Section 18.08.640) and uses in connection with a winery (refer to Napa County Code Section 18.20.030) are permitted in the AW District with an approved use permit. The project, as conditioned, complies with the Napa County Winery Definition Ordinance (WDO) and all other requirements of the Zoning Code as applicable.

18. The procedural requirements for a Use Permit set forth in Chapter 18.124 of the Napa County Code (zoning regulations) have been met.

Analysis: The Use Permit application has been appropriately filed and noticed and public hearing requirements have been met. The hearing notice and intent to adopt a Mitigated Negative Declaration were posted on September 13, 2019, and copies were forwarded to appropriate persons on the mailing list. The public comment period ran from September 13, 2019 to October 15, 2019.

19. The grant of the Use Permit, as conditioned, will not adversely affect the public health, safety or welfare of the County of Napa.

Analysis: Granting the Use Permit for the project, as proposed and conditioned, will not adversely affect the health, safety or welfare of the County. Various County divisions and departments have reviewed the project and commented regarding site access, proposed wastewater disposal system, parking, building permits, and fire protection. Conditions are recommended which will incorporate these comments into the project to ensure the protection of the public health, safety, and welfare. As conditioned, the divisions and the departments recommend approval.

20. The proposed use complies with applicable provisions of the Napa County Code and is consistent with the policies and standards of the Napa County General Plan and any applicable specific plan.

Analysis: Compliance with the Zoning Ordinance

The project is consistent with the AW zoning district regulations. A winery (as defined in the Napa County Code Section 18.08.640) and uses in connection with a winery (refer to Napa County Code Section 18.20.030) are permitted in the AW District subject to an approved use permit. The proposed project includes the construction of a new winery building and cave and will comply with the development standards of the AW District. The project, as conditioned, complies with the Napa County Winery Definition Ordinance (WDO) and all other requirements of the Zoning Code as applicable.

Analysis: Compliance with the General Plan

As proposed and as conditioned, the requested Use Permit is consistent with the overall goals and objectives of the General Plan (2008). The General Plan land use designation for the subject parcel is Agriculture, Watershed, and Open Space (AWOS).

General Plan Agricultural Preservation and Land Use Goal AG/LU-1 guides the County to “preserve existing agricultural land uses and plan for agriculture and related activities as the primary land uses in Napa County.” General Plan Goal AG/LU-3 states that the County should “support the economic viability of agriculture, including grape growing, winemaking, other types of agriculture, and supporting industries to ensure the preservation of agricultural lands.” Goal AG/LU-3 and Policy AG/LU-2 recognize wineries as agricultural uses.

The proposed use of the property for fermenting and processing of grape juice into wine supports the economic viability of agriculture within the County, consistent with Goal AG/LU-3 and Policy AG/LU-4 (“The County will reserve agricultural lands for agricultural use including land used for grazing and watershed/open space...”). By allowing the proposed agricultural use, the requested Use Permit supports the economic viability of both the existing vineyard and requested agricultural product processing uses on the property, consistent with Economic Development Goal E-1 and Policy E-1.

The “Right to Farm” is recognized throughout the General Plan and is specifically called out in Policy AG/LU-15 and in the County Code. “Right to Farm” provisions ensure that agriculture remains the primary land use in Napa County and is not threatened by potentially competing uses or neighbor complaints. Napa County’s adopted General Plan reinforces the County’s long-standing commitment to agricultural preservation, urban centered growth, and resource conservation.

Applicable Napa County General Plan goals and policies:

Goal AG/LU-1: Preserve existing agricultural land uses and plan for agriculture and related activities as the primary land uses in Napa County.

Goal AG/LU-3: Support the economic viability of agriculture, including grape growing, winemaking, other types of agriculture, and supporting industries to ensure the preservation of agricultural lands.

Policy AG/LU-2: “Agriculture” is defined as the raising of crops, trees, and livestock; the production and processing of agricultural products; and related marketing,

sales and other accessory uses. Agriculture also includes farm management businesses and farm worker housing.

Policy AG/LU-4: The County will reserve agricultural lands for agricultural use including lands used for grazing and watershed/open space, except for those lands which are shown on the Land Use Map as planned for urban development.

Policy AG/LU-8: The County's minimum agricultural parcel sizes shall ensure that agricultural areas can be maintained as economic units.

Policy AG/LU-15: The County affirms and shall protect the right of agricultural operators in designated agricultural areas to commence and continue their agricultural practices (a "right to farm"), even though established urban uses in the general area may foster complaints against those agricultural practices. The "right to farm" shall encompass the processing of agricultural products and other activities inherent in the definition of agriculture provided in Policy AG/LU-2.

Goal CON-10: Conserve, enhance and manage water resources on a sustainable basis to attempt to ensure that sufficient amounts of water will be available for the uses allowed by this General Plan, for the natural environment, and for future generations.

Goal CON-11: Prioritize the use of available groundwater for agricultural and rural residential uses rather than for urbanized areas and ensure that land use decisions recognize the long-term availability and value of water resources in Napa County.

Policy CON-24(c): Maintain and improve oak woodland habitat to provide for slope stabilization, soil protection, species diversity, and wildlife habitat through appropriate measures including one or more of the following:

c) Provide replacement of lost oak woodlands or preservation of like habitat at a 2:1 ratio when retention of existing vegetation is found to be infeasible. Removal of oak species limited in distribution shall be avoided to the maximum extent feasible.

Policy CON-53: The County shall ensure that the intensity and timing of new development are consistent with the capacity of water supplies and protect groundwater and other water supplies by requiring all applicants for discretionary projects to demonstrate the availability of an adequate water supply prior to approval. Depending on the site location and the specific circumstances, adequate demonstration of availability may include evidence or calculation of groundwater availability via an appropriate hydrogeologic analysis or may be satisfied by compliance with County Code "fair-share" provisions or applicable State law. In some areas, evidence may be provided through coordination with applicable municipalities and public and private water purveyors to verify water supply sufficiency.

Policy CON-54: The County shall maintain or enhance infiltration and recharge of groundwater aquifers by requiring all projects in designated groundwater

deficient areas as identified in the County's groundwater ordinance (County Code Chapter 13.15) be designed (at minimum) to maintain a site's predevelopment groundwater recharge potential, to the extent feasible, by minimizing impervious surfaces and promoting recharge (e.g., via the use of water retention/detention structures, use of permeable paving materials, bio-swales, water gardens, cisterns, and other best management practices).

Policy CON-55: The County shall consider existing water uses during the review of new water uses associated with discretionary projects, and where hydrogeologic studies have shown that the new water uses will cause significant adverse well interference or substantial reductions in groundwater discharge to surface waters that will alter critical flows to sustain riparian habitat and fisheries or exacerbate conditions of overdraft, the County shall curtail those new or expanded water uses.

Policy CON-60.5 All aspects of landscaping from the selection of plants to soil preparation and the installation of irrigation systems should be designed to reduce water demand, retain runoff, decrease flooding, and recharge groundwater.

Policy CON-72: The County shall seek to reduce the energy impacts from new buildings by applying Title 24 energy standards as required by law and providing information to the public and builders on available energy conservation techniques, products, and methods available to exceed those standards by 15 percent or more.

Policy CON-77: All new discretionary projects shall be evaluated to determine potential significant project-specific air quality impacts and shall be required to incorporate appropriate design, construction, and operational features to reduce emissions of criteria pollutants regulated by the state and federal governments below the applicable significance standard(s) or implement alternate and equally effective mitigation strategies consistent with BAAQMD's air quality improvement programs to reduce emissions. In addition to these policies, the County's land use policies discourage scattered development which contributes to continued dependence on the private automobile as the only means of convenient transportation. The County's land use policies also contribute to efforts to reduce air pollution.

Policy CON-81: The County shall require dust control measures to be applied to construction projects consistent with measures recommended for use by the BAAQMD [Bay Area Air Quality Management District].

Goal E-1: Maintain and enhance the economic viability of agriculture.

Policy E-1: The County's economic development will focus on ensuring the continued viability of agriculture in Napa County.

Policy SAF-20: All new development shall comply with established fire safety standards. Design plans shall be referred to the appropriate fire agency for comment as to:

- 1) Adequacy of water supply.
- 2) Site design for fire department access in and around structures.

- 3) Ability for a safe and efficient fire department response.
- 4) Traffic flow and ingress/egress for residents and emergency vehicles.
- 5) Site-specific built-in fire protection.
- 6) Potential impacts to emergency services and fire department response.

21. That the proposed use will not require a new water system or improvement causing significant adverse effects, either individually or cumulatively, on the affected groundwater basin in Napa County, unless that use will satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Sections 13.15.070 or 13.15.080 of the County Code.

Analysis: The project is consistent with General Plan Conservation Policies CON-53 and CON-55, which require that applicants who are seeking discretionary land use approvals, prove that adequate water supplies are available to serve the proposed use without causing significant negative impacts to shared groundwater resources. The project is categorized as "all other areas" based upon current County Water Availability Analysis policies and therefore water use criteria is parcel specific based upon a Tier 2 analysis. A Tier 2 analysis was completed by Richard C. Slade & Associates, LLC on February 9, 2017 which included a parcel specific recharge evaluation. According to the recharge evaluation, groundwater recharge at the subject property is estimated to be 17.9 AF/YR (Richard C. Slade & Associates, LLC, 2017).

An existing well was constructed at the site in 2006 and is proposed as the project's water source. According to a test conducted on February 25, 2015, it has a measured yield of 15 gpm (Richard C. Slade & Associates, LLC, 2017). According to the water analysis, the projected water use for the well for the project plus existing demand is 1.21 AF/YR. The anticipated total overall water demand for the project site would be 2.00 AF/YR representing a 0.79 AF/YR increase of the existing water demand of 1.21 AF/YR. Based on this information, adequate water would be available to serve the project because the projected water demand is below the parcel specific recharge estimation of 17.9 AF/YR. Therefore, the project is considered not to have a potential to significantly impact groundwater resources. Because the projected water demand for the project is below the estimated water availability acre feet per year for the parcel, the requested Use Permit is consistent with General Plan Goals CON-10 and CON-11, as well as the policies mentioned above that support reservation and sustainable use of groundwater for agricultural and related purposes. The project will not require a new water system or other improvements and will not have a negative impact on local groundwater. The project is also consistent with General Plan Conservation Policy CON-54 because it minimizes impervious surfaces and utilizes bio swales to aid in maintaining the site's predevelopment groundwater recharge potential.