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Agenda Date: 2/11/2020  
Agenda Placement: 9C  
Set Time: 9:30 AM PUBLIC HEARING  
Estimated Report Time: 2.5 Hours

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** David Morrison - Director  
Planning, Building and Environmental Services  
**REPORT BY:** Jason Hade, Planner III - (707) 259-8757  
**SUBJECT:** Hard Six Cellars Winery Appeal Hearing

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### **RECOMMENDATION**

Consideration and possible direction regarding an appeal filed by Martin Checov and Timothy Bause (Appellants) to a decision by the Planning Commission on October 16, 2019, to approve Use Permit No. P16-00333, a Use Permit Exception to the Conservation Regulations (Permit No. P19-00315) and an Exception to the Road and Street Standards regarding the **Hard Six Cellars Winery** (the Project, Hard Six or the Winery) for a new 20,000 gallon per year winery with a cave, six employees, a visitation and marketing plan and related infrastructure improvements on an approximately 53.04-acre parcel located approximately two miles from the intersection of State Route 29 and approximately 0.75 miles south of the City of Calistoga at 1755 South Fork Diamond Mountain Road, Calistoga, California (APN 020-100-014).

### **ENVIRONMENTAL DETERMINATION:**

Consideration and possible adoption of a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program. According to the proposed Mitigated Negative Declaration, the proposed Project would not have any potentially significant environmental impacts after implementation of mitigation measures on biological resources and transportation. The Project site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

### **EXECUTIVE SUMMARY**

The matter before the Board involves a neighbor's appeal of the Planning Commission's decision on October 16, 2019, to approve (4:1– AYES: Gallagher, Whitmer, Hansen and Mazotti; NO: Cottrell) an application submitted by Wayne and Karen Fingerma (Applicant) for a use permit to allow a new 20,000 gallon per year winery known as the Hard Six Cellars Winery including the construction of a cave, hospitality area, daily tours and tastings by appointment only, marketing events, six employees and related infrastructure improvements proposed on an

approximately 53.04-acre parcel located approximately two miles from the intersection of State Route 29 and approximately 0.75 miles south of the City of Calistoga at 1755 South Fork Diamond Mountain Road, Calistoga, California.

### **PROCEDURAL REQUIREMENTS:**

1. Chair introduces item, and invites disclosures from Board members.
2. Chair invites the Staff Report presentation.
3. Chair opens the public hearing and invites testimony from Appellants and their witnesses as previously disclosed on their witness list and in the order noted on the witness list attached as **Attachment B**.
4. Chair invites any other interested members of the public to testify regarding the appeal.
5. Upon hearing all testimony from interested members of the public, Chair invites the Applicant and their witnesses as previously disclosed on their witness list attached as **Attachment B** to testify.
6. Chair then invites Appellants to have final rebuttal.
7. Chair closes the public hearing.
8. A motion of intent is made and seconded to deny, uphold, and/or remand.
9. Chair refers the matter to County Counsel's office for preparation of a Resolution of Findings and Decision on Appeal. Because of the number of grounds raised in the appeal, good cause exists for County Counsel's office to have up to ninety days to prepare the Resolution of Findings and Decision on Appeal. Consequently, Staff recommends that the Board direct County Counsel's office to return to the Board on April 14, 2020 at 9:45 a.m. with the proposed Resolution for the Board's consideration and adoption.

### **FISCAL & STRATEGIC PLAN IMPACT**

Is there a Fiscal Impact? No

County Strategic Plan pillar addressed: Effective and Open Government

### **ENVIRONMENTAL IMPACT**

Consideration and possible adoption of a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program. According to the proposed Mitigated Negative Declaration, the proposed Project would not have any potentially significant environmental impacts after implementation of mitigation measures on biological resources and transportation. The Project site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

### **BACKGROUND AND DISCUSSION**

All documents associated with the Hard Six Cellars Winery including, but not limited to, the application materials, the Mitigated Negative Declaration, Planning Commission Staff Report, comments and correspondence, the transcript of the Planning Commission meeting, and the appeal packet can be accessed at:  
<https://www.countyofnapa.org/738/Hard-Six-Cellars-appeal>

The matter involves a neighbor's appeal of the Planning Commission's approval of a new 20,000 gallon winery including the construction of a cave and hospitality area, daily tours and tastings for a maximum of 16 persons per

day and 80 per week by-appointment only, three marketing events per year, six employees and related infrastructure improvements on an approximately 53.04-acre parcel located on South Fork Diamond Mountain Road approximately two miles from the intersection of State Route 29. The Project was appealed due to its remote location, the existing condition of the road, and fire and safety issues on Diamond Mountain Road.

There are four other existing wineries located along Diamond Mountain Road. The Wallis Family Estate Winery (at 1670 South Fork Diamond Mountain Road) was approved for a maximum of 30,000 gallons per year, but is not yet producing wine. For comparison and context, the four other wineries (1510 Acquisition, LLC, 1520 Acquisition, LLC, Diamond Creek Vineyards, and Diamond Mountain Winery) have permitted production levels between 9,200 and 25,000 gallons per year. Hard Six's production of 20,000 gallons per year would be at slightly above the average for facilities along Diamond Mountain Road. As shown in Attachment L of the Planning Commission Staff Report, the Hard Six proposed annual maximum visitation is above the average of 71 weekly visitors and the median of similar production capacity by-appointment wineries. The requested number of marketing events is below both the average and median for similar production capacity by-appointment wineries while requested maximum annual visitors is above the average and median. The visitation request approved by the Commission could result in a maximum of 4,435 visitors per year, but it is very unlikely that the Winery would host 16 daily visitors for 365 days per year. Two marketing events with 75 guests and one event with 125 guests were approved. These events would be held between 10:00 AM and 3:00 PM or after 6:00 PM and would use a shuttle bus system to transport guests to the Winery. The tasting room would be closed during the marketing event for 125 persons.

**Code Compliance:**

There are no active code violations at the Project site.

**Public Process:**

The Hard Six Cellars Winery Use Permit No. P16-00333, a Use Permit Exception to the Conservation Regulations (Permit No. P19-00315) and an Exception to the Napa County Road and Street Standards (RSS) was submitted on August 11, 2016. Resubmittal applications were provided on July 24, 2017, February 1, 2018, and January 31, 2019.

The application was determined to be complete on May 9, 2019.

On August 23, 2017, a New Project Submittal Courtesy Notice (dated August 25, 2017) was mailed to all property owners within 1,000 feet of the subject property and emailed to those persons on the general CEQA document notification list.

On September 12, 2019, the Public Notice for the Planning Commission hearing and Notice of Intent to adopt a Mitigated Negative Declaration was mailed to all property owners within 1,000 feet of the subject property as well as any other persons who had requested notice. It should be noted that the County's requirements to notice all property owners within 1,000 feet far exceeds the State mandate of noticing all owners within 300 feet. Notice was also provided to those persons on the general CEQA document notification list. The Notice was published in the paper on September 13, 2019.

Topics considered by the Planning Commission during the public hearing on October 16, 2019, included traffic, site access, overall intensity of the proposed visitation and marketing program, potential environmental impacts, fire hazards, existing site conditions, tribal consultation, groundwater availability, wastewater, and grape sourcing.

At the time the October 16, 2019 Staff Report was posted, 10 written comments had been received expressing support for the Project. A letter from the Middletown Rancheria was also received. Although it was received outside of the 30-day deadline from the initial notification (February 7, 2019) to request tribal consultation, a standard condition of approval regarding cultural resources was included in the final adopted conditions of approval as well as a requirement that the Applicant conduct an on-site meeting with the tribe prior to the commencement of project construction. Three additional public comment letters were received after the initial Staff Report posting identifying concerns regarding biological resources, site access, fire hazards, and the proposed scope of the Project.

Public notices of this appeal hearing were mailed and provided to all parties who received notice of the Planning Commission hearing on January 29, 2020. The notice ran in the newspaper on January 31, 2020.

The public comment period on this appeal will have run for 151 days by the time the hearing is held on February 11, 2020.

### **Findings:**

When reviewing the proposed Project, the Planning Commission based its decision on a series of Findings, as required under both County Code and State law. The Board of Supervisors must also consider all of the same Findings in reaching its decision. To uphold the Planning Commission's approval of the Project and denial of the appeal, the Board must determine that the Project is consistent with each of the following Findings. Alternatively, to deny the Project and grant the appeal, the Board must determine that the Project is not consistent with at least one (or more) of the Findings or the County General Plan.

### CEQA:

1. The Board of Supervisors has read and considered the Mitigated Negative Declaration prior to taking action on said Mitigated Negative Declaration and the proposed Project.
2. The Mitigated Negative Declaration is based on independent judgment exercised by the Board of Supervisors.
3. The Mitigated Negative Declaration was prepared and considered in accordance with the requirements of the California Environmental Quality Act.
4. There is no substantial evidence in the record as a whole that the Project as mitigated will have a significant effect on the environment.
5. There is no evidence in 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.

### Use Permit:

1. The Board of Supervisors has the power to issue a Use Permit under the Zoning Regulations in effect as applied to the property.
2. The procedural requirements for a Use Permit set forth in Chapter 18.124 of the County Code (zoning regulations) have been met.
3. The grant of the Use Permit, as conditioned, will not adversely affect the public health, safety or welfare of the County of Napa.
4. The proposed use complies with applicable provisions of the County Code and is consistent with the policies and standards of the Napa County General Plan and any applicable specific plan.
5. The proposed use would 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 would 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.

Exception to Conservation Regulations:

1. Roads, driveways, buildings and other man-made structures have been designed to complement the natural landform and to avoid excessive grading.
2. 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.
3. 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.
4. Disturbance to streams and watercourses shall be minimized, and the encroachment, if any, is the minimum necessary to implement the Project.
5. 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.

Exception to Road and Street Standards:

1. The exception will preserve unique features of the natural environment that include, but are not limited to, steep slopes, heritage oak trees, or other trees of at least 6" dbh (diameter at breast height) and are found by the Board to be of significant importance, but do not include manmade environmental features such as vineyards, rock walls, ornamental or decorative landscaping, fences or the like.
2. The 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.

Appeal:

On November 13, 2019, Martin Checov and Timothy Bause (Appellants) timely filed an appeal packet (the Appeal) to the Planning Commission's decision to approve the Hard Six project. (Please see **Attachment A**). Pursuant to the County's appeals ordinance (Napa County Code Chapter 2.88) a public hearing on an appeal must be scheduled not less than fifteen days nor more than ninety calendar days from submittal of an appeal. To accommodate all parties' schedules, the Appeal hearing was scheduled for February 11, 2020.

**Pre-Hearing Conference:**

To clarify the County's procedural requirements and expectations regarding land use appeals, the County Counsel's office has initiated a voluntary program of holding pre-hearing conferences with the parties and the Chair of the Board to discuss estimates on presentation lengths, scope of evidence, and testimony to be presented, together with witness lists. Any witness not appearing on a witness list at the pre-hearing conference is treated as an ordinary member of the public and allotted the usual three minutes of speaking time.

A pre-hearing conference was held on January 13, 2020, with Appellants and Appellants' Counsel, Applicant's representative and counsel, Chair Dillon and a Deputy County Counsel. At that time, Appellants and Applicant agreed to provide a list of their respective witnesses along with the subject matter of testimony and time estimates in advance of the hearing. The Chair informed the Appellants and the Applicant that each side is allocated a maximum of 45 minutes for their presentation, allocated at their discretion. A summary of the witness information by name, subject matter of testimony, and time estimates that was provided by Appellants and the Applicant is provided in **Attachment B**.

Appellants and Applicant also agreed to provide the Chair in advance of the hearing with any requests for "good cause" to either supplement the record with new information and/or requests to have the appeal heard de novo (e.g., a fresh hearing). As part of the appeal packet, Appellants requested that "good cause" be found for a de novo hearing. On January 20, 2020, Appellants submitted an additional "good cause" request to augment the record with documentary evidence in the form of two additional documents relating to fire safety and engineering analysis and a fire evaluation for the Diamond Mountain neighborhood. Applicant submitted an opposition to the requests. A copy of Appellants' request and Applicant's opposition is attached as **Attachment C** and can also be viewed online at: <https://www.countyofnapa.org/738/Hard-Six-Cellars-appeal>

The Chair denied Appellants' request that the hearing be de novo but found good cause to augment the record with the following two reports: The Fire Safety Assessment from Reax Engineering dated January 20, 2020 and The Diamond Mountain Neighborhood Community Firewise Evaluation dated December 2019 prepared by Carol Rice. A copy of the Determination of Good Cause decision issued by the Chair is attached as **Attachment D** and the two reports are attached as **Attachment E**. Pursuant to County Code Section 2.88.090 (B), the Chair's decision is final unless one of the parties requests that a majority of the Board overrule the decision. Neither Appellants nor Applicant requested that a majority of the Board overrule the Chair's prior good cause determinations. The Chair's determination stands.

At the pre-hearing conference, Appellants further agreed to provide any supplemental information, not to exceed five pages, and Applicant agreed to a limit of ten pages for any additional information. The supplemental information provided by Appellants is attached as **Attachment F** and as **Attachment G** from Applicant. The information is also available for review online at: <https://www.countyofnapa.org/738/Hard-Six-Cellars-appeal>

#### **Appeal Hearing Public Comments:**

Public notice of this appeal hearing was mailed and provided to all parties who received notice of the Planning Commission hearing on January 29, 2020. The notice ran in the paper on January 31, 2020.

The public comment period on this appeal will have run for 151 days by the time the hearing is held on February 11, 2020.

All correspondence received by the Board as of January 30, 2020 is included as part of the correspondence in **Attachment H** to this report. It is also available at: <https://www.countyofnapa.org/738/Hard-Six-Cellars-appeal>

#### **GROUND OF APPEAL:**

The following outlines the basis of the Appeal as contained in Appellants' Appeal dated November 13, 2019 (**See Attachment A**). For convenience, Staff has provided a summary below, but recommends the Board review the actual Appeal for details.

**Appeal Ground No. 1:** Appellants assert that the Planning Commission erroneously found the Project would not adversely affect the County public health, safety, and welfare. Specifically, Appellants contend that the Commission disregarded the fact that the Project lies on a remote mountaintop located at the end of 2.2 miles of a steep and narrow, dilapidated mountain road and is burdened by innumerable existing dangerous conditions that the Project, in its current form, will exacerbate and thus adversely affect the environment, public health, safety and welfare of the County, its residents and any visitors to the facility.

**Staff Response:** Contrary to the Appellants' assertion, the Commission was well aware of the Winery's remote location as reflected in their deliberations. For example, Commissioner Whitmer stated, "You know, a 20,000-gallon winery in my estimation is not a huge ask and I agree that the site is remote, but that is the character of the Napa Valley and the roads that we have." (Certified Planning Commission Hearing Transcript October 16, 2019, page 48:6-9.) This view was echoed by Commissioner Mazotti: "Yeah, I see the road is a concern, but I agree with Commissioner Whitmer that this is what we deal with in the Napa Valley and we deal with it well, and while it's not ideal, the road seems adequate to me. So at the moment I don't feel compelled to deny the project." (Certified Planning Commission Hearing Transcript October 16, 2019, page 51:11-15.) Chair Gallagher also considered the Winery's remoteness: "I think this is really a tough one, I have to say. I feel that way because I know that the remote nature of this site, it does cause me concern when I drive up that road and I see how narrow it is, and it is in places like one lane. But I also know that, you know, we drive around this Valley and we're not going to widen every road to be a two-lane roadway either. I mean, that's totally out of character with the Valley, so we're not going to do that." (Certified Planning Commission Hearing Transcript October 16, 2019, pages 51:24-28 and 52:1-4.)

There are four other existing wineries located along Diamond Mountain Road. The Wallis Family Estate Winery (at 1670 South Fork Diamond Mountain Road) was approved for a maximum of 30,000 gallons per year, but is not yet producing wine. For comparison and context, the three other wineries have permitted production levels between 9,200 and 25,000 gallons per year. The Winery's approved production of 20,000 gallons per year would be at slightly above the average end for facilities along Diamond Mountain Road.

The Commission did not ignore the conditions present on Diamond Mountain Road. They properly considered the Project's potential to change those existing conditions, and based on the evidence in the record, including the opinions of licensed traffic professionals and the Fire Department, found the Project would not significantly change traffic volumes or road safety. Based on the analysis by the reviewing County divisions and departments as well as the discussions at the Planning Commission hearing, it is clear that the Commission thoughtfully considered the Project's remote location, existing road conditions, and scale of the proposal before concluding it will not adversely affect the environment, public health, safety and welfare of the County, its residents and any visitors to the facility.

**Appeal Ground No. 2:** Appellants assert that the Commission erroneously found the Project would not adversely affect the County public health, safety, and welfare. Specifically, Appellants claim that Diamond Mountain Road is unusually hazardous and the Project would dramatically exacerbate those conditions. The Project is located in a Very High Fire Hazard Severity Zone and photographs presented to the Commission illustrate the sharp turns and difficult maneuvers required to reach the Winery. Applicant's agreement to use shuttle buses for larger events are the types of vehicles that would have difficulty navigating Diamond Mountain Road and would obstruct fire equipment and evacuation access during emergencies.

**Staff Response:** Virtually all hillside areas of Napa County, which make up the vast majority of land area countywide, are located in areas designated High or Very High Fire Hazard Severity Zones by CalFire. Throughout Napa County, these fire hazard areas apply to thousands of residences and dozens of wineries. New residences and business are not prohibited in these zones but rather subject to significantly more rigorous fire safety standards, including fire resistive construction standards, mandatory automatic fire sprinklers, dedicated on-site emergency water supplies, and specific fire access road design standards. The Project is designed to meet these

standards and has been recommended for approval by the County Fire Marshal, who is a contracted subject matter expert from CalFire.

The proposed access driveway improvements and on-site circulation configuration meets Napa County Road and Street Standards (RSS) except for a limited request for an exception. As a result, approximately 70 percent of the driveway would meet the RSS. Safety improvements would consist of the installation of two turnouts and warning traffic signs. The Winery would be accessed via an existing driveway on the South Fork of Diamond Mountain Road. Sight distance adequacy at the project driveway was evaluated by the Public Works Department and found to be acceptable with the removal of trees and brush on the east side of the South Fork of Diamond Mountain Road to the north and south of the project driveway connection (this work is shown in Figures 11 and 12 of the traffic impact report). The proposed project driveway sightlines would meet the standards for sight design criteria contained in the Highway Design Manual published by Caltrans provided that landscaping is maintained in a manner that does not interfere with these sightlines (See Mitigation Measure TRANS-2, COA No. 6.12.f in Attachment B of the Planning Commission Staff Report). Proposed site access, including the RSS exception, was reviewed and recommended for approval by the Napa County Fire Department, Engineering Division of the PBES Department, and Public Works Department.

Although the Project is located within the State Responsibility Area and is classified as a Very High Fire Hazard Severity Zone, the Commission found that the Project would not substantially impair an adopted emergency response plan or emergency evacuation plan because the proposed driveway improvements (including installation of two new turnouts to improve vision and offer space for vehicles to pass) would provide adequate access to the South Fork of Diamond Mountain Road and comply with current California Department of Forestry and California Building Code requirements for fire safety (see Engineering Service Memo dated July 17, 2019 in Attachment B of the Planning Commission Staff Report).

The Planning Commission also imposed a condition requiring a Transportation Demand Management (TDM) Plan so that Winery events would not be scheduled to begin or end between the peak period of 3:00 PM and 6:00 PM. The TDM Plan requires use of a shuttle bus system for all events. The TDM Plan must be prepared and submitted to the Planning Division prior to the issuance of a Final Certificate of Occupancy. After issuance of a Final Certificate of Occupancy, an Ongoing Monitoring and Reporting Statement shall be submitted by the Applicant to the Planning Division on January 15 of each year. Planning Division staff will review the statement to ensure compliance with the TDM Plan. Enforcement steps will be taken, if needed, to ensure compliance (see COA No. 4.19.a in Attachment B of the Planning Commission Staff Report).

It is speculative for the Appellants to argue that the agreed upon shuttle bus system for events will be ineffective since details regarding the shuttle bus size, frequency, and schedule have yet to be determined. The purpose and intent of the TDM Plan is to reduce trips on Diamond Mountain Road by significantly reducing or eliminating the use of private Single-Occupancy Vehicles accessing the Project site during events and to safely transport marketing event visitors from a legally approved parking lot to the Winery via shuttle service. The specific details would be included when the TDM Plan is actually prepared. It is possible that smaller size shuttle buses would be utilized, avoiding the concerns expressed by the Appellants.

The Winery's visitation at 16 per day equates to approximately 11 daily trips (comparable to a single-family residence) and the largest of the three marketing events equates to approximately 89 trips (which will be significantly reduced with the required shuttle service). There is no substantial evidence that these levels of marketing and visitation to the Winery would obstruct fire equipment and evacuation access during emergencies.

**Appeal Ground No. 3:** Appellants assert that the Commission erroneously concluded that the Project would not adversely affect the County public health, safety, and welfare. The additional car, bus and truck trips to import grapes on Diamond Mountain Road will further deteriorate the already perilous physical condition of the road and



lead to more accidents, incidents, fires and other public safety issues. Appellants allege that the Project seeks to attract 6,249 annual visitors who will be imbibing alcohol and driving on the narrow lanes and sharp turns of Diamond Mountain Road.

**Staff Response:** The Winery's maximum annual visitation would be 4,435 not 6,249. Assumptions that winery visitors are likely to be under the influence of alcohol while driving, and that the road is difficult to safely traverse for those who are otherwise unfamiliar with it, are based on conjecture, fear and speculation and not substantiated facts. Neighbors' opinion that winery visitors will cause traffic congestion during a fire is not supported by fact. Generalized fears and concerns about a project does not constitute substantial evidence. (*Perley v. Board of Supervisors* (1982) 137 CA3d 424.)

The Applicant submitted a traffic report entitled "Crane Transportation Group Traffic Impact Report dated January 24, 2017" (hereafter the Traffic Report). The Traffic Report identifies existing traffic volumes at the intersection of SR 29/Diamond Mountain Road in Figure 3 and includes 21 inbound trips and 37 outbound trips during the Friday PM peak hour (3:45 PM to 4:45 PM) and 13 inbound trips and 24 outbound trips during the Saturday PM peak hour (5:00 PM to 6:00 PM). The Traffic Report found that the proposed Project would result in an increase of one inbound trip and one outbound trip during the Friday PM peak hour (3:45 PM to 4:45 PM) and zero inbound and one outbound trips during the Saturday PM peak hour (5:00 PM to 6:00 PM). The trips identified in the Traffic Report do not reflect the reduction to maximum weekly visitation from 112 to 80 visitors nor the removal of two 75-person marketing events. The Project has three events per year: one for up to 125 visitors and two for up to 75 visitors. These events would be held between 10:00 AM and 3:00 PM or after 6:00 PM to avoid peak periods of travel on Diamond Mountain Road and visitors would be transported to the Winery via shuttle buses.

Wine cave spoils would total approximately 4,230 cubic yards of spoils. The majority of spoils would be permanently kept on-site and utilized for the restoration of the pond while the remaining excess spoils would be transported off-site to a County approved location. The Applicant anticipates up to two truck trips per day for spoils off-hauling during the projected eight month project construction duration. Up to 16 grape haul truck trips per year would occur, but the processing of grapes grown on-site at the proposed winery would eliminate approximately three to four existing grape haul trucks per year now leaving the site (the Traffic Report).

Contrary to the Appellants' unsubstantiated assertion, according to the Traffic Report, "the project would result in no significant off-site circulation system operational impacts to SR 29 or to the SR 29/Diamond Mountain Road intersection." The Project would not degrade road operation from acceptable to unacceptable at any analyzed location nor increase peak hour volumes by one percent or greater on any segment of SR 29 already experiencing unacceptable "Without Project" operation. Implementation of mitigation measure TRANS-1, which requires the use of shuttle services for all marketing events and prevents events from occurring during peak periods, would reduce potential impacts to a less than significant level. Public Works Department staff reviewed the Traffic Report and confirmed that it adequately demonstrates that the proposed use (a new winery) in the proposed location (Diamond Mountain Road) would not result in any significant impacts, either project-specific or cumulative, on traffic circulation in the vicinity. The Project would result in a nominal increase in trips on the study area transportation network.

**Appeal Ground No. 4:** Appellants assert that the Planning Commission erroneously concluded that the Project would not adversely affect the County public health, safety, and welfare. The Winery Definition Ordinance (WDO) and the 2010 WDO Amendment (Resolution No. 2010-48) ensure that remote wineries are to be appropriately scaled. According to the Appellants, the Winery is inappropriately scaled relative to its remote mountain top location. The Project site is 2.2 miles, almost a thousand feet in elevation up Diamond Mountain Road, and is remote and rural. The Winery should be significantly reduced both in production and marketing and visitation to a size that is more suitable for the remote location. The comparative analysis employed by both the County and the Applicant ignore that many of the cited comparisons with production facilities licensed for more than 10,000

gallons are a mile or more closer to Highway 29, and require less than half the climb up the height of the Mountain.

**Staff Response:** In criticizing the Winery comparison analysis prepared for the Project, Appellants fail to acknowledge that almost half of the wineries included in the comparison table are located within hillside areas of the County (See Attachment L to Planning Commission Staff Report). Moreover, the WDO and Resolution No. 2010-48 do not prescribe specific visitation and marketing program numbers for every proposed winery. Resolution No. 2010-48 provides guidance on the appropriate intensity of marketing programs associated with wineries in agriculturally zoned areas. It does not address wine production or visitation levels. It describes examples of acceptable and unacceptable forms of marketing events, and states that operational and location factors should be considered when setting marketing limits. Each proposed winery is evaluated on its own merits based upon factors such as site location, parcel constraints (water availability, steep topography, and biological resources) and site access. The winery comparison analysis provided to the Planning Commission is intended to be used as a tool to aid in their decision-making. It is not a policy or formula which dictates specific visitation and marketing program numbers.

In response to the concerns expressed at the Commission hearing regarding the scale of the proposed visitation and marketing program, the Applicant voluntarily agreed to reduce the maximum number of weekly visitors from 112 to 80. The Applicant also reduced the requested marketing program from five events to three and agreed to utilize shuttle bus systems for all events. Commissioner Whitmer acknowledged the reduction: "I am appreciative of the concerns that have been given to the number of visitors, and I think that what's been proposed as a revision to those numbers brings this project a little bit more in line to the numbers of folks that I thought would be more applicable to this kind of site and location. I think that this is appropriately zoned." (Certified Planning Commission Hearing Transcript October 16, 2019, page 48:10-15.) Chair Gallagher agreed: "I do really appreciate the reduction in the marketing and visitation. I think that's very important because I do think that that was too large." (Certified Planning Commission Hearing Transcript October 16, 2019, page 52:5-13.) Regarding the reduction, Commissioner Hansen stated, "I appreciate that the Applicant was really responsive and listened to concerns about numbers of visitors, and thank you for bringing us another alternative, which I think brings down some of the other pieces that we're talking about. Like traffic or water impacts should there be any." (Certified Planning Commission Hearing Transcript October 16, 2019, page 50:14-18.)

The Planning Commission properly evaluated the Winery's marketing and visitation program and found the Applicant's reductions to be appropriate given the Winery's location, production level and other site specific factors.

**Appeal Ground No. 5:** Appellants assert that the Planning Commission erroneously found the Project would not adversely affect the County public health, safety, and welfare. Specifically, Appellants claim that the size and scope of the production and marketing activities of existing wineries on Diamond Mountain Road are rationally and sensitively scale-based on either their parcel size or their location on dead-end roads, or both. Since the Winery is being proposed for the dead-end South Fork of Diamond Mountain Road, the same standards and considerations must be applied to Hard Six.

**Staff Response:** Appellants are incorrect. The Project was reviewed with the same standards and considerations as other operating or approved wineries within one mile of the Project site. For example, 1510 Acquisition, LLC located at 1510 Diamond Mountain Road was approved for production of up to 25,000 gallons per year compared to 20,000 gallons per year for Hard Six. Also, 1520 Acquisition LLC was approved for 100 maximum visitors per week compared to 80 visitors for Hard Six. The Wallis Family Estate Winery, approved but not yet operating, was approved for a maximum production of 30,000 gallons per year and 108 visitors per week. It is located at 1670 Diamond Mountain Road within one mile from the Project site.

The site currently includes four acres of vineyards with authorization to plant an additional two acres for a total of six acres of on-site vineyards. The Applicant also owns four acres of vineyards on Hennessey Ridge. Based on four

tons of grapes per acre, the Applicant anticipates producing approximately 2,880 gallons of wine per year from the on-site fruit and a total of 4,800 gallons of wine per year from the on- and off-site vineyards. As identified in Staff Response to Appeal Ground No. 3, up to 16 grape haul truck trips per year would occur, but the processing of grapes now being grown on-site at the proposed winery would eliminate approximately three to four existing grape haul trucks per year now leaving the site (See The Traffic Report). A total of approximately 15.6 grape trucks per harvest season are expected to haul fruit to the site. This equates to less than one truck trip per day during harvest. The Applicant intends to utilize 100 percent Napa County fruit and designed the project to align with the available grapes along with accommodation for future growth.

As reflected in testimony from Commissioners Whitmer and Hansen and Chair Gallagher as summarized above in Staff Response to Appeal Ground No. 5, the Planning Commission properly considered the Applicant's reduced marketing and visitation levels to be appropriately scaled relative to the remoteness of the project site and intensity of surrounding existing wineries.

**Appeal Ground No. 6:** Appellants assert that the Planning Commission erroneously found the Project would not adversely affect the County public health, safety, and welfare. Critical to determining the appropriate volume of wine to be produced at the remote Winery location is that only 12.4% of the proposed production will be derived from on-site grapes. This will require an unprecedented magnitude of vehicular transport to the site, dwarfing that of the other approved high-elevation Diamond Mountain wineries (which focus on estate production and have not proposed a destination custom-crush business plan like that of Hard Six).

**Staff Response:** As stated in the Staff Response to Appeal Ground Nos. 4 and 5 above, the site currently includes four acres of vineyards with authorization to plant an additional two acres for a total of six acres of on-site vineyards. The Applicant also owns four acres of vineyards on Hennessey Ridge. At four tons of grapes per acre, the Applicant anticipates producing approximately 2,880 gallons of wine per year from the on-site fruit and a total of 4,800 gallons of wine per year from the on- and off-site vineyards. Up to 16 grape haul truck trips per year would occur, but the processing of grapes grown on-site at the Winery would eliminate approximately three to four existing grape haul trucks per year now leaving the site (the Traffic Report). A total of approximately 15.6 grape trucks per harvest season are expected to haul fruit to the site. This equates to less than one truck trip per day during harvest which is far from Appellants' claims of an "unprecedented magnitude of vehicular transport."

The Planning Commission also heard testimony from Ketan Mody, a neighbor and grape grower at 2087 Diamond Mountain Road: "I grow grapes on Diamond Mountain and currently make my wines in Sonoma County and would love to have the opportunity to bring all this closer to home by possibly crushing at their facility." (Certified Planning Commission Hearing Transcript October 16, 2019, page 32:17-20.)

Concerning the issues of estate vineyards, the Applicant's representative, Donna Oldford, clarified at the hearing, "There was a question posed about how many more vineyards. The Fingermans have two more acres up on top of the ridge above the Winery that could be planted, and they've actually been told they have as many as ten by one of the viticulturists or civil engineers. Ten's probably pushing the margin, but there is reason to think that they could have more if they wanted them." (Certified Planning Commission Hearing Transcript October 16, 2019, page 39:10-15.)

The record reveals that the Applicant intends to utilize 100 percent Napa County fruit and designed the project to align with the available grapes on its properties and from growers in the vicinity of Diamond Mountain Road along with accommodation for reasonable future growth. Appellants erroneously concluded that the Project was a destination custom-crush business plan but provided no evidence of such a business plan.

**Appeal Ground No. 7:** Appellants assert that the Planning Commission erroneously concluded that the Project is

consistent with the Napa County General Plan. Specifically, Appellants allege that the Project is inconsistent with the following goals and policies of the General Plan Safety Element:

- a. Goal SAF-1 of the General Plan Safety Element provides that "[s]afety considerations will be part of the County's education, outreach, planning, and operations in order to reduce loss of life, injuries, damage to property, and economic and social dislocation resulting from fire, flood, geologic, and other hazards;"
- b. Goal SAF-3 declares that it is the "goal of Napa County to effectively manage forests and watersheds, and to protect homes and businesses from fire and wildfire and minimize potential losses of life and property;"
- c. Policy SAF- 16 requires that "development in high wildland fire hazard areas shall be designed to minimize hazards to life and property;"
- d. Policy SAF-20 mandates that "[a]ll new development shall comply with established fire safety standards" and consider the "[a]bility for a safe and efficient fire department response ... [t]raffic flow and ingress/egress for residents and emergency vehicles" and "[p]otential impacts to emergency services and fire department response;" and
- e. Policy SAF-38 requires the "County to achieve the goals, objective, and actions of the [Napa Operational Area Hazard Mitigation Plan (NOAHMP)], including ... [p]romoting a fire safer community ... [and] [m]inimizing the risk of wildfire at the urban interface."

**Staff Response:** A consistency analysis for each of the specific General Plan goals and policies is provided below.

Goal SAF-1: According to the environmental review conducted for the Project, the Project would not increase exposure of people and/or structures to a significant loss, injury or death involving wild land fires. The proposed driveway improvements would provide adequate access to the South Fork of Diamond Mountain Road. The Project would comply with current California Department of Forestry and California Building Code requirements for fire safety. The analysis in the MND reveals that flood, geologic and other hazards were appropriately considered and analyzed by the Planning Commission.

Goal SAF-3: The Project would avoid development on slopes in excess of 15 percent and would require minimal tree removal (nine trees). The Project would not substantially impair an adopted emergency response plan or emergency evacuation plan because the proposed driveway improvements would provide adequate access to the South Fork of Diamond Mountain Road. The Project would comply with current California Department of Forestry and California Building Code requirements for fire safety. The Napa County Fire Department reviewed the Project application and recommended the project for approval, as conditioned, because the driveway improvements, turnouts, vegetation removal and improved line of vision would offer additional protection for homes and businesses from fire and wildfire and minimize potential losses of life and property consistent with Goal SAF-3.

Policy SAF-16: As referenced above, the Project would comply with current California Department of Forestry and California Building Code requirements for fire safety which would minimize hazards to life and property consistent with Policy SAF-16. Proposed architectural design of the Winery structure would utilize fire-resistant materials such as gray concrete walls with steel finish, steel trellising, glass façade with aluminum and glass storefront doors, and a metal roof of pre-finished metal with gray or zinc-tone color. The Project also includes two new water storage tanks (5,000 and 50,000 gallons).

Policy SAF-20: Implementation of the Project would include the improvement of the existing access driveway (on and off-site) to County standards except for the RSS exception. As part of the Project, the property owner would implement a horizontal and vertical vegetation management plan consistent with California Department of Forestry and Fire Protection requirements along the entire length of the driveway to provide defensive space and improve sight distance. The Napa County Fire Marshal must review and approve the vegetation management plan. The Public Works Department evaluated the sight distance adequacy at the project driveway and found it acceptable

with the proposed removal of trees and brush on the east side of the South Fork of Diamond Mountain Road to the north and south of the project driveway connection. Proposed site access, including the RSS exception, was reviewed and recommended for approval by the Napa County Fire Department, Engineering Services Division of the PBES Department, and the Public Works Department, as conditioned. The Applicant designed the Project to minimize impacts to steep slopes, which would also minimize potential slope instability and drainage issues.

Policy SAF-38: The Project is consistent with this policy as it includes improvements to the access driveway that promote a fire safer community and minimize the risk of wildfire at the urban interface by meeting the applicable Fire Code and California Building Code requirements. See also Staff response to Policy SAF-20 regarding sufficient emergency access.

Based on the analysis above, the Project is consistent with Goal SAF-1, Goal SAF-3, Policy SAF-16, Policy SAF-20, and Policy SAF-38.

**Appeal Ground No. 8:** Appellants assert that the Planning Commission erroneously concluded that the Project is consistent with the Napa County General Plan. Specifically, Appellants claim the Winery is located approximately 2.2 miles up a dead-end road in a "Very High Fire Hazard Severity Zone," the most hazardous category of rating established by CalFire. The Project will introduce some 6,249 visitors per year, which vastly increases the chances of individuals unfamiliar with the area starting a fire or failing to understand how to safely evacuate in the event of a fire. This is completely contrary to the safety goals of the General Plan.

**Staff Response:** Even though the Winery is located within the State Responsibility Area and is classified as a Very High Fire Hazard Severity zone, the Project would not substantially impair an adopted emergency response plan or emergency evacuation plan because the proposed driveway improvements (including turnouts, vegetation removal and improved line of vision) would provide adequate access to the South Fork of Diamond Mountain Road. The Project would comply with current California Department of Forestry requirements for safety and Chapter 7A of the California Building Code requirements for fire safety. The Winery would be required to comply with Chapter 7A of the California Building Code which applies to building materials, systems and/or assemblies used in the exterior design and construction of new buildings located within a Wildland-Urban Interface Fire Area. Building materials include concrete walls with steel finish, steel trellising, glass facade with aluminum and glass storefront doors, wood trim, and a metal roof of pre-finished metal. The Project also includes two new water storage tanks (5,000 and 50,000 gallons). The Napa County Fire Department reviewed and recommended approval of the Project, as conditioned.

It is speculative to assume that visitors to the Winery would start fires because they are unfamiliar with the area. The use of a shuttle bus system for all events furthers consistency with the General Plan's safety goals because it would take cars off the roadway and provide drivers who are familiar with the Project site and surrounding area. Engineering staff, as well as Fire Department staff, recommended approval of the requested RSS exception (Engineering and Fire memos of September 4, 2017 and July 17, 2019 at Attachment B of the Planning Commission Staff Report).

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 County RSS. The design features and, specifically, the two new turnouts and the installation of a new caution sign on Diamond Mountain Road notifying drivers of the driveway intersection, would assist with safe evacuations in the event of a fire.

**Appeal Ground No. 9:** Appellants assert that the Planning Commission gave short shrift to its obligation to

conduct "outreach" to the community including failing to consult with the local Diamond Mountain Fire Safe Council.

**Staff Response:** Appellants are mistaken. The Napa Communities Firesafe Foundation is made up of neighborhood Fire Safe Councils (FSCs), such as the newly created Diamond Mountain Fire Safe Council, which join forces to effectively reduce and prevent wildfire losses by mobilizing residents to protect their homes, communities and environments from wildfire. Napa Firewise is a collaboration between Napa County and the various city governments within the County. The Project was routed to the Napa County Fire Department, the subject matter experts on life safety and fire issues, for review and the preparation of recommended conditions of approval prior to Planning Commission consideration of the Project. The Fire Department's review included conducting a site visit on April 25, 2018. The Napa County Fire Department and CalFire work closely with the Napa Communities Firesafe Foundation including the Diamond Mountain Fire Safe Council. The Napa County Fire Department and CalFire are responsible for responding to specific emergency incidents at the Project site and surrounding area while the Diamond Mountain Fire Safe Council focuses on community-wide projects such as a chipping program, shaded fuel breaks along Diamond Mountain Road, and assisting with the creation of defensible space.

The County provided notice of this Project well beyond the noticing requirements required by State law. Consistent with County policies and State law, on August 23, 2017, a New Project Submittal Courtesy Notice (dated August 25, 2017) was mailed to all property owners within 1,000 feet of the subject property and emailed to those persons on the general CEQA document notification list. On September 12, 2019, staff mailed the Public Notice for the Planning Commission hearing and Notice of Intent to adopt a Mitigated Negative Declaration to all property owners within 1,000 feet of the subject property as well as any other persons who had requested notice. It should be noted that the County's requirements to notice all property owners within 1,000 feet far exceeds the State mandate of noticing all owners within 300 feet. Notice was also provided to those persons on the general CEQA document notification list. The Notice was published in the paper on September 13, 2019. The Applicant also conducted its own public outreach via letters (dated September 18, 2017) sent to surrounding property owners to solicit feedback regarding the Project.

**Appeal Ground No. 10:** Appellants assert that the County failed to comply with the CEQA in adopting the Mitigated Negative Declaration (MND) and should have prepared an environmental impact report (EIR). Opponents produced substantial evidence demonstrating a "fair argument" that the Project may have substantial environmental effects on biological resources on the delicate ecology of this mountaintop site. Appellants submitted a peer review prepared by a professional biologist citing several potentially significant adverse impacts resulting from the Project (See Huffman-Broadway Group letter dated October 9, 2019) (hereafter the Huffman-Broadway Letter). Potentially significant impacts to biological resources were also documented by the California Department of Fish and Wildlife in its October 10, 2019 letter (hereafter the CDFW Letter). Appellants asserted that the Planning Commission ignored these expert opinions and neither the Planning Commission nor County staff provided a response to rebut the conclusions offered in the letters.

**Staff Response:** CEQA case law requires a public agency to prepare an EIR if it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 74-75.) Substantial evidence means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even if other conclusions may be reached. (CEQA Guidelines Section 15384(a)). However, argument, speculation, inaccurate information, unsubstantiated opinion, or social or economic impacts unrelated to physical changes to the environment do not constitute substantial evidence. (Public Resources Code Section 21080(e), 21082.2(c)). The existence of public controversy over the environmental effects of a project does not, in and of itself, require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment. (Public Resources Code Section 21082.2(b); CEQA Guidelines Section 15064(f)(4)).

A “fair argument” has not been made that the construction and operation of the new Winery may have significant environmental effects. The vast majority of materials submitted by the Appellants, both during the Planning Commission hearing and now on appeal, pertain to existing conditions without a direct or indirect link of how the Project influences or exacerbates those existing conditions. An argument that a project may have a significant environmental effect must be based on relevant evidence sufficient to support that conclusion. An EIR is not required if there is no substantial evidence in the record showing the project may cause significant adverse impacts. (*Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 785).

Appellants erroneously claim that the Planning Commission ignored the Huffman-Broadway Letter and the CDFW Letter and neither the Commission nor County staff provided a response to rebut the conclusions offered in the letters. Project Planner Jason Hade specifically addressed the Huffman-Broadway Letter during the opening presentation of the Project to the Commission: “We also received, I think, three or four letters expressing opposition or concerns to the project, as well as independent biological report or assessment conducted for a neighboring property owner. One thing I did want to point out is in looking at the independent biological assessment, throughout the letter it alludes to the State may or may not permit this, concerns of what the State may say. In this case, though, we’re lucky, we don’t have to guess because we have a letter from the State, which outlines their concerns, and that’s actually what our memo seeks to address with the Revised Conditions.” (See Memo dated October 16, 2019 as Attachment N to Planning Commission Staff Report; and Certified Planning Commission Hearing Transcript October 16, 2019, page 7:13-16.)

Regarding the CDFW Letter Commissioner Whitmer commented, “All of the background on traffic and water and biology, I appreciate hearing from the State agency responsible, and that folks are going to be responsive to the issues that are raised there.” (See Certified Planning Commission Hearing Transcript October 16, 2019, page 48:18-21.) Contrary to the Appellants’ assertion that their expert opinions were ignored, the Planning Commission considered all evidence submitted at the hearing and adopted the Mitigated Negative Declaration and Mitigation Monitoring Reporting Program after determining that no substantial evidence had been produced demonstrating a “fair argument.” As described in the biological report prepared by Pacific Biology entitled “Special-Status Plant Survey Hard Six Cellars 1755 South Fork Diamond Mountain Road, Calistoga, CA 94516” (the Biological Habitat Report), a thorough evaluation of all biological resources was performed. The Biological Habitat Report and MND identify natural habitats within the Project site boundary to include the following, in general order of extent: fresh emergent wetland (associated with the on-site 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 California Native Plant Society. Avoidance of all special-status plants may be impractical so a mitigation plan is required to be developed as discussed further in mitigation measure BIO-1 (COA No. 6.12.a in Attachment B of the Planning Commission Staff Report) which addresses special-status plants.

Forest Ecosystem Management conducted an assessment for Northern Spotted Owls on September 22, 2016, and determined that the Project is located in unsuitable Northern Spotted Owl habitat and would not alter any Northern Spotted Owl habitat. 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. Sensitive animal species which could occur on the Project site include special-status birds and the western pond turtle (See Attachment I of the Planning Commission Staff Report). The implementation of mitigation measures imposed as conditions of approval nos. 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 Army Corps of Engineers, Regional Water Quality Control Board (RWQCB) and California Department of Fish and Wildlife

(CDFW) prior to and during the construction as required by mitigation measure BIO-4 (COA 6.12.d in Attachment B of the Planning Commission Staff Report).

In response to the CDFW Letter, Staff revised and strengthened biological resources mitigation measures to better address Northern Spotted Owls pre-construction surveys, potential impacts to bats, and required the preparation of an Invasive Species Management Plan. The Huffman-Broadway Letter raised issues concerning potential permitting challenges from the RWQCB and CDFW, rare plant mitigation, roadway improvement impacts and tree loss and vegetation removal. The mitigation measures that were added were in response to comment letter from CDFW. The Mitigated Negative Declaration identified that the project may have a potential impact on special-status birds. To reduce that potential impact, a mitigation measure was included that requires preconstruction surveys be performed prior to any vegetation or land disturbance to reduce impacts to special-status birds. CDFW's comment letter requested that the preconstruction surveys include Northern Spotted Owl and roosting bats. The biological reports supporting the MND discussed and potential impacts to Northern Spotted Owl and roosting bats but concluded that the site did not contain suitable habitat. Because CDFW requested that these species be included in the preconstruction surveys, staff added CDFW's requested mitigation measures to address these two bird species. CDFW also requested an invasive species management plan to prevent invasive bull frogs from harming western pond turtle. Again, the potential impact to western pond turtle was identified in the MND and the mitigation was merely expanded to include an invasive species management plan.

Because these new mitigation measures strengthened and amplified existing mitigation measures and were not the result of a new unavoidable significant effect, recirculation was not required. (CEQA Guidelines Section 15073.5(c)(3)). New mitigation measures may be adopted without triggering recirculation if they are added in response to comments on environmental impacts already identified in the mitigated negative declaration. Adding conditions of approval that will not create new significant impacts and that are not necessary to mitigate significant impacts will also not trigger recirculation. (CEQA Guidelines Section 15073.5 (c)(3); *Clews Land & Livestock v. City of San Diego* (2017) 19 CA5th 161, 197.)

The Huffman-Broadway Letter further speculates that 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." Hypothesizing as to whether the Project is permissible by the RWQCB does not rise to the level of substantial evidence that would support a fair argument of a significant environmental impact to biological or water quality resources. Substantial evidence means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even if other conclusions may be reached. (CEQA Guidelines Section 15384(a)). Appellants have not made a "fair argument" that consultation and permitting by RWQCB and CDFW prior to the construction and placement of fill within the fresh water marsh of the pond may have a significant environmental effect. The RWQCB and CDFW have jurisdiction and the agencies with permitting authority over this component of the Project. To ensure that these agencies have appropriately reviewed and permitted the Project, Mitigation Measure BIO-4 states that the County will not issue grading permits until the Applicant has provided proof that the required permits or approvals from RWQCB and CDFW has been provided.

The Huffman-Broadway Letter is also inconsistent with and contrary to the recommendations expressed in the CDFW Letter and strengthened mitigation measures adopted by the Planning Commission specifically to address CDFW's concerns. Moreover, the Huffman-Broadway Letter actually supports the requested Use Permit to the Conservation Regulations request because of the proposed driveway's limited encroachment into the required stream setback (a 30 to 35 square foot area of disturbance). As stated in the Huffman-Broadway Letter, "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." (See page 6 of Huffman-Broadway Letter).



The Commission properly considered the biological resources at the site and properly adopted the MND for the Winery.

**Board Considerations and Staff Recommendation:**

The following options are provided for the Board's consideration regarding possible action on the appeal:

- | Deny the appeal in its entirety and uphold the Planning Commission's approval of the Hard Six Cellars Winery;
- | Deny the appeal in its entirety and modify the scope of the proposed Project and/or the recommended Conditions of Approval;
- | Uphold one or more grounds of the appeal and reverse the Planning Commission's decision, thereby denying the Hard Six Cellars Winery Use Permit and related actions; or
- | Remand the matter to the Planning Commission with direction.

In Staff's opinion, none of the information provided in the appeal and/or other public comments received to date substantively challenges or requires modification of the decision reached by the Planning Commission regarding this matter. As a result, Staff recommends that the Board deny the appeal in its entirety and uphold the Planning Commission's approval of the Project subject to the recommended Conditions of Approval.

**SUPPORTING DOCUMENTS**

- A . Attachment A - Appeal Filed by Appellants M. Checov and T. Bause
- B . Attachment B - Witness Lists
- C . Attachment C - Good Cause Request & Opposition
- D . Attachment D - Chair Good Cause Determination
- E . Attachment E - Good Cause Augmented Record
- F . Attachment F - Appellants' Supplemental Info
- G . Attachment G - Applicant's Supplemental Info
- H . Attachment H - Correspondence as of 1-30-20

CEO Recommendation: Approve

Reviewed By: Leigh Sharp