

Huffman-Broadway Group, Inc.

ENVIRONMENTAL REGULATORY CONSULTANTS

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Sent Via Email

October 9, 2019

Mr. Martin Checov
1755 Diamond Mountain Road
Calistoga, CA 94515

Subject: Comments on Napa County's Initial Study for the Hard Six Cellars Winery Project, Napa County, California

Dear Mr. Checov:

Huffman-Broadway Group, Inc. (HBG) has reviewed the Biological Resources section of Napa County's Initial Study prepared pursuant to the California Environmental Quality Act (CEQA) for the proposed Hard Six Cellars Winery Project near Calistoga in Napa County, California. The Hard Six Cellars Winery Project is County Use Permit #P16-00333-UP and Use Permit Exception to Conservation Regulations #P19-00315. HBG also reviewed several biological technical reports used by the County Planning, Building and Environmental Services Department as technical resource documents for preparation of the Biological Resources section of the CEQA document. These documents included the following:

- Biological Habitat Evaluation Report, Fingerman Property, 1755 South Fork Diamond Mountain Road, Calistoga, Napa County. Prepared by Pacific Biology, October 2016.
- Special Status Plant Survey, Hard Six Cellars, 1755 South Fork Diamond Mountain Road, Calistoga, California. Prepared by Kjeldsen Biological Consulting, June 2018.
- Delineation of Potential Jurisdictional Waters, Fingerman Property, Calistoga, Napa County, California. Prepared by Vollmar Natural Lands Consulting, October 2016.
- Northern Spotted Owl Assessment, Hard Six Cellars Project, Napa County. Prepared by Forest Ecosystem Management. September 2016.

Project Description

Several aspects of the project description are important in terms of an analysis of the biological impacts of the proposed winery project. As described in the Initial Study, the proposed project includes construction of a 3,267 square foot winery for the annual production of 20,000 gallons of wine; 5,486 square feet of uncovered work area; 7,315 square feet of wine cave with three portals; a 1,185 square foot outdoor hospitality area; improvement of the access driveway to County standards; a septic leach field; construction of 4 parking spaces; and a 168 square foot pump house. The

construction for the winery will be confined to an area currently used to corral horses and that is within the footprint of an existing barn that will be removed.

The wine cave will be excavated underground using an excavator and concrete trucks. The construction of the exit portals will require construction of a concrete bulkhead wall, installation of two 22-foot long entryway wing walls for each portal, and construction of a temporary road for access by construction equipment. The constructed road will be up to 12 feet wide and will be 55 feet long to access one portal and 75 feet long to access another portal; the road will be converted into a walking path after construction. In addition, the project includes approximately 2,790 cubic yards of cut and 2,816 cubic yards of fill, with spoils from the wine cave totaling 4,230 cubic yards. The plan for disposal of the spoils is to use the spoils to fill an onsite pond in an effort described in the project description as a pond “restoration.”

The project description also includes a Use Permit Exception to the Conservation Regulations to allow regrading of the existing access driveway to the South Fork of Diamond Mountain Road to encroach within the required 55-foot stream setback from an offsite unnamed stream by approximately 30 to 35 square feet.

Comments

After reviewing the project description and the biological documentation mentioned above, we offer several comments as discussed below.

Comment No. 1- Filling the pond. The wetland delineation prepared by Vollmar Natural Lands Consulting found that an onsite pond contains 0.3 acres of open water and 1.16 acres of seasonal wetland habitat (a total of 1.46 acres) that are likely subject to the regulatory jurisdiction of the San Francisco Bay Regional Water Quality Control Board (RWQCB) and possibly and California Department of Fish and Wildlife (CDFW). Based on information in the Vollmar Natural Lands Consulting report dated October 2016, we agree that the pond and wetlands are not hydrologically connected to a water of the U.S. and likely not subject to federal jurisdiction under the Clean Water Act. The wetland delineation report and the County’s Initial Study acknowledge that the proposed disposal of nearly 4,230 cubic yards of excavated wine cave spoils within the pond and adjacent wetland would likely require permits from both state agencies. These permits would be a Waiver of Waste Discharge Requirements from the RWQCB under their Porter-Cologne Act jurisdiction and a Lake and Streambed Alteration Agreement from CDFW as required under the California Fish and Game Code.

The Initial Study alleges that the disposal of the material into the open water and adjacent wetlands as proposed constitutes a “restoration of the existing pond” and as a “temporary disturbance of the pond and associated wetlands.” According to the Initial Study, “the existing pond would be drained and planting material on the pond bottom would be removed and stored and used as a planting medium for pond restoration. The pond would be rough graded according to the landscape design and an artificial liner would be placed to stop pond leakage. Spoil material would be spread over the liner and the stored growing medium would be placed and augmented with compost and topsoil.” The Initial Study goes on to say that the pond would fill from rainfall and wetlands would reform, so “there would not be a long-term loss of wetland and waters.”

The disposal of the wine cave spoils into the onsite pond would be considered as placement of fill into the pond according to federal Clean Water Act regulation. The term “fill” is defined in 33 CFR Part 33 (Permits for Discharge of Dredged Material or Fill Material into Waters of the U.S.) as “material placed in waters of the United States where the material has the effect of: (i) Replacing any portion of a water of the United States with dry land; or (ii) Changing the bottom elevation of any portion of a water of the United States.” The same document states that “temporary fills shall be removed in their entirety and the area restored to its original elevation.” These definitions also apply to situations involving waters of the State of California.

The impacts described in the Initial Study would not be considered as temporary impacts to areas of state regulatory jurisdiction. To be considered as a temporary impact, fill placed in wetlands would be removed after construction and the original contours would be restored so wetlands performing the same functions as the temporarily-filled wetlands could reform in the same place and at the same contour elevation they were found prior to the project. The filling of the pond as described in the project description for the proposed project would not result in a restoration of the original contours and the wetlands that may reform in the location of the existing pond would not be considered as an in-kind wetland restoration. For instance, the 0.3-acre open water pond would be filled to a higher elevation and converted into a shallow seasonal wetland according to the report. In addition, the fact that the existing pond is likely subject to CDFW Lake and Streambed Alteration Program jurisdiction and the resulting wetlands in the aftermath of the “restoration project” would not be subject to CDFW jurisdiction, illustrates that the wetlands resulting from the proposed “restoration” project would not be considered as in-kind restoration of wetlands. The statement in the Initial Study that “there would not be a long-term loss of wetland and waters” is not true.

The Initial Study simply recommends as mitigation that the applicant obtain the necessary permits from the RWQCB and CDFW, without recognizing that there are some inherent problems in this approach. Even though wetlands may reform in a portion of the 1.46 acres of existing wetlands and waters of the state, the filling of the 1.46 acres under state regulatory jurisdiction would not simply be considered a “temporary” impact as existing wetlands and open water habitats would be filled in their entirety and any resulting wetlands that may reform in the aftermath of this effort would not function in a manner similar to the existing habitats. The act of filling 1.46 acres of wetlands and waters of the state would be considered a significant impact, and the RWQCB would undoubtedly require the applicant to complete an alternatives analysis analogous to what would be required for an Individual Permit from the U.S. Army Corps of Engineers under EPA’s Clean Water Act Section 404(b)(1) guidelines. For this analysis, the applicant would need to demonstrate that the proposed project avoids jurisdictional waters to the maximum extent practicable in order to achieve the overall project purpose. The analysis will also need to document how the project has minimized unavoidable impacts to jurisdictional waters, as well as provide an analysis of the proposed mitigation plan to illustrate that the both 404(b)(1) guidelines as well as other required USEPA analysis criteria are satisfied. According to the 404(b)(1) guidelines, the RWQCB can only approve a project that is the Least Environmentally Damaging Practicable Alternative (LEDPA).

It appears as though reasonable alternatives for disposal of spoils from the wine cave excavation are available, but the Initial Study does not explain why such alternatives are infeasible. The RWQCB will likely require the applicant to evaluate an alternative that involves spoil disposal in onsite uplands or off-hauling the spoils to an offsite location. If the applicant considers that offsite

disposal of nearly 4,230 cubic yards of spoils or onsite disposal in uplands is not feasible, then an alternative design should be analyzed that reduces the proposed 20,000 gallon production operation to a scale that could accommodate production of an amount of wine commensurate with grapes grown on the existing 4 acres of vineyards that are currently found on the property.

The project as proposed may not be permissible by the RWQCB and/or CDFW and will likely need to be revised to provide off-hauling of wine cave spoils or disposal of the spoils in an upland location, and could require a reduction in the scale of the project. Mitigation Measure BIO-4 provides no specific performance criteria for mitigation other than deferring analysis to the RWQCB and CDFW permitting processes. Because the Initial Study's mitigation defers analysis of potential impacts and mitigation to RWQCB and CDFW, we expect that those agencies will conduct their own CEQA review of the permits required.

Comment No. 2- Rare Plant Mitigation. The Biological Habitat Evaluation Report prepared by Pacific Biology in October of 2016 recognizes that two special status plant species may occur on the property: Napa false indigo (*Amorpha californica* var. *napensis*) (California Native Plant Society, CNPS, list 1B.2) and Calistoga ceanothus (*Ceanothus divergens*) (also CNPS list 1B.2). The 2016 report described impacts that could result from the project to these two species and recommended further rare plant surveys and mitigation recommendations to be implemented if the species occurred and could not be avoided. Rare plant surveys conducted by Kjeldsen Biological Consulting and reported in their June 2018 report found that populations of both species occur on the property. Approximately 50 Napa false indigo plants were found south of the proposed winery within the area of the proposed leach field and approximately 30 Calistoga ceanothus plants were found along the proposed road alignment on the west side of the proposed winery. The 2018 rare plant survey report recommended additional mitigation measures beyond those in the 2016 Pacific Biology report. These additional mitigation requirements pertain to avoidance of special status plant populations and necessary implementation of Best Management Practices and other measures to protect plant populations as, according to their findings, approximately 50% of the populations of the Calistoga ceanothus and Napa false indigo plants found on the property are within the proposed project footprint.

The County's Initial Study is written as if the 2018 Special Status Plant Survey report didn't exist, as mitigation measures recommended to address rare plant populations in the Initial Study include only those recommended in the 2016 Pacific Biology report. The Initial Study includes only recommendations pertaining to what to do if the rare plant populations cannot be avoided and describes the detail needed to implement a program of transplanting plants in consultation with CDFW. The Initial Study should include the recommendations of the 2018 Special Status Plant Survey Report that include specific suggestions for avoidance of populations of both special status species found on the property. These measures should be included in the County's Initial Study and Mitigation Monitoring Program and should include: (1) flagging of all plants of Napa false indigo and Calistoga ceanothus in the field so they can be avoided during construction, (2) realignment of the project road alignment to eliminate impact to the Calistoga ceanothus population on the north edge of the road, (3) preservation and protection of at least a portion of these important plant populations if total avoidance is not practicable, (4) establishment of clearly marked no disturbance buffer zones around plant populations, and (5) Best Management Practices to control erosion.

Alternative project designs need to be analyzed to find ways to relocate elements of the project to protect populations of special status plants.

The 2016 Biological Habitat Evaluation Report also includes a mitigation measure (see Mitigation Measure BIO-1B) designed to address impacts to *Calistoga ceanothus* plants that could occur from subterranean excavation associated with construction of the wine cave tunnels. The mitigation measure includes plant monitoring, reporting procedures, performance criteria, and contingency measures. This mitigation measure should be included in the County's Initial Study as well.

Comment No. 3- Roadway Improvements. The project description includes a Use Permit Exception to the Conservation Regulations to allow regrading of the existing access driveway to the South Fork of Diamond Mountain Road to encroach within the required 55-foot stream setback from an offsite unnamed stream by approximately 30 to 35 square feet. A Permit Exception does not seem unreasonable for this purpose, especially since much of the stream setback from the top of bank of the unnamed stream consists of the existing paved roadway of South Fork Diamond Mountain Road. However, the Initial Study includes no evaluation of whether the proposed construction activities would result in erosion issues or sedimentation in the unnamed stream that could have an adverse effect on aquatic organisms or other wildlife populations within the creek or in areas downstream. At a minimum, the Initial Study should describe a recommended erosion control plan with implementation of Best Management Practices to prevent such impacts from occurring.

Comment No. 4- Tree loss and Vegetation Removal. The County's Initial Study states that "a total of nine trees would be removed as part of project construction. Impacts would be less than significant because no oak trees would be removed." Neither the Initial Study or any of the technical reports actually indicates what trees are to be removed (e.g., species, size, health of trees) to allow the reader to complete an independent assessment of the severity of tree loss.

The project description in the 2016 Biological Habitat Evaluation Report includes construction of a "temporary" road for access by construction equipment that will be up to 12 feet wide and will be 55 feet long to access one portal and 75 feet long to access another portal. The project description indicates that although some disturbed areas will be revegetated, the road will be converted into a walking path after construction. This would not be considered a temporary impact as there will be some permanent long-term impacts on vegetation related to this element of the project.

The 2016 Biological Habitat Evaluation Report indicates that the Stanford manzanita chaparral habitat found on the property constitutes a sensitive plant community according to the 2009 Manual of California Vegetation. According to the report, up to 3,000 square feet of this community would be eliminated during construction of portals for the wine cave, and additional impacts could result from subterranean excavation for the wine cave within the root zone of some of the chaparral plants. These impacts should be discussed in the Biological Resources section of the Initial Study and Mitigation Measures BIO-5A related to avoidance of the Stanford manzanita chaparral

plant community and BIO-5B regarding the requirement for a 5-year monitoring plan in this sensitive habitat type should be included in the County's Initial Study.

If you have any questions pertaining to our comments on the County's Initial Study for the Hard Six Cellars Winery Project please contact either me or Dr. Terry Huffman at 415-925-2000.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Deghi". The signature is fluid and cursive, with a prominent initial "G" and "D".

Gary Deghi

Vice President/Senior Environmental Scientist

George Caloyannidis
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October 12, 2019

To the Napa County Planning Commission

RE: FINGERMAN WINERY APPLICATION P16-00333-UP / 1755 Diamond Mountain Road South Fork

COMMENTS:

1) GENERAL:

The application is for a 20,000-gallon production facility on Diamond Mountain Road South Fork. The property is planted with approximately 4 acres of vines which per hillside vineyard standards produce 8 – 10 tons of grapes equaling approximately 1,000 gallons of wine.

The balance of 19,000 gallons of wine sought by the applicant (approximately 160 tons) will be from imported grapes. This is not an estate producing winery. It is an outsourced grape crush facility or a custom crush facility.

The project requires several exemptions to Napa County Code:

- Encroachment to the 55-foot stream setback to be reduced to 30-35 feet.
- Reduction to the commercial street width.
- Exemption to the maximum access road slope of 18%.
- Exemption to the required transition zones.

The question before the Planning Commission is whether this type production winery relying on imported grapes and predicated on several County Code exemptions (rendering them meaningless) is appropriate in this remote hillside location.

2) INCONSISTENCIES BETWEEN DOCUMENTS POSTED ON THE NAPA COUNTY WEBSITE:

Winery Application:

16 day-visitor trips – 80 trips / week max.

5 annual events @ 75 persons

Initial Study Check List:

16 day-visitor trips – 112 trips / week

4 annual events @ 75 persons

1 annual event @ 125 persons

If there are updated quantities in the application, they are not posted on the County website so that citizens may have an opportunity to respond.

3) ROAD CONDITION MISTAKES IN THE INITIAL STUDY CHECK LIST (NEGD):

The NEGD describes Diamond Mountain Road (DMR) as “a narrow two-lane Rural County Collector” with a posted speed limit of 15 miles/hour and Diamond Mountain Road South Fork (SF) as “a very narrow two-lane road 14-15 feet wide and no posted speed limit”.

The distance from highway 29 to the DMR / SF crossing is 2.2 miles and the distance of said crossing to the subject site is 1 mile making the total distance of the subject site to Highway 29, 3.2 miles. The first 2.05 miles from Highway 29 to the subject site have a width of 18 feet while the remainder 1.15 miles of road accessing the subject property is 12 or less-feet wide, not 14-15 feet wide.

To characterize a 12-foot county road as a two-lane road – especially a steep, winding up hill road – is incorrect. One only need encounter an opposing passenger vehicle on that section of the access road let alone trucks of any kind as the proposed winery contemplates for its grape imports, caves spoils exports, catering trucks or bussed visitors to realize the mischaracterization.

The 15 mile/hour speed limit which applies to both roads and the fact that their occasional non-complying turnouts which are mandated to facilitate emergency evacuations are being used to accommodate routine opposing traffic is an indication that these roads are too narrow for commercial vehicle traffic.

As the County Road Standards discussed below show, both DMR and SF roads are non-conforming and substandard.

4) NAPA COUNTY ROAD STANDARDS:

Napa County has established road standards. Nowhere is the NEGD designation “*Rural County Collector*” let alone “*narrow two-lane Rural County Collector*” to be found.

SECTION 14 / Street and Road Classifications:

Major Roads:

The pertinent road classifications serving vineyards and wineries are either (a) *Arterial* (collectors to highways) or (b) *Collectors* (1,000 to 5,000 vehicles per day). These roads are through-roads, not dead-end roads. Note that both DMR and SF are dead-end roads.

Minor Roads:

These are defined as serving “up to 1,000 vehicles per day”. They may have a Cul-de-Sac (e) but then they must have “a maximum traffic volume of up to 250 vehicles per day”.

“Cul-de-Sac situations with lengths greater than 1,000 feet shall be provided with turnaround areas at 1,000-foot intervals and emergency access unless it is not considered feasible by the County Engineer”.

It is important to note that the requirement is for *turnarounds* not *turnouts* and that the non-feasibility engineering discretion is one based on topographic conditions rather than on public safety or health and welfare considerations. Granting mandated turnaround exemptions for commercial uses in a high fire danger area as Diamond Mountain with no public secondary escape routes as in the case of DMR and SF is unacceptable.

Other Roads:

(i) Agricultural Special Purpose Roads

“Serve agricultural related single use facilities and light traffic facilities which generate up to 100 vehicle trips per day. This road is not applicable to any winery access”.

All other roads must comply with either the Major or a Minor road specification listed above.

SECTION 15 / Design Criteria:

Roadway Width:

- All streets and roads, with the exception of Agricultural Special Purpose Roads shall be constructed to provide a minimum of two 10-foot traffic lanes and a minimum of one foot of shoulder on each side.
- Both Arterial and Collector Roads with no Parallel Parking Lanes (Details C-2 and C-3) require a Right of Way of 40 feet with two 14-foot traffic lanes and shoulders.
- General Minor Roads with no Parallel Parking Lanes require two 12-foot traffic lanes, and a total of 12 feet of shoulders.
- In addition to the 1,000 feet turnaround maximum spacing requirement for dead-end roads, roads with turnouts (Detail C-11) “shall be spaced a maximum of 400 feet apart and must be Inter-Visible unless allowed by the County Engineer and Fire Marshall”.

Dead-End-Road specifications:

- Maximum road length for parcels zoned 5 acres to 19.00 acres – 2,640 feet
For parcels zoned 20 acres or larger – 5,260 feet.
Such distance for the proposed winery is 3.2 miles or 16,896 feet.
- (b) Turnarounds where parcels are zoned 5 acres or larger shall be provided at a maximum of 1,320-foot intervals.

The access road to the subject winery does not comply with not even one single County Road Standard.

5) NEGD / TRANSPORTATION:

Statement: “The majority of cave spoils shall remain on the site”. The term “majority” is not quantifiable in terms of assessing impacts. In fact, other sections of the application contradict it.

The application states that such spoils shall be hauled by 2 truck per day for 8 months. Ten-wheelers on steep roads may carry 8 cubic yards each (9-10 on flatlands) for a total of 16 yards/day. Assuming no hauling occurs on weekends there will be 160 days of hauling for a total of 2,560 cubic yards of export. This constitutes 60.5% of the total spoils of 4,230 cubic yards.

This means that instead of the majority of cave spoils being deposited on site (in the pond) as the application contends, they are actually being exported.

The transportation study maintains that only one additional in and one outbound trip will be added by this permit. Considering that 16 visitors per day, four new employees (excluding the 5 annual events), as well as grape importing and catering trucks are added the NEGD finding is hard to confirm.

Given the fact that the study is not posted on the County website, it is impossible for the public to adequately review and comment on it.

6) NEGD / HYDROLOGY - WATER QUALITY – WASTEWATER:

The NEGD relies on the Napa County water table data to ensure that the water supply is adequate to accommodate the additional 0.49-acre feet (160,000 gallons) the proposed winery will require.

As the Carneros Inn debacle has shown, relying on this type of hydrology may not be reliable and may lead to wrong conclusions and permitting.

The permit for the Enchanted Resort (now Calistoga Hills) across the Diamond Mountain canyon was conditioned on the resort not drawing water from its existing wells.

The Tom Seaver vineyard at 1761 SF immediately bordering the subject property imports water on occasion when its well does not produce enough.

Most wells on Diamond Mountain are very low producing. Our own 340-foot deep well produces 5 gallons / minute.

The applicant states that its well produces 15 gallons per minute. The County website does not contain information as to whether this production level has been certified and how it varies during the season.

WASTEWATER:

About 140,000 gallons of the additional water demand is attributed to the 20,000 gallons of wine making (7 gallons of water per 1 gallon of wine). The potential problem the NEGD has not addressed is the fact that 90% of this wastewater need to be treated during the months of August, September and October. It is doubtful that the proposed leach field in this rocky geology (even resorting to a mound system) will be able to process 42,000 gallons of waste in a 30-day period, 3 months in a row.

This is a serious issue because once a permit is granted, the only remedy will be a hold and haul operation which will add even more truck traffic on the narrow SF road.

7) NEGD / BIOLOGICAL RESOURCES:

Two Special Species plants have been identified on the property, also Tambark Oak and mature Redwoods providing valuable canopy will be compromised by the reduction in stream setback to accommodate the proposed road alignment.

The mandated stream setbacks are there for a reason especially ones with a healthy tree canopy such as this in the face of the Napa river having been designated “impaired”.

MANE-MADE POND:

There is no record of this pond ever having been created subject to a permit or review by California Fish & Wildlife, U.S Army Corps of Engineers and the Regional Water Quality Control Board. Nevertheless, according to recent court rulings, the existing condition is the accepted CEQA baseline. Given this situation it is incorrect to characterize the proposed changes to it as a “restoration” as the applicant and the NEGD do. While the existing pond is grand fathered, any changes to its current condition are subject to the above agencies’ review and approval.

The area under discussion consists of a seasonal pond and a Coastal & Fresh Water Marsh, a wetland habitat, each with their own ecosystems.

The proposed disposal of cave spoils - a minimum of 1,700 cubic yards and perhaps more than 2,500 cubic yards according to the application (See 5 above) will elevate the water table considerably.

Once the water level of the pond rises, it will encroach into the 1.16-acre wetland habitat area changing both individual ecosystems. This issue has not been identified let alone addressed by either the Kjeldsen or the Vollmar studies.

A further issue is the timeline of cave excavation, spoil export and/or their disposition into the pond relative to their effect not only on bird nesting season but also the pond's use by migratory birds. Traffic, noise, dust, all impact these populations. The bird breeding season is between February 15 and August 15 (a 6-month period). Yet spoil trucking is supposed to continue uninterrupted for 8 months of which 5 (December - April) are rainy ones during which grading is not permitted. This leaves only ONE "safe" month of operation. These are incompatible and irreconcilable scheduling conflicts.

The conflicting timelines do not bare out the NEGD mitigation of avoiding work during the bird breeding season. In addition, the mitigation of collecting seeds and relocating species such as turtles while the pond is being altered requires more extensive review than the one provided in order to avoid an environmental disaster.

The NEGD statement that, "Although the proposed project could have a significant effect on the environment, there will be no significant effect in this case because revisions on the project have been made" is not a credible one.

Given the complexity of the task, the incompatible construction and export trucking and grape importing timelines with the bird breeding season, the disruption of migratory bird patterns, seed collection and species relocation, it seems that an Environmental Impact Report is the proper instrument to address them.

8) NEGD / MANDATORY FINDINGS:

Such findings must consider future projects.

One such project is the planned forest conversion to a 2.99-acre vineyard, parcel APN 020-300-066 immediately to the south of the subject property.

Said property consists mostly of mature redwoods and other species which must be hauled away in large trucks marginally able to negotiate the 12-foot-wide SF and DMR.

Furthermore, once this vineyard has been planted and comes in production, additional truck traffic will be generated concurrent with the one by the subject property.

The NEGD has failed to consider the mandated impacts of this future project.

9) WINE AND FOOD PAIRINGS:

The applicant proposes to serve catered food. Such food constitutes a full meal disguised as "incidental" to a wine tasting. Even though it is catered this constitutes a restaurant-type food service.

In addition, there is no stated limit to the number of catered food events. They may take place every day of the week to the daily visitors to the winery.

Such considerations aside, at a time when restaurants are becoming casualties to food served at wineries due to customer or labor force competition (among the 4 restaurant closings in St. Helena alone in the past two year, Cook's Tavern is their latest casualty), it is unfair to the cities' restaurant

community and counterproductive to the overall diverse experiences of the Napa Valley for the County to facilitate such permits.

10) CONCLUSION:

Given the following essential County Code exemptions and other requirements needed to make this project viable...

- Accessibility over non-conforming substandard roads.
- Encroachment into the stream set back.
- Three additional variances in commercial road width and excessive grade and lack of transition zones.
- Production relying on 95% of grapes being imported, an essentially custom crush facility and entertainment center.
- The generation of truck traffic, both during its long construction period and in its subsequent regular operation particularly disruptive and potentially unsafe in that location.
- Unresolved questions about the ecology of the pond and wetlands which seem incompatible with the extent and time-coordination of the proposed construction operations.
- Increased guest traffic which enhances the chances of a man-made fire incident in this highly combustible forest environment.
- Unresolved questions regarding the ability to safely dispose wastewater on site.

... it becomes evident that this project is a poster child of a wrong project in a wrong location.



EBINER →

NOT A THROUGH ROAD

SummitVine →

Harmony →

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Diamond Mountain Rd
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Charley and Gretchen de Limur
1771 Diamond Mountain Road
Calistoga, CA 94515

October 14, 2019

To the Napa County Planning Commission

Re: Fingerman Winery Application P16-00333-UP
1755 Diamond Mountain Road South Fork

This application is for a winery that is too big and the applicants disregard some fundamental flaws with the location of this proposed winery.

Road Conditions:

This road is substandard under Napa County road standards. A good part of Diamond Mountain Road is not a two-lane road and South Fork is hardly even a single lane road and certainly doesn't meet the basic Napa County road standards.

Anyone driving up Diamond Mountain Road (including) South Fork has encountered many incidences of reckless driving, lost drivers and truck traffic, including semi-truck trailers that have gotten stuck and have required on occasion CHP escorts to help drivers back down. On any typical day there are cyclists who ride up Diamond Mountain Road and on blind curves, badly maintained surfaces the conditions are extremely dangerous. There are many technical deficiencies to this road that make it hazardous to all. Anyone *unfamiliar* with the road makes it even more treacherous.

All who live on this road are concerned that any additional traffic is asking for trouble and unless Napa County *addresses the deficiencies* of this road on a broader and permanent manner, permitting any additional wineries is poses a continuous hazard which is inappropriate.

Cave Spoils Removal:

Given the fact that the Napa County road is substandard, additional heavy truck traffic will add to these extremely hazardous road conditions. The Project Statement for the transportation of cave spoils states that "the majority of cave spoils shall remain on the site" but it doesn't quantify or limit the transportation of the excess spoils that will not be used on site.

The cave spoils on site is described in this application as a pond restoration project, however, this "pond" is no more than a catch basin which has never retained water and mostly dries up in the summer. Any alterations to this pond should require all the environmental permits needed for a new project.

Winery Operations:

“The applicant envisions being able to comply with the County’s 75% Grape Source Agreement.” Envisioning and complying are two very distinctive things. Custom crushes using grape from outside Napa County can take place as long as the product is not described as Napa designate wines. A 20,000-gallon winery for a single label given that the sourcing of the grape is at best uncertain also assumes that some custom crushing will be part of the business plan, if not for this applicant then for possibly any subsequent owner.

A 20,000-gallon winery requires a lot of grape to be shipped to this site for processing. Considering the applicant’s existing vineyard is only a few acres additional grape will have to be coming from off site. The applicant has stated to me that they plan to acquire grapes locally from other vineyards on Diamond Mountain. This presumes that other vineyard owners are willing and able to break with existing contracts. The remaining grapes will have to be hauled up Diamond Mountain Road creating additional heavy traffic.

Hours of operation and staffing will require additional traffic, bottling trucks, case deliveries, case hauling, all require more traffic.

Daily tastings for up to 16 does not stipulate if that is *persons* or *cars* per day and it is well known in the industry that these numbers are fudged to accommodate whomever wants to have a tasting. Who is monitoring this traffic?

Special events, up to four a year with 75 people each and one “Auction Related” event with 125 people all of it catered also will require additional traffic on this narrow and badly maintained road.

The applicant also wants to have a picnic license, all of this without a permitted kitchen facility.

In the section of the application “Nearby Wineries” fails to mention that there are five on Diamond Mountain alone and at least a dozen more in the 94515 Zip code.

Wildland:

Although the studies conclude that there will be no significant impact to the environment and wildlife up here on Diamond Mountain, these studies are not only misleading but are paid for and serve the applicant’s purposes.

We have been living up there for the past 19 years and have seen a lot of changes in the wildlife corridor. This is due mainly in the loss of habitat as a result of many new vineyard developments. The raptor birds are not as prevalent as they once were, we used to have golden eagles that made this their regular migratory route. Those have disappeared. Wild turkeys have

completely disappeared from our area. Bobcat, mountain lions and deer are less prevalent as have tree frogs been less noticeable. We have had a bear sighting for the first time in our 19 years. Fences, tractors, traffic and fires all have contributed to this loss of habitat and changes in the wildlife corridors. All this human activity has contributed to this degradation.

Water and Wells.

The impact on wells and the water table is not a quantifiable science. All of our wells around here are low flow wells and are subject to all sorts of conditions that are mostly out of our control. Drought, winter rain, runoff and usage are all part of living on a well.

Wineries are water intensive at best. Seven gallons are used for every gallon of product. A winery permit for 20,000 gallons of production means that just to make the wine, 140,000 gallons will be used per year. That is not inclusive of the winery's needs for personal sanitation, catering, landscape irrigation, nor does it include the applicant's personal home use, including a pool. All produced from a well that purportedly currently produces 15 gallons a minute.

Our neighbor, Tom Seaver has had to truck water into for his personal home use because he's experiencing low flow production. None of the wells up here on Diamond Mountain are great producers. And of all the issues that are most troubling in this application, it is the glossing over of this high water use activity.

Additional Development:

Directly adjacent to our property another 2.99 acres of vines will strip the forest of mature redwood trees and wildlife habitat. This will impact the enjoyment of our property as well as impact additional draws on the water table. The size and scope of this new vineyard may not seem significant, but in the aggregate it all adds up. When is enough enough?

Concluding:

Exemptions and impacts are too numerous to ignore. This is a very *inappropriate* place to put this scale of winery development.

Exemptions to substandard road size.

Exemption to stream setbacks.

Large amounts of grapes being imported from offsite.

Major increases in truck traffic, visitor traffic.

Uncertainty of well water resources and onsite waste management.

Wine and food as well as picnic privileges.

Wildlife degradation.

Additional Fire hazard and risk. On dead end mountainous roads.

Your decisions on this matter will be irrevocable.

From: [Hade, Jason](#)
To: [PlanningCommissionClerk](#)
Cc: [Bordona, Brian](#); [Gallina, Charlene](#); [Anderson, Laura](#); [Dooley, Jason](#)
Subject: Additional 10/16 PC Correspondence - Item 7B
Date: Tuesday, October 15, 2019 4:11:49 PM
Attachments: [Additional PC Correspondence - Item 7B.pdf](#)
[image001.png](#)

Please distribute the attached for tomorrow's hearing.

Thanks.

Jason

Jason R. Hade

Planner III

Planning, Building and Environmental Services

County of Napa 1195 Third Street, Suite 210 Napa, CA 94559

707.259.8757

jason.hade@countyofnapa.org



A Tradition of Stewardship
A Commitment to Service

From: [Hade, Jason](#)
To: [PlanningCommissionClerk](#)
Cc: [Bordona, Brian](#); [Gallina, Charlene](#); [Dooley, Jason](#); [Anderson, Laura](#)
Subject: FW: HARD SIX APPLICATION (Project Number: P16-00333) - Item 7B
Date: Tuesday, October 15, 2019 4:48:29 PM
Attachments: [image001.png](#)
[Comment Letter 10-15-19 ChecovBause to J. Hade.pdf](#)

Please add the attached to the additional PC correspondence for item 7B for tomorrow's hearing.

Thanks.

Jason

From: Checov, Martin S. <mchecov@omm.com>
Sent: Tuesday, October 15, 2019 4:43 PM
To: Hade, Jason <Jason.Hade@countyofnapa.org>
Cc: Timothy Bause <tbause@aol.com>
Subject: Re: HARD SIX APPLICATION (Project Number: P16-00333)

Mr. Hade:

Please see attached our comment submission, as promised, for inclusion in the record in this matter.

Thanks,
Martin S. Checov
Timothy J. Bause

From: "Hade, Jason" <Jason.Hade@countyofnapa.org>
Date: Wednesday, October 9, 2019 at 11:46 AM
To: Martin Checov <mchecov@omm.com>
Cc: Timothy Bause <tbause@aol.com>
Subject: RE: HARD SIX APPLICATION (Project Number: P16-00333)

[EXTERNAL MESSAGE]

Thank you for the heads-up Mr. Checov.

Jason R. Hade
Planner III
Planning, Building and Environmental Services
County of Napa 1195 Third Street, Suite 210 Napa, CA 94559
707.259.8757
jason.hade@countyofnapa.org



A Tradition of Stewardship
A Commitment to Service

From: Checov, Martin S. <mchecov@omm.com>
Sent: Wednesday, October 09, 2019 11:08 AM
To: Hade, Jason <Jason.Hade@countyofnapa.org>
Cc: Timothy Bause <tbause@aol.com>
Subject: HARD SIX APPLICATION (Project Number: P16-00333)

Mr. Hade:

I wish to introduce myself and my spouse, Timothy J. Bause, as a courtesy to let you know that we plan on submitting comments on the above-mentioned winery application of our next-door neighbors on Diamond Mountain, the Fingermans. We understand that the deadline for submission is Oct. 15 at 4:45 and don't anticipate any trouble meeting it, but wanted to give you this heads-up.

I should note that the email address I am using is my business address, but I am communicating solely as an individual neighbor and my firm is not involved in this personal matter.

Please let me know if you have any questions.

Thank you,
Martin S. Checov
2031 Diamond Mountain Road
Calistoga, CA 94515

MARTIN S. CHECOV & TIMOTHY J. BAUSE
2013 DIAMOND MOUNTAIN ROAD (SOUTH FORK)
CALISTOGA, CALIFORNIA 94515
mchecov@omm.com; tbause@aol.com

October 15, 2019

Jason R. Hade
Planner III
Napa County Planning, Building &
Environmental Services Department
1195 Third Street, Suite 210
Napa, California
jason.hade@countyofnapa.org

**Re: HARD SIX CELLARS WINERY - USE PERMIT #PI6-00333-UP & USE PERMIT
EXCEPTION TO THE CONSERVATION REGULATIONS #PI9-00315**

Dear Mr. Hade:

We are the owners of the residential property that is adjacent to the parcel which is the subject of the above-captioned application for a use permit and use permit exception (the "Application") for the proposed Hard Six Winery project (the "Project"). We own the property pertinent to the driveway easement over which the Application proposes to have a non-compliant road access road serving the Project. In that capacity, we respectfully submit the following comments in response to the Notice served by the Planning Commission and request that they be made part of the public record of these proceedings.

INTRODUCTION

Since 1996, we (Martin S. Checov and Timothy J. Bause) have jointly owned and resided at 2031 Diamond Mountain Road (the "Bause/Checov Property"). The South Fork of Diamond Mountain Road bisects the Bause/Checov Property, with its terminus proximate to the front door of the main dwelling. (Our address, which is out of numeric sequence with that of other residences on the South Fork of Diamond Mountain Road, reflects the historic siting of the property years prior to the construction of the South Fork.) An early dwelling on the property has existed since at least the 1860s, and the principal dwelling was constructed as a log cabin from native redwood in 1907. We purchased the property in 1996 from Mr. Lee Kenyon, who had owned it for the prior three decades. In 1977, Mr. Kenyon granted a Deed of Easement across the northerly portion of what is now the Bause/Checov property to enable the owners of the adjacent parcel, now held by Wayne and Kara Fingerman (the "Fingermans" or the "Applicants") to construct a driveway for access to their residence from the South Fork. A copy of the Deed of Easement, filed April 15, 1977 (the "Driveway Easement"), is appended to this letter. (The Driveway Easement is alluded to in various portions of the Application and the record of these proceedings, particularly in reference to the Use Permit Road Exception Request by the Applicants. An image of that portion of the driveway is also appended to this letter.)

Our interest in the Application derives from our concerns as residents of the South Fork; established members of the local Diamond Mountain community; immediately adjacent neighbors of the Applicants; and the owners of the Driveway Easement as to which the Use Permit Road Exception Request is made in the

Application. As such, we are immediately impacted by the use of the subject property in regard to most or all of the environmental, bioresource, vehicular traffic, noise, water availability, and wildfire protection issues that are now under review by the Commission as part of the Application, including the various studies in the record of these proceedings, the proposed Use Permit and Use Permit Exception to Conservation Regulations, and the Recommended Conditions of Approval.

Please permit us to preface the specific comments with some personal reactions to the Application. We are not opponents of reasonable development. For example, we did not object to the development of the estate vineyard on the Fingermans' property (or the adjacent Seaver vineyard); nor did we challenge the approval by the City of Calistoga of the Rosewood Resort at the base of Diamond Mountain. Although we have pointed out to County officials various violations of neighboring owners of their vineyard use permits, we have never protested compliant agriculture-related activity. We recognize the legal right, and sympathize with the ambition, of entrepreneurs such as the Applicants to invest in and realize the dream of making their own wine at their home. Indeed, we personally consider it entirely appropriate for the Fingermans to receive approval to construct an *appropriately sited and sized winery* for the production of their estate vineyard grapes. Our objection is solely to the Application's overreaching and disproportionate scale, and to the proposed construction and operation of what amounts to a destination industrial and tourist facility on an environmentally delicate and remote mountaintop site that is calculated to cause undue harm to the quiet enjoyment, safety, and privacy of Diamond Mountain residents like us.

We summarize our specific comments on the Application as follows, with a detailed discussion below:

- **Scope and Overall Environmental and Community Impact:** The project contemplates establishing a magnet mountaintop winery with a 20,000-gallon capacity, which is to be met by the importation of grapes not grown on the Fingermans' Diamond Mountain appellation estate, or even their remote vineyard properties. The Hard Six website indicates a total production from their crops of less than 2,500 gallons; 90% or more of the winery production will therefore consist of crushing under contract to third parties, with grapes hauled to the facility in heavy trucks up a thousand feet in elevation across three miles of an exceedingly narrow, steep winding country road (including the South Fork)—all at an unspecified and avoidable environmental cost that has not been mentioned, much less quantified, by the Applicants or the County. Further, the proposed capacity and visitor flow exceed those of any winery ever approved on the upper reaches of Diamond Mountain Road; all of the ostensibly comparable hillside facilities listed in the agency record enjoy access that is approximately one mile or less from a major highway, and the wineries on the Mountain operate under a capacity that is a fraction of that proposed by the Applicants, or reflect a much larger percentage of estate property production. This project would bring about unprecedented disruption and risk. The non-economic, and possibly economic, value of the residences on Diamond Mountain, particularly beyond Pacheteau Road, and the entirety of the South Fork, depend in part on the seclusion and comparative privacy of the community. The noise that will be audible to neighbors accustomed heretofore only to farming operations rather than mass production facilities and the visitor traffic that is contemplated will pose a continuing safety hazard. Any approval should be appropriately re-scaled, and should ideally not exceed the capacity necessary for the production of wines from the Fingerman estate vines on the property.
- **Specific Environmental Exceptions:** We believe that the impact of the redevelopment of the large pond on the subject property cannot properly be characterized as "temporary," or that the re-filling and reconfiguration of the pond is an in-kind "restoration," as claimed in the Application and related submissions. Further, nowhere in the agency record is there any consideration of the effect of converting the pond into a shallow pool, thereby depriving CalFire of a vital water resource that has been used in the past to combat wildfires in the area. The project should not be approved until the

agency review that is acknowledged by the Applicants to be required is completed and appropriate permits are secured, including, if necessary, a full EIR. As a result, any negative declaration and approval of the Project by the Commission prior to the completion of this process would be premature and defective under CEQUA. With respect to the Biological Habitat Evaluation Report and Special Status Plant Report, measures taken to avoid injury to populations of rare plant species on the property as set forth in the County's Initial Study are insufficient and defective. The Project should not be approved until these measures are enhanced to ensure protection of the impacted species. These and other specific environmental exceptions are addressed in a report by the Huffman-Broadway Group, Inc., dated October 9, 2019, and separately transmitted to you for inclusion in the record, which we commissioned and incorporate herein by reference (the "Huffman-Broadway Report").

- **Road Exception:** In terms of environmental impact, as discussed in the Huffman-Broadway Report, the County's Initial Study fails to adequately evaluate whether construction activities pose erosion or stream sedimentation risks. Separately, there are serious safety issues presented by this hillside location: the construction of a non-standard driveway with less than conforming width, which is purportedly acceptable because it is deemed necessary to minimize grading, including outside the present 40-foot easement, and to preserve additional trees from being cut, has been reviewed without any consideration of less environmentally impactful alternatives, or of the safety risks to visitors and workers inherent in traversing an unusually narrow, steep and dangerous stretch of road. For example, the Applicants never contacted us as property owners to ask whether we would agree to modifications of the Driveway Easement to facilitate compliance with standard construction requirements while avoiding adverse environmental impact—all of which we are fully prepared to discuss. In fact, with respect to the Driveway Easement, we were only asked by the Applicants to sign an indemnity to the County for any liability—including, potentially, to visitors or workers suffering injuries due to the approval of a hazardous, non-standard roadway—arising from the proposed approval of a Road Exception pertinent to our property. Needless to say, this highlights the possibility that third parties may seek to impose liability on us as the owners of the land the Driveway Easement crosses, which could include claims for injuries or damage allegedly due to the failure to insist that the Applicants/easement beneficiaries comply with modern safety standards in converting the road from a little-used residential driveway into the gateway for a massive mountaintop factory complex accommodating more than a thousand visitors and countless heavy trucks each year. The Road Exception should be declined, and the construction of a driveway meeting all County standards should be a condition of project approval.

SPECIFIC COMMENTS

CEQUA and Other Regulatory Concerns

The Huffman-Broadway report, commissioned by us, identifies several serious deficiencies in the application. The Planning Commission should review its detailed analysis and recommendations, which we incorporate by reference herein. We offer the following highlights:

- **Comment No. 1 - Filling the pond:** The report concludes that "the wetlands resulting from the proposed 'restoration' project would not be considered as in-kind restoration of wetlands," so that the "statement in the Initial Study that 'there would not be a long-term loss of wetland and waters' is *not true*" (emphasis added). Huffman-Broadway notes that the "act of filling 1.46 acres of wetlands and waters of the state would be considered a significant impact, and the RWQCB would undoubtedly

require the applicant to complete an alternatives analysis analogous to what would be required for an Individual Permit from the U.S. Army Corps of Engineers.” But the Project, warns the report, “may not be permissible by the RWQCB and/or CDFW and will likely need to be revised to provide off-hauling of wine cave spoils or disposal of the spoils in an upland location, and could require a reduction in the scale of the project.” Accordingly, it concludes, “Mitigation Measure BIO-4 provides no specific performance criteria for mitigation other than deferring analysis to the RWQCB and CDFW permitting processes,” and “the Initial Study’s mitigation defers analysis of potential impacts and mitigation to RWQCB and CDFW.” We respectfully submit that the proposed approval of the Project based on a *deferral*, rather than completion, of the necessary agency consultation and permitting process, is based on an incorrect and incomplete analysis and is therefore premature and an abdication of the County’s responsibility.

An additional non-biological deficiency is the absence of any reference to the pond’s unique value as a resource for firefighting. On several occasions during our occupancy at 2031 Diamond Mountain Road, CalFire helicopters have utilized helicopter buckets to scoop water from the pond for the purpose of fighting local wildfires. Although we were spared from the path of the Tubbs Fire in 2017, the increasing frequency of such events, and their growing ferocity due to changing climate conditions, warrants every effort to preserve local resources of this kind to protect life and property. All indications from the submitted reports are that the pond, rather than being “restored,” will be replaced by a pond with a water depth that would render it useless to CalFire for aerial delivery. Whether or not there exists a strict requirement for agency consultation with CalFire in these circumstances, all property owners of Diamond Mountain would benefit from the County’s insistence that the availability of such resources be considered and taken into account in approving specific dredging and filling operations of existing waters. Finally, as the Applicants are aware, residents have in the past year formed a local Diamond Mountain FireSafe Council (of which Ms. Dyer, one of the commenters, is one of the founders). The administrative record does not reflect any interaction with the FireSafe Council on the subject of the degradation of the pond water supply, a substantial dereliction of community obligations.

- **Comment No. 2 - Rare Plant Mitigation:** The Huffman-Broadway report observes that “the County’s Initial Study is written as if the 2018 Special Status Plant Survey report didn’t exist, as mitigation measures recommended to address rare plant populations in the Initial Study include only those recommended in the 2016 Pacific Biology report” that pertain to “what to do if the rare plant populations cannot be avoided.” Instead, the “Initial Study should include the recommendations of the 2018 Special Status Plant Survey Report that include specific suggestions for avoidance of populations of both special status species found on the property” and “incorporate those measures into the Mitigation Monitoring Program.” In order to support approval of the Project, “[a]lternative project designs need to be analyzed to find ways to relocate elements of the Project to protect populations of special status plants.” The categorical omission of those steps at this juncture renders the proposed negative declaration defective.
- **Comment No. 3 - Roadway Improvements:** The report acknowledges that a Use Permit Exception to allow paving to encroach on the 55-foot stream setback may be reasonable, but faults the Initial Study for providing absolutely “no evaluation of whether the proposed construction activities would result in erosion issues or sedimentation in the unnamed stream that could have an adverse effect on aquatic organisms or other wildlife populations within the creek or in areas downstream.” Huffman-Broadway concludes that “[a]t a minimum, the Initial Study should describe a recommended erosion control plan with implementation of Best Management Practices to prevent such impacts from occurring.”

- **Comment No. 4 - Tree Loss and Vegetation Removal:** According to Huffman-Broadway, although the County's Initial Study acknowledges that trees would be removed, it is deficient because "[n]either the Initial Study or any of the technical reports actually indicates what trees are to be removed (e.g., species, size, health of trees) to allow the reader to complete an independent assessment of the severity of tree loss." Further, the 2016 Biological Habitat Evaluation Report indicates that the Stanford manzanita chaparral habitat found on the property constitutes a sensitive plant community, and "up to 3,000 square feet of this community would be eliminated during construction of portals for the wine cave, and additional impacts could result from subterranean excavation for the wine cave within the root zone of some of the chaparral plants." These impacts should have been "discussed in the Biological Resources section of the Initial Study and Mitigation Measures BIO-5A related to avoidance of the Stanford manzanita chaparral," but are not. This is another example of how the County's recommendation is based on incomplete information, making approval premature.

Road Exceptions

The Road Exception consists of exemptions from three important safety standards governing construction of such facilities: (1) a Request for Non-Standard Driveway Apron; (2) a Request for Roadway Width Less than 22 feet; and (3) two separate Requests Roadway Grade of 19.5% without a preceding and ensuing 10% slope.

This departure from County construction and safety standards concerns us for two reasons. First, there is the matter of public safety. In past years, we have frequently navigated the existing driveway, which we consider treacherously narrow and steep, to visit our neighbors on the subject property. It seemed obvious to us that the volume of heavy truck and visitor traffic contemplated by the proposed 20,000-gallon mountaintop winery mandates the most scrupulous adherence to safety standards applicable to such roadways. We were surprised to learn that the County felt otherwise, and we doubt such a waiver of safety requirements has recently been granted by the County for projects of this magnitude occupying similar terrain.

Second, there is the matter of potential risk we face as the owners of the Driveway Easement parcel. The proposed road exceptions could open the door to personal injury or property damage claimants seeking to impose liability on us, as well as on the Applicants for maintaining an unsafe roadway and the County for allowing it. That this is not a merely academic concern was driven home to us when, on March 21, 2018, Kara Fingerma forwarded a document prepared by their consultant, Ms. Donna Oldford, and requested that we execute it. (Communication attached.) The document would have committed us as property owners to indemnify the County for any liability arising from any proceeding relating to the "discretionary approval" by the County of the Project. On April 4, 2018, we informed Ms. Fingerma that we could not execute any document providing indemnification relating to the easement. (The Indemnification Agreement, executed only by Applicants, is already part of the administrative record.) The County's obvious awareness of such liability concerns is most disquieting for us as property owners of the land underlying approximately the lower 150 feet of the driveway. While we would vigorously contest any basis for such liability arising from the County's improper approval of safety shortcuts for the driveway, the cost of successfully defending against such claims can be exceedingly onerous.

Obvious alternatives to the roadway exceptions were improperly rejected in the County's analysis. The document entitled F- Use Permit Exception states:

"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."

As indicated, the Applicants were not shy to ask us to agree to an indemnification document to ease the way for their non-standard driveway construction. Nevertheless, we have never been invited by Applicants to discuss whether we would be willing to make adjustments to the existing easement, in the interest of both public safety and environmental conservation, that would allow construction of a conforming driveway. We remain open to such a conversation. Hence, it is simply false that the present course of the 40-foot easement makes realignment impossible.

Because of the unwarranted rejection of alternatives, the negative declaration regarding environmental review of matters involving traffic—in particular, evaluation of the risk of “increase[d] hazards due to a geometric design feature, (e.g., sharp curves or dangerous intersections)” as being “[l]ess than significant” is clearly erroneous. (See below for discussion of the environmental impact of hauling almost all of the grapes for production up a mountain road with a massive elevation gain, which has nowhere been taken into account as part of the County’s environmental analysis.)

Overall Environmental and Community Impact

Every resident of the Mountain will vividly recall the first time they braved the three-mile drive up Diamond Mountain Road as far as the South Fork, a daunting journey through steep and rough, densely forested terrain on perilously hairpin-curved, steep and narrow pavement. Likewise, each resident has repeatedly had the experience of encountering, at numerous places on the road above Pachetau, vehicles too large to allow their car to pass, resulting in a (usually) polite contest requiring each to slow, and one or the other to pull aside. Diamond Mountain Road is also intensively utilized by walkers and bicycles throughout the year whose enjoyment and safety would be compromised by the dramatic contemplated increase in truck and visitor traffic. The characterization of Diamond Mountain Road as a “narrow *two-lane* rural County collector road” (J-Traffic Impact Study; emphasis added) unjustifiably minimizes the hazards associated with increased vehicular activity. In a rural setting such as this, a negative declaration by the Commission with respect to a project the size of that proposed would be unsupportable. The finding as to whether the Project would “[c]ause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system” as being “[l]ess than significant” is clearly erroneous. The mitigation action (MM Trans-1), which would merely reduce visitations during worker and resident rush-hour periods, cannot adequately serve to eliminate the significance of this environmental impact.

The Application seeks to create the impression that this and other impacts should be tolerated by making a so-called comparison to other wineries in Napa County. In fact, for several reasons, this comparison demonstrates the extent to which the Project constitutes an unprecedented and radical departure from the normal standards for winery approvals of this magnitude.

First, the characterization in the document D-Project Statement of Ballantine, Folie a Deux, Napa Cellars, Freemark Abbey, Stony Hill, Schramsberg, Tudal, and Ehlers Lane as “nearby wineries” is inherently flawed. Of these, only Schramsberg touches on the Diamond Mountain appellation or geography, and not one is accessed from such a long country public road.

Second, the catalog of other 20,000-gallon wineries in L-Winery Comparison is similarly misleading. Each of the wineries designated as “hillside” is accessed by a driveway or public road that is close to a major highway. As one example, the Colgin Partners Winery on Pritchard Hill is reached by a private road (by all appearances, constructed fully in compliance with Napa roadbuilding standards) that directly meets the Highway 128. None of these wineries provide the slightest support for a determination that a large, industrial facility with thousands of visitors each year would not adversely impact the unique Diamond Mountain environment in terms of traffic patterns and public safety.

Third, the list of wineries on Diamond Mountain establishes that the proposed project would be disproportionate for its location. Of the neighboring wineries, Checkerboard and Joseph have direct access from Highway 29 and do not impact Diamond Mountain Road at any point. The former properties of Reverie and Von Strasser, 1510 Acquisition and 1520 Acquisition, are located only approximately *one mile* into Diamond Mountain Road, with a comparatively modest elevation gain; in addition, because they are controlled by the principals of the Rosewood Resort to which they are adjacent, it is expected that their primary access will eventually be through the resort property directly on Highway 29. Wallis Family Winery is reached via Pachetau Road, and Diamond Creek Winery via a driveway below that on the hill, both approximately *one mile* up Diamond Mountain Road. The only winery that has been approved at a distance up Diamond Mountain Road equal to or beyond the South Fork is the former Constant property, Diamond Mountain Winery. Notably, its capacity is limited to 10,000 gallons, and its approved visitor count is less than *one quarter* that proposed by Applicants. No recent local precedent exists for a facility as large as the Applicant's proposal that would be located such a distance from a major highway.

Fourth, we have reason to believe that the majority of the wineries that are accessed from any appreciable distance along Diamond Mountain Road are far more, if not entirely, reliant on estate production than the proposed Project. For example, Diamond Creek (10,000 gallons) famously pioneered exclusive vineyard estate bottling. The larger Wallis production is chiefly, if not exclusively, from the family's Diamond Mountain estate, as is that of Diamond Mountain Vineyards (10,000 gallons). We are not aware of any winery having been approved on the mountain with the intention of importing 90% or more of the grapes to the facility from a remote distance, all of but a few thousand gallons of which would be custom-crushed under contract.

Fifth, if Applicant's calculations are correct, 87.6% of grapes (J-Traffic Study) will be hauled the three miles up Diamond Mountain Road and the South Fork to Applicant's driveway, a gain in elevation of at least 1,000 feet, resulting in the consumption of large amounts of fossil fuel and the generation of significant airborne emissions that would not be incurred with transport to valley floor or lower hillside facilities. (The Application and documents in the record are devoid of any evaluation of the adverse environmental impact of a winery anticipating the transport of 90% of its grapes up this sort of elevation, or the consideration of any alternatives.)

Finally, based on the Hard Six website's report of a production of less than 2,500 gallons, and the approximately 500 gallons from Applicant's present Diamond Mountain estate vineyard, this would mean that of the 20,000 total gallon capacity, approximately 97% will have to be trucked in. The 87.6% calculation cited by Applicants in their submission could only be mathematically correct if Hard Six were to contribute as much as 5,000 gallons from their own various vineyard estates (with 15,000 gallons coming from other growers under contract), representing a doubling of their current production. This percentage is very revealing: Applicants have inadvertently based their calculations on the capacity that would be appropriate for a winery that chiefly produced—like other Diamond Mountain wineries—wine from the owners' estates. A facility this far up the Mountain might be sustainable if limited to the amount of production anticipated from the vineyards on the Applicant's Diamond Mountain property. A 5,000-gallon use permit limited to estate production from vineyards owned by Applicants elsewhere in Napa would have a far less deleterious impact on the environment, road safety, and quality of life on the upper reaches of Diamond Mountain.

Neighbor Comments

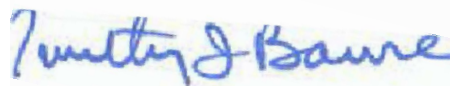
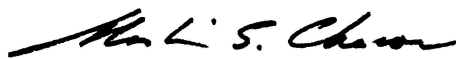
The only property owners that have submitted comments in favor of Applicant's 20,000-gallon use permit do not have a sufficient basis to represent the views of the Diamond Mountain community. Ms. Dyer (we understand Applicants to have retained the Dyers as consultants and suggested that they might offer the

proposed facility for custom crushing of Dyer grapes) resides approximately two miles closer to Highway 29 at a low elevation. Peter Thompson's property is adjacent to that of the Applicants, but he neglects to mention that he does not have a home on the site; further, although there are numerous examples of his conducting activities on his vineyard that violate his use permit (such as improperly extracting and selling water from the Mountain's aquifer and entertaining visitors for wine tasting), those activities would not in fact be adversely impacted by noise or other disruption from the proposed project and in any event such interests are not legally cognizable for these purposes. The record reflects that Applicants solicited the support of their neighbors, Mr. and Mrs. Seaver, but they appear not to have responded to the invitation.

Our property, on the other hand, may be the only location that has a direct line-of-site view of the Applicant's structures. It is also within earshot. With 112 visitors permitted per week, the noise level from the 1,185 square foot outdoor hospitality patio, presumably the location for picnicking and tasting except in extreme weather, will be almost constant, and will have a direct and immediate impact on our enjoyment of our heretofore quiet property.

Among the neighbors, we have a unique position at the terminus of the South Fork of Diamond Mountain Road. It seems that virtually every visitor who becomes lost on the South Fork turns up in our driveway (or, often, undeterred, speeds up beyond the driveway into our fruit orchard well beyond the main house, only to find themselves stymied by an ancient olive grove). The Applicant's driveway, which is proposed to be left largely in place where it meets South Fork, is a blind left turn, and will likely be invisible to most visitors, who will continue along until they reach our home, asking for directions or pausing to enjoy our premises without permission (including taking their picnics to our property), as has occurred with surprising frequency even with the minimal winery capacity on the Mountain. A winery project of the scope proposed will multiply the intrusion, and stands to irreparably spoil our long-cherished seclusion in the redwood and fir forest of Diamond Mountain. The Application should be rejected, or, at a minimum, scaled to a more modest facility better suited to the community and environment and to the Applicants' legitimate desire to produce wine from their estate property.

Yours very truly,



DRIVEWAY EASEMENT

NAPA COUNTY

FIRST AMERICAN TITLE COMPANY
OF NAPA 82987

WHEN RECORDED RETURN TO:

JONES & BENNETT
Howard Building
1424 1/2 Lincoln Avenue
Calistoga, California 94515
Telephone: (707) 942-6212

CC4020

Vol 1032 PAGE 939

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FIRST AMERICAN TITLE COMPANY
NAPA COUNTY RECORDS
AT 11:25 o'clock A.M.
APR 15 1977

ELEANOR E. KIMBROUGH
COUNTY RECORDER

FILE 6 LEE R. KENYON

400

DEED OF EASEMENT

PL# 20-100-14

LEE R. KENYON GRANTS to JOSEPH A. FLYNN and JESSIE FLYNN,
AS JOINT TENANTS, an easement for road purposes described as
follows:

A right of way 40 feet in width
extending Southerly from the South-
westerly line of Parcel A as shown
on Map number 1987 entitled "Record
of Survey Map of the property of
Joseph Flynn" recorded 9 November
1970 and filed in Book 17 at page 51
of Surveys in the Office of the Napa
County Recorder, to the Northerly
line of a County maintained road.
The center line of said 40 foot
right of way is described as follows:

Beginning at the intersection of the
center of a traveled way with said
Southwesterly line of Parcel A,
distant along said Southwesterly line
South 44° 05' 57" East 173.7 feet from
a 1/2" iron pin on the West bank of a
creek marking the most Westerly corner
of said Parcel "A" thence along the
center of said traveled way South 5°
05' West 80.8 feet, South 19° 31' East
46.5 feet and South 12° 50' West 41
feet more or less to said Northerly
line of said county maintained road.

The easement granted herein is appurtenant to the following
described real property hereafter referred to as "dominant tenement":

All that real property located in an
unincorporated area of the County of
Napa, State of California, described
in that Deed recorded in Volume 642
at page 463 of Official Records,
Napa County Recorder.

The easement granted herein is across the following
described real property hereafter referred to as "servient tenement":

All that real property located in an unincorporated area of the County of Napa, State of California, described in that Deed recorded in Volume 653 at page 987 of Official Records, Napa County Recorder.

The easement granted herein includes incidental rights of maintenance, repair and replacement and includes the right to install and maintain utility lines and/or pipes within the area of the easement.

DATED: 7 April 1977.

DOCUMENTARY TRANSFER TAX \$ 0.1
FIRST AMERICAN
TITLE COMPANY OF
NAPA
Sue Zakaria

Lee R. Kenyon
LEE R. KENYON

STATE OF CALIFORNIA (ss
COUNTY OF NAPA)

On the date above shown before me, the undersigned, a Notary Public in and for the State of California, personally appeared LEE R. KENYON, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

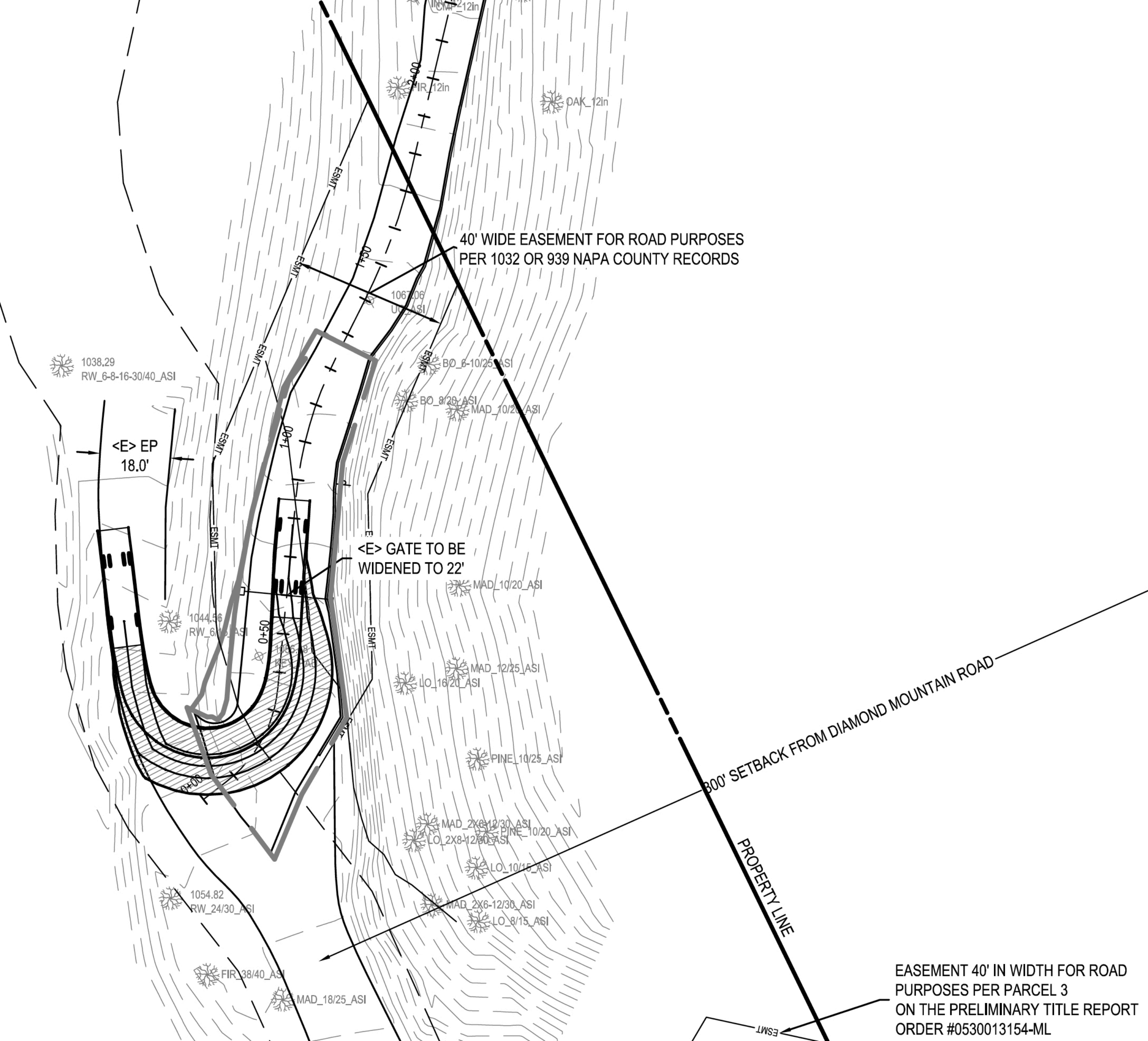
OFFICIAL SEAL
JOHN P. TRELEVEN
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
NAPA COUNTY
My Commission Expires Oct. 5, 1978

John P. Treleven

[SEAL]

END OF DOCUMENT

EASEMENT MAP EXCERPT



40' WIDE EASEMENT FOR ROAD PURPOSES
PER 1032 OR 939 NAPA COUNTY RECORDS

<E> GATE TO BE
WIDENED TO 22'

300' SETBACK FROM DIAMOND MOUNTAIN ROAD

PROPERTY LINE

EASEMENT 40' IN WIDTH FOR ROAD
PURPOSES PER PARCEL 3
ON THE PRELIMINARY TITLE REPORT
ORDER #0530013154-ML

1038.29
RW_6-8-16-30/40_ASI

<E> EP
18.0'

1044.56
RW_6-8-16-30/40_ASI

1054.82
RW_24/30_ASI

FIR_38/40_ASI

MAD_18/25_ASI

FIR_12in

DAK_12in

1067.06
U_ASI

BO_6-10/25_ASI

BO_8/28_ASI

MAD_10/20_ASI

MAD_10/20_ASI

LO_16/20_ASI

MAD_12/25_ASI

PINE_10/25_ASI

MAD_2X6-12/30_ASI

LO_2X8-12/30_ASI

LO_10/15_ASI

MAD_2X6-12/30_ASI

LO_8/15_ASI

0+50

1+00

0+00

ESMT

ESMT

ESMT

ESMT

ESMT

ESMT

ESMT

ESMT

ESMT

ESMT

ESMT

ESMT

OLDFORD INDEMNIFICATION REQUEST

Subject: Fwd: Indemnification Form for Exception Request
Date: Wednesday, March 21, 2018 at 1:08:42 PM Eastern Daylight Time
From: Kara Fingerman
To: tbase@aol.com, Checov, Martin S.
Attachments: 2018_03_21_09_28_52.pdf000.tif

Sorry, here's another one for your review. Thanks...

Begin forwarded message:

From: Donna Oldford <dboldford@aol.com>
Date: March 21, 2018 at 9:31:40 AM PDT
To: karafinger@gmail.com, wfingerman44@gmail.com
Subject: Indemnification Form for Exception Request

Kara,

Please see attachment for a separate indemnification form for the exception request (since applicant and property owner are different). Can you please sign as applicant and have the neighbor sign as owner? Thanks.

Donna

Donna B. Oldford
Plans4Wine
(707)963-5832
DBOldford@aol.com

[2018_03_21_09_28_52.pdf000.tif](#)