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January 20, 2020

VIA E-MAIL Diane.Dillon@countyofnapa.org

Supervisor Diane Dillon
Napa County Board of Supervisors
Administrative Building
1195 Third Street
Napa, CA 94559

**Re: Hard Six Cellars Appeal Hearing
Appellants' Request for De Novo Hearing and Request to Augment the Record**

Dear Chair Dillon:

As you know, this office represents Martin S. Checov and Timothy J. Bause (the "Appellants"), the owners and residents of the property located at 2031 Diamond Mountain Road in Calistoga, immediately south of, and adjacent to, the property located at 1755 Diamond Mountain Road, which is proposed for the development of the 20,000 gallon per year Hard Six Winery (the "Project"). The Planning Commission approved the Project on October 16, 2019 and our clients timely filed an appeal on November 13, 2019, and requested both a de novo hearing before the Board of Supervisors and an augmentation of the record with additional evidence that could not have been submitted at the time of the Planning Commission hearing.

We are writing to supplement the request for a de novo hearing and augmentation of the record based on good cause. As discussed in detail below, the Planning Commission failed to consider comments on the environmental document that included substantial evidence that significant environmental impacts associated with the Project may occur, and failed to make adequate findings to support its decision to approve the Project.

In this case, exceptional circumstances that precluded the Planning Commission from doing so included the following: (1) a public comment period for the Project's environmental document that ended the day before the Planning Commission hearing, leaving very little time for adequate response prior to hearing; (2) the submission of numerous, substantive comment letters and late correspondence that resulted in new, last-minute conditions of approval, mitigation measures and changes to the Project; and (3) a PG&E power outage in the days preceding the hearing that impeded communication and access to information. Moreover, as a matter of law, CEQA mandates de novo review by a board of supervisors that is required to make specific findings regarding significant environmental effects identified in an environmental document. (See *Vedanta Society of Southern California v. California Quartet* (2000) 84 Cal.App.4th 517, 529 ["CEQA requires not only de novo review by a board of supervisors, but de novo fact finding as well."].)

Accordingly, we respectfully request that you grant both a de novo review of the appeal by the Board of Supervisors and an augmentation of the record with an expert report responsive to matters raised for the first time at the October 16, 2019 Planning Commission hearing as they relate to traffic and safety.

A. The Project and Timeline for Approval

1. The Project. The Project site is currently developed with a single family residence, barn, a swimming pool, two 10,000-gallon water storage tanks, approximately four acres of vineyards, and a pond. The proposed Project includes the demolition of the existing barn and construction a 7,135 square foot wine cave, a two-story, 3,969 square foot winery structure, a 5,486 square foot outdoor work area, a 1,185 square foot outdoor hospitality patio, and an accessory pumphouse structure, together with four parking spaces, access road improvements, a wastewater treatment system, new water storage tanks, and reconfiguration of the existing pond that involves filling portions of it with cave spoils. The work proposed for the pond will involve removing it from service for an indefinite period of time, and then eventually reestablishing a pond in the same location, a process they describe as “restoring” the pond.

2. Required Entitlements. The proposed Project requires the County’s approval of the following entitlements: (1) a Winery Use Permit (P16-00333) for a new 20,000 gallon winery and Marketing Plan (the “Use Permit”); (2) an exception to the Napa County Road and Street Standards to allow for a reduction in commercial driveway width, a non-standard driveway in connection to the nearest public road, and for a portion of road with slopes exceeding 18% but less than 20% without transition zones (the “RSS Exception”); and (3) a Use Permit for an Exception to Conservation Regulations (P19-00315) to allow re-grading of the existing access driveway to encroach into the required 55-foot stream setback (the “Use Permit Exception”). A portion of the driveway that is greater than 100 feet in length is located within an easement on our clients’ property.

3. Permit and Environmental Review Processing Timeline. For purposes of satisfying the requirements of CEQA, Napa County Planning, Building, & Environmental Services (the Planning Department) prepared an Initial Study and Mitigated Negative Declaration (“IS/MND”)¹ and filed it with the State Clearinghouse on September 12, 2019, with a recommendation for distribution to the California Department of Fish and Wildlife (“CDFW”) and the Regional Water Quality Control Board (“RWQCB”).

- On Friday, September 13, 2019, the 30-day public review period for the IS/MND began.

¹ While the IS/MD utilizes a checklist form updated January 2019, with the exception of the Wastewater Feasibility Report prepared by Delta Consulting & Engineering of St. Helena dated May 16, 2016 and revised January 18, 2019, the analyses contained in the IS/MND are outdated and based on studies conducted in 2016 and 2017, including (1) the Water Availability Analysis prepared by Richard Slade & Associates, LLC dated February 9, 2017, (2) the Biological Habitat Evaluation Report prepared by Pacific Biology dated October 2016; (3) Delineation of Potential Jurisdictional Waters prepared by Vollmar Natural Lands Consulting dated October 2016; and (4) Traffic Impact Report prepared by Mark D. Crane dated January 14, 2017 (utilizing traffic counts taken in April 2016).

- On September 13, 2019, the County also published notice of public hearing on the Project scheduled for October 16, 2019.
- On October 8, 2019, PG&E announced a planned power safety shutoff for extreme fire danger due to forecasted high wind.
- Beginning on October 9, 2019, a public power outage caused major disruptions throughout the County and impacted governmental functions, including the Planning Department's ability to distribute information effectively, and to receive, review, and respond to comments, as well as the ability of the public to access, review, and respond to the same. The power outage continued through October 12, 2019.
- On October 10, 2019, the Planning Department released the staff report prepared for the Project (the "Staff Report").
- Prior to hearing, the County received numerous comments, including a letter from an interested Native American Tribe requesting consultation and specified mitigation measures, a letter from CDFW requesting specific mitigation measures relating to biological resources, and a letter from the Appellants, including an independent biological assessment.
- On October 15, 2019, the 30-day public review period for the IS/MND ended.
- On October 16, 2019, the Planning Commission conducted its one and only public hearing regarding the Project.

B. Good Cause Supports Granting De Novo Review by the Board

Section 2.88.090.A of the Napa County Code provides that in hearing the appeal, the board shall exercise its independent judgment in determining whether the decision appealed was correct. Pursuant to subsection B, "[u]pon a showing of good cause, the chair of the board may authorize a de novo review and/or the presentation of additional evidence which could not have been presented at the time of the decision appealed from." In other words, in hearing the appeal, the Board is required to exercise its independent judgment in reviewing the Planning Commission's decision for error, or upon a showing of good cause, may make a wholly independent decision on the proposed Project. We understand that a finding of "good cause" must be supported by specific facts and a rationale, e.g., a substantial reason.

Good cause supports a de novo review by the Board of Supervisors that allows it to take a fresh look at the proposed Project without any obligation to accept the interpretations, conclusions, and findings of the Planning Commission because the Planning Commission was not fully apprised of all of the available evidence. As discussed in detail below and setting aside substantive issues raised in the comment letters, the timeline and circumstances immediately

preceding the public hearing resulted, in part, in the Planning Commission's failure to consider all of the relevant evidence in the record.²

1. Lack of Opportunity to Consider Comments on the Project and IS/MND.

Neither County staff nor members of the public were afforded enough time to review, prepare, submit, access, and respond to a substantial amount of information in the days preceding the hearing. Consequently, key analyses provided by staff regarding the Project's impacts in terms of traffic, safety, water supply and quality, and biological resources were presented to the public for the first time at the hearing. Under CEQA, a lead agency cannot insulate a CEQA document from public scrutiny by adding key disclosures or analyses after a public comment period closes; preventing public access in that way would be "inconsistent with the purpose of CEQA. . . ." (See *Friends of Old Trees v. Dept. of Forestry & Fire* (1997) 52 Cal.App.4th 1383, 1402, discussing *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal. App.3d 1043, 1052.)

As a procedural matter, the Planning Department took an ad hoc approach to responding to comments, providing limited written responses to comments on the IS/MND and improperly adding new mitigation measures addressing previously unidentified impacts as conditions of Project approval, with no corresponding revisions to the IS/MND or Mitigation Monitoring and Reporting Program and without any apparent consideration of whether the IS/MND and its Mitigation Monitoring and Reporting Program should be recirculated. CEQA Guidelines section 15073.5 requires a lead agency to recirculate a negative declaration when the document is substantially revised after its public release but before its adoption. For purposes of determining whether recirculation is required, a "substantial revision" of the negative declaration is defined to mean "either (1) a new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance, or (2) the lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required." (14 Cal.Code Regs., § 15073.5.)

2. Omission of Requisite Finding Relating to Comments on the IS/MND.

The Planning Commission's failure to consider the IS/MND, together with comments and responses is evidenced in the adopted findings. Specifically, in approving the Project, the Planning Commission failed to make the requisite finding that there is no substantial evidence that the Project will have a significant effect on the environment based on "the whole record before it (including the initial study and any comments received)" during the public-review process. (14 Cal. Code Regs., § 15074(b).) Here, seven recommended findings were made

² Denying an opportunity for a de novo hearing is fundamentally inconsistent with the express terms of Public Resources Code 21177 and the doctrine of exhaustion of administrative remedies. The exhaustion doctrine "is fully served when parties raise all issues before the administrative body with ultimate or final responsibility to approve or disapprove the project, *even if those issues were not raised before subsidiary bodies in earlier hearings.*" (*Tahoe Vista Concerned Citizens v. County of Placer* (2000) 81 Cal.App.4th 577, 594, emphasis added; see also *ibid.* ["Our interpretation of section 21177 is consistent with the judicially created doctrine of exhaustion of administrative remedies the Legislature sought to codify when it adopted section 21177."].)

with regard to environmental review and none reflect the Planning Commission's consideration of the comments received during the public review process.

3. Misinformation and Incomplete Information Presented at Hearing.

As mentioned above, numerous comment letters on the IS/MND were submitted, including the following: (1) a letter from Middletown Rancheria Tribal Historic Preservation Department dated September 4, 2019, requesting consultation; (2) a letter from the California Department of Fish and Wildlife, a Trustee Agency, dated October 10, 2019; (3) a letter from the Appellants dated October 15, 2019, that included an expert report prepared by Huffman-Broadway Group, Inc., regarding biological resources; and (4) additional correspondence from members of the public expressing concerns regarding the Project's potential environmental impacts, particularly with respect to traffic, water supply, the scope and intensity of the Project, and biological resources.

At the hearing, staff provided inaccurate and incomplete information relating to the comment letters, largely dismissing significant environmental issues.

i. Tribal Cultural Resources

The comment letter submitted by the Middletown Rancheria Tribal Historic Preservation Department (the "Tribe") requested consultation and proposed five new mitigation measures to mitigate potential impact to tribal cultural resources during ground disturbing activities occurring in conjunction with the Project. At the hearing, planning staff indicated the letter was untimely but that the Tribe's concerns were nonetheless resolved with a new Condition of Approval to require an onsite meeting with the tribe and the applicant before project construction begins. (Transcript of Videorecorded Proceedings, Napa County Planning Commission Meeting of October 16, 2019, In Re: Item 7B Wayne and Kara Fingerman/Hard Six Cellars Winery/Use Permit #P16-00333 and Use Permit Exception to Conservation Regulations #19-00315 and Exception to the Napa County Road and Street Standards ("Transcript"), pp. 6-7 at line 19.)

Although the comment letter, dated September 4, 2019, was untimely under the notice and consultation requirements proscribed by Assembly Bill 50, it was not untimely for purposes of providing public comment on the IS/MND. At a minimum, the Planning Commission should have had the opportunity to consider the concerns raised by the Tribe, and the feasibility of the proposed mitigation measures to make an informed decision.

ii. Biological Resources

The Planning Department addressed the CDFW letter in a supplemental staff memo prepared after the Staff Report was published. At the hearing, planning staff explained, "So moving on to correspondence that you received after the Staff Report was published, you'll notice there's a PC memo. Within that there is a ... letter from the California Department of Fish and Wildlife. They outline some concerns with our biological resources analysis. As a result of that we prepared a Staff memo with some recommended changes or additions to, I think, about three mitigation measures." (Transcript, p. 7, at line 5.) Per the staff memo dated October 16, 2019, the draft recommended Conditions of Approval were revised to add three new Mitigation Measures MM BIO-5, MM BIO-6, MM BIO-7.

Again, the new mitigation measures were added without any discussion as to whether and/or how the County determined that such revisions did not require recirculation of the IS/MND pursuant to CEQA Guidelines section 15073.5, and the new mitigation measures were not added to the IS/MND or the Mitigation Monitoring and Reporting Program as required by CEQA. (See *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655-656 [holding lead agency cannot propose mitigation measures and assume their efficacy without disclosing the extent and severity of underlying impacts in an appropriate CEQA document].)

iii. Water Quality

The Appellants' letter transmitting the biological assessment they commissioned raised issues of potential environmental impacts relating to the filling of the existing pond, which would fall within the jurisdiction of the Regional Water Quality Control Board and potentially require a Lake and Streambed Alteration agreement with CDFW, as well as issues relating to rare plant mitigation that could require consultation with CDFW. At the hearing, however, staff explained that any concerns of the State were addressed:

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. So we feel like the State concerns have been addressed as part of that memo you have before you.

(Transcript, pp. 7-8 at line 21.) Even assuming for the sake of argument that CDFW comments were actually addressed, the issues relating to the requirements of the RWQCB raised in the expert report were entirely ignored. The Planning Commission, again, did not (or could not) consider substantial evidence relating to potential water quality impacts and concerns relating to filling the existing pond with cave spoils. And the new conditions were not recirculated, as required. (See 14 Cal. Code Regs., § 15073.5.)

In addition to the foregoing instances of the Planning Commission being presented with incomplete or inaccurate information regarding the comments on the IS/MND, questions about basic facts raised at the hearing, including whether Diamond Mountain Road is a two-lane or one-lane road, went unanswered. For example, the IS/MND (at page 23) and related Traffic Impact Study (at page 6) erroneously describe Diamond Mountain Road as a narrow, two-lane, rural County collector road. But at the public hearing, numerous commenters pointed out that the road is a single-lane road. (Transcript, p. 29 at line 14, p. 33 at line 6, p. 34 at line 6.) On rebuttal, the representative for the Project applicant offered detailed, anecdotal testimony relating to her ability to maneuver around a mail truck, a grape truck, a UPS truck, "and cars of all sizes," earlier in the week while in a vineyard truck, and yet she provided no clarification on this basic point—whether the road is a one- or two-lane road—nor was any confirmation sought by the commissioners. (Transcript, p. 41 at line 1.)

C. Good Cause Supports an Augmentation of the Record

In addition to the foregoing, which support a finding of good cause for a de novo review by the Board of Supervisors, good cause supports an augmentation of the record because modifications to the Project's marketing plan, made for the first time at the hearing, resulted in an increase in the number of marketing events that would utilize shuttle operations. Shuttle service, which is a mitigation measure identified in the IS/MND to be provided for events for up to 125 people, was intended to mitigate broader transportation and safety impacts of the Project. As approved, shuttle operations would be allowed for events for up to 75 people (as opposed to events for up to 125 people). This resulted in a greater number of events per year that would utilize shuttle services, without any consideration for the impacts of the shuttle trips themselves and failing to address the broader concerns in a meaningful way. When considered together with the RSS Exception, which will allow a narrower road width than required under County standards and eliminates requirements for turnarounds and curves, the proposed shuttle operations raised new concerns relating to traffic and public safety. The Appellants retained an independent consultant to evaluate the potential impacts of the proposed shuttle operations, which require modification of Mitigation Measure MM-Trans-1, and seek to augment the record with the final report, which could not have been prepared prior to the Planning Commission's acceptance and approval of staff's recommendation at the hearing.

In addition, the Board should take into consideration the publicly available fire crises and evacuation advisories for Calistoga that were issued subsequent to the Planning Commission's action and underscore the need for de novo review and augmentation of the record with respect to matters of public safety. In the same vein, the Board should take into consideration the December 2019 Risk Assessment Report issued by the Diamond Mountain Firesafe Council.³ The Risk Assessment Report emphasizes the need to undertake fire safety projects, including the urgent mandate to improve access "by widening areas for turnouts wherever possible," in direct contradiction to the Planning Commission's approval of the Project's access driveway (a significant portion of which lies on our client's property) that is *narrower* even than the existing minimum Napa County Road and Street Standards. (Risk Assessment Report, p. 30.)

Notably, at the planning commission hearing, Chair Gallagher also expressed frustration regarding the lack of any policy guidance from the Board relating to remote wineries that might otherwise have served as a formal basis to deny the Project of necessity. (Transcript, p. 51 at lines 24-28, p. 52 at lines 14-26.) In the absence of Countywide policy guidance on remote wineries, the Board should take de novo review and consider all available and up to date information pertaining to the Project's impacts on life safety.

D. Due Process Requires De Novo Review by the Board

The fundamental requirements of procedural due process are (1) adequate notice, to give the party a chance to be heard before property interests are disturbed, and (2) the opportunity to be heard before a fair and impartial hearing body. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612.) Before a person is deprived of a recognized property right, they have a right to present their position to the decisionmaking body at a fair hearing that is appropriate to the

³ The Risk Assessment Report is available at: https://www.dropbox.com/sh/c1v76i20plkthho/AAAWbNM_mBy004Kn4I1SxulCa?dl=0 (as of January 20, 2020).

nature of the case. (*Id.* at 612.) Here, the Appellants own the property subject to the easement within which the Project applicant proposes to make certain driveway improvements under the Use Permit Exception, which potentially will be overburdened by the use serving the proposed commercial winery as opposed to the single family home, as contemplated when the easement was originally granted. As such, the Appellants' property rights are at stake and compel a de novo review by the Board as well as an augmentation of the record with pertinent information relating to issues raised at the Planning Commission hearing.

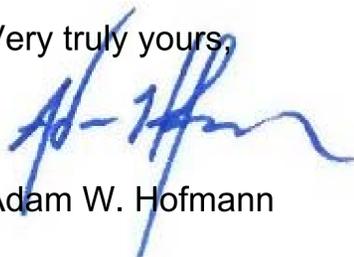
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The Appellants have engaged in the permit approval and environmental review processes in good faith and have made diligent efforts to submit reasonable and timely comments and participate actively in every opportunity afforded to them. They conscientiously worked within the timeframe established by the County, being mindful of everyone's time and without requesting any extensions of time, continuances or other accommodations. The Appellants have refrained from engaging in delay tactics or obstructing the process by making so-called "document dumps" at the eleventh hour as is commonly the case with project opponents. In fact, they are not opposed to the Project outright. However, there are serious environmental concerns supported by substantial evidence that were not properly considered and deliberated on by the Planning Commission. In considering a project of this magnitude, in a remote location and on a severely constrained site, the Board should have the opportunity to render a fully informed decision in a conscious and deliberative manner.

Based on the foregoing, we respectfully request that you grant our request for a de novo hearing before the Board of Supervisors and to augment the record with the attached fire safety assessment report dated January 20, 2020 and prepared by Reax Engineering.

We appreciate your time and consideration.

Very truly yours,



Adam W. Hofmann

AWH:rsc

Attachments

cc:	Jason Hade, Principal Planner	(via email Jason.Hade@countyofnapa.org)
	Laura Anderson, Deputy County Counsel	(via email laura.anderson@countyofnapa.org)
	Brien McMahon	(via email BMcMahon@perkinscoie.com)
	Martin S. Checov	(via email mchecov@omm.com)
	Timothy J. Bouse	(via email tbause@aol.com)
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David Rich
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January 20th, 2020

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Subject: Hard Six Cellars expansion – Fire safety assessment

Dear Mr. Hofmann,

At your request we have reviewed fire/life safety and Code issues associated with the planned expansion at Hard Six Cellars at 1755 S. Fork Diamond Mountain Road, Calistoga, CA. This assessment has focused on whether a rational engineering analysis supports use of mitigating factors, i.e. turnouts and signage, to compensate for road widths less than those required by code for safe access and egress in emergencies. Failure to meet access and egress minimums are especially important because the development is introducing a larger number of greater risk “Assembly” occupants to a location in a relatively high fire hazard area without providing the minimum egress protections offered by the code.

Our analysis addresses three items as summarized below:

- (1) The Hard Six Cellars marketing plan describes Assembly occupancy characteristics as defined in California Building and Fire Codes, an occupancy group which the code recognizes as having a comparatively high potential for fatalities and injuries resulting from fire.
- (2) Hard Six Cellars is in an area of elevated wildland fire risk as demonstrated by historic fires and risk assessments from Cal Fire and the California State Public Utilities Commission.
- (3) Proposed mitigations to address reductions in access for firefighting and egress for occupants has not been supported by a rational engineering analysis demonstrating equivalency with the intent of prescriptive code requirements. The analysis from Delta Engineers fails to demonstrate that turnouts and signage provide an equivalent level of fire life safety with the prescriptive road width requirements. Use of shuttles is also not a demonstrated improvement since these vehicles are wider than cars.

Item 1 – Hard Six Cellars Use and Occupancy

- (1) Hosted daily tours and tastings by appointment only for a maximum of 16 persons per day and 80 persons per week Monday through Sunday.

- (2) As approved the marketing plan is 2 wine and food events of 75 persons each per year and one event with a maximum of 125 guests with shuttle service for all three. All food to be catered.
- (3) Chapter 2 of the *2016 California Fire Code* defines an Assembly occupancy as a gathering together of 50 or more persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking, dining or awaiting transportation.

The *International Building Code Commentary 2015* Section 303 provides the following with respect to Assembly occupancies:

Because of the arrangement and density of the occupant load associated with occupancies classified in the Group A assembly category, the potential for multiple fatalities and injuries from fire is comparatively high...In sudden emergencies, the congestion caused by large numbers of people rushing to exits can cause panic conditions. For these and many other reasons, there is a relatively high degree of hazard to life safety in assembly facilities...If a room or space is used for assembly purposes (i.e., gathering of persons for purposes such as civic, social or religious functions; recreation, food or drink consumption...and the occupant load is 50 or more, Group A is likely to be the appropriate designation.

The marketing plan for the Hard Six Cellars development clearly defines Assembly use with greater than 50 guests. Other occupants would include catering and winery guest services and winery operations employees. Building and Fire codes provide enhanced protections for these occupancies, especially with respect to occupant egress and emergency responder access.

Item 2 – Fire Hazard Assessment

Assessments of landscape-scale fire hazard and historical fire perimeters are considered as follows:

1. Fire Hazard Severity Zone (FHSZ) map. In California, for the purposes of promulgating building regulations, land is categorized into one of three Fire Hazard Severity Zones: moderate, high, or very high. Figure 1 (upper left) shows that the project and road fall within the Very High Hazard Severity Zone of the State Responsibility Area.
2. FRAP Fire Threat Map. CAL FIRE’s Fire Resource Assessment Program (FRAP) also published a Fire Threat Map that is a rating of wildland fire threat based on the combination of potential fire behavior and expected fire frequency. Fire threat is categorized as either moderate, high, very high, or extreme. As shown in, Figure 1, upper right, the project location and most adjacent areas are classified as “high” with localized pockets of “very high”.
3. CPUC Fire Risk Map. In January of 2019, the California Public Utilities Commission (CPUC) adopted a fire risk map that quantifies the potential impact to people and improved property. This three-tiered map classifies areas as Tier 1 (moderate), Tier 2 (elevated), or Tier 3 (extreme). Figure 1, lower left, shows the project and access road fall in the “extreme” area.
4. Historical Fire Perimeters. Figure 1, lower right, shows historic fire perimeters from 1858 to 2018 in the region surrounding the proposed development. The 2017 Tubbs fire burned to within approximately 3 miles of the property and access road. Quoting from the Diamond Mountain neighborhood Community FireWise Evaluation, “northern Napa County has experienced devastating wildfires. Most recently, the 77,758-acre 2019 Kincade Fire burned nearby, up to Petrified Forest Road. The 2017 Tubbs fire was the nearest fire that approached the area encompassed by the Diamond Mountain Firesafe Council and caused the area to be evacuated.

The Valley Fire burned over 60,000 acres and destroyed several hundred structures in Lake and Napa County and caused one fatality. The Butts Canyon Fire in 2014 burned 4300 acres on the northern county border.

While there are no recently recorded fire perimeters in the Diamond Mountain community, this contributes to years of fuel accumulation in a county with significant fire history and numerous high fire hazard indices.

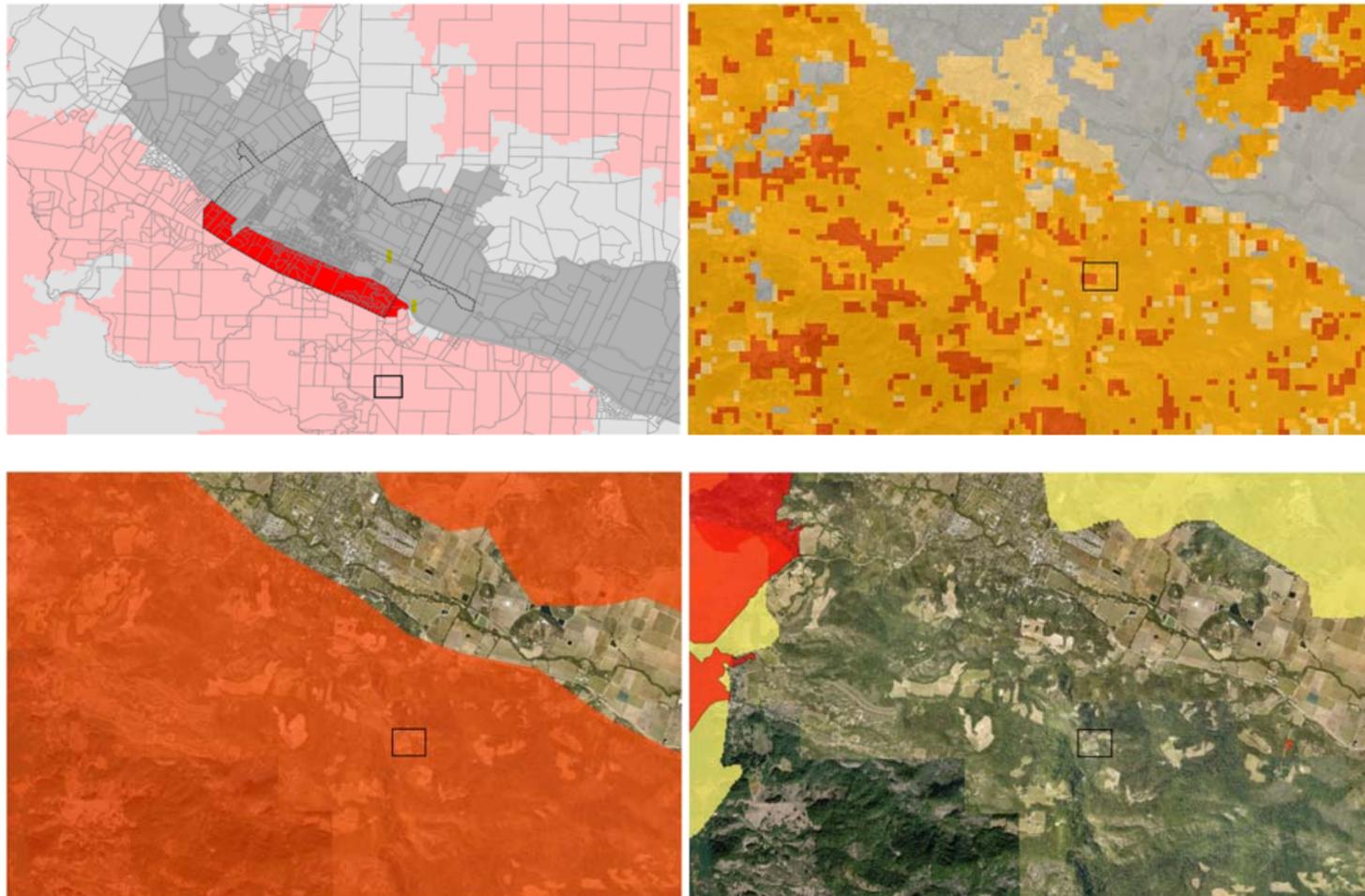


Figure 1. CDF’s Very High Fire Hazard Severity Zone in the LRA (red) and SRA (pink). CDF’s Fire and Resource Assessment Program (FRAP) Fire Threat Map showing areas of “Very High” (red) and “High” (orange) fire threat areas. California Public Utilities Commission 2019 High Fire Threat District Fire Threat Map showing areas of “Extreme” (red) fire threat. Fire Perimeters 1858 to 2018, red – Tubbs 2017, yellow – pre 1970.

Item 3 – Proposed Reductions in Prescriptive Access/Egress Requirements

In their January 8th, 2018 letter to Napa County Public Works, Delta Consulting and Engineering requested the following:

“...specific exceptions to the November 22, 2016, Napa County Road and Street Standards (RSS) for an existing driveway from Diamond Mountain Road (South Fork) to serve a proposed winery site on the subject parcel noted above. The parcel is currently accessed by a private driveway that ranges in width from 10-12 feet and serves a single-family residence and vineyards”.

Their requests are summarized in Table 1 below and broadly fall into three categories, allowances for a reduction in road widths, an increase in road grades, and adjustments to turning requirements.

Code Requirements – Vehicle Accessibility

The 2016 California Fire Code Section 503.2.1 requires that fire apparatus access roads have an unobstructed width of not less than 20 feet exclusive of shoulders.

Napa County Road and Street Standards Section 15 requires that all streets and roads, with the exception of agricultural special purpose roads and residential driveways, provide a minimum of two 10-foot traffic lanes and a minimum of one foot of shoulder on each side, providing two-way traffic flow. A common drive must provide a minimum of two 10-foot traffic lanes and provide a horizontal clearance of 22 feet. Turnouts must be minimum 22 feet wide and 30 feet long with a minimum 25-foot taper on each end.

California Board of Forestry and Fire Protection, SRA Fire Safe Regulations Section 1273.01 – requires that roads be constructed to provide a minimum of two ten (10) foot traffic lanes, not including shoulder and striping and turnouts shall be a minimum of twelve (12) feet wide and thirty (30) feet long with a minimum twenty-five (25) foot taper on each end.

California Building Code Section 104.11 allows for alternate means of complying with the intent of prescriptive requirements if the alternate:

“complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, not less than the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety”.

These alternate provisions are found in many codes and requests should be accompanied by proposed mitigation measures. These are typically accompanied by a rational engineering analysis, tests, or research reports that demonstrate how the mitigation provides equivalency.

In their analysis, Delta Consultants and Engineers provide this type of support for Exception Request #1 by using a model of truck performance at the mitigated turn. Requests 2 through 4 are not accompanied by an explanation for how the mitigating measures provide an equivalent level of access and egress for occupants and emergency responders respectively. Replacement of cars with shuttle buses for wine and food and marketing events is similarly unaccompanied by a rational analysis for the mitigation this offers. This analysis should address whether the wider buses present a greater impediment to uphill and downhill passing on narrow roads. Rational support opposing the mitigating effects of shuttle buses can be found in the Diamond Mountain Fire Safe Council report as follows:

Diamond Mountain Road is an extremely long (3.7 miles), steep road (an average of 8% grade) that is 1.5 – 2 lanes, with sharp curves, few turn-outs, and steep drop-offs. For example there are four hairpin turns that would preclude easy access by emergency response vehicles, and would definitely prohibit simultaneous emergency access and evacuation.

An accounting should be made for the elevated hazards and risks associated with occupants who are unfamiliar with the site, may have been drinking, may be egressing at night and in smoke, and may be doing so under stressful conditions. Fire conditions should also be a factor in the assessment, vis-à-vis numerous indices of wildland fire behavior that show elevated or extreme fire hazard, conditions which warrant no less than the minimum levels of protection afforded by prescriptive requirements.

Road widths are established to allow occupants and emergency responders to pass on narrow roads without backing up in emergency situations. Inbound fire apparatus and outbound shuttles or delivery trucks may be 8 ½ feet wide, requiring 17 feet of road width without clearance. Driving at night and in smoke during an emergency with steep slopes bordering narrow roads provides the basis for road widths greater than the prescribed minimums, not narrower. Mitigating measures may result in one direction of traffic backing on these same roads if lowered visibility causes occupants to miss signage or the presence of a responding emergency vehicle through smoke.

Table 1. Summary of Option 2 exceptions.

Location	Exception request	Mitigation
Exception Request 1 (0+05 to 0+60)	Nonstandard driveway apron requires 90° turning angle and 20-foot inside turning radius.	Widen inside pavement extents by 10 feet, maintain inside turning radius of 6 feet, reduce inside slope to 18%. Clear brush for visibility, add caution sign.
Exception Request 2 (0+60 to 4+50)	Width reduction from 22 feet to an overall width ranging from 12-20 feet. Blind corner (3+60 to 4+50).	Install County Standard turnout through blind turn. Clear brush for visibility. Notification signs – “Road narrows: uphill traffic has right of way”, “Turnout Ahead. Uphill Traffic has Right-of-Way”.
Exception Request 3 (4+40 to 7+00)	Roadway Grade of 19.5% without a preceding and ensuing 10% slope	Match existing road grade of 19.5% at station 4+40, hold that grade to station 4+86, install a 100-foot vertical curve with an ensuing road grade of 17.9%, and hold that grade to station 7+00, where it ties into an existing road grade of 17.9%.
Exception Request 4 (4+25 to 8+00)	Width reduction from 22 feet to an overall width ranging from 12-22 feet.	Widen driveway to maximum extent possible (14-22 feet). Install non-standard turnout through blind turn. Clear brush for visibility. Notification signs – “Road narrows: uphill traffic has right of way. Use Turnouts”.

Summary and concluding remarks

1. The proposed winery use would shift occupant type from a few workers who are familiar with the site, operating largely during daylight hours, and possibly trained in emergency procedures, to large groups of 75 or more, recreational visitors. These visitors would likely not be familiar with the site, egress routes, or emergency procedures. Groups indoors, in social situations, possibly consuming alcohol, may delay egress for significant periods after becoming aware of an emergency, and might be making their escape after dark. The Building and Fire codes anticipate these higher risk elements associated with assemblies and provide extra levels of protection for occupants.
2. The risk of fire at a working winery is likely higher than typical Assembly occupancies. That risk is magnified considerably by this winery’s location in a recognized and historically “high” to “extreme” fire threat area.
3. Reduction in prescriptive requirements for access and egress have not seen quantitative description of the basis for prescriptive requirements or substantial rational support for numerous and significant reductions in these requirements. This is especially important in the context of high fire hazard and when referencing local amendments that may be anticipating rural and agricultural uses more common in unincorporated areas. As a result, there has not been a demonstration that these changes provide the same overall practical effect as State and Local Standards aimed at protecting life, safety and public welfare.

Sincerely,



David B. Rich, PhD