



Agenda Date: 12/19/2006  
Agenda Placement: 8D  
Set Time: 10:30 AM PUBLIC HEARING  
Estimated Report Time: 30 Minutes

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Hillary Gitelman - Director  
Conservation, Development & Planning  
**REPORT BY:** Hillary Gitelman, Director, 253-4805  
**SUBJECT:** Earth Defense for the Environment Now (EDEN) Appeal

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### **RECOMMENDATION**

Consideration and possible action regarding an appeal filed by Earth Defense for the Environment Now (EDEN) of decisions by the Director of Conservation, Development and Planning (Planning Director) to adopt a mitigated negative declaration and to approve Erosion Control Plan No. 02253-ECPA for earthmoving activities related to establishment of a vineyard by Napa Canyon LLC on a site northeast of the intersection of American Canyon Road and Flosden Road (Assessor's Parcel No. 050-040-065).

**ENVIRONMENTAL DETERMINATION:** A Mitigated Negative Declaration (MND) has been prepared and adopted pursuant to CEQA, the State CEQA Guidelines, and the County's local procedures. According to the MND, the proposed project would have, if mitigation measures are not included, potentially significant environmental impacts in the following areas: air quality, biological resources, cultural resources, hazards & hazardous materials, and hydrology & water quality. The adequacy of the mitigated negative declaration is the subject of the appeal. If the Board upholds the appeal, the project may be remanded back to the Department of Conservation, Development and Planning for further environmental review which may include preparation of an Environmental Impact Report (EIR). If the Board denies the appeal, it will need to re-adopt the mitigated negative declaration and associated mitigation monitoring program prior to re-approving the project. The project site is not on any of the lists of hazardous waste sites enumerated under Government code section 65962.5.

**(STAFF REQUESTS CONTINUANCE TO FEBRUARY 27, 2007 AT 10:00 AM)**

### **EXECUTIVE SUMMARY**

On September 22, 2006, 2006, the Planning Director adopted a mitigated negative declaration and approved an Erosion Control Plan No. 02253 - ECPA for earthmoving activities associated with establishment of a vineyard on a 317 acre site located northeast of the intersection of American Canyon Road and Flosden Road, east of the City of American Canyon. The proposed project would involve earthmoving and grading for agricultural purposes and installation of erosion control measures, leading to establishment and operation of a vineyard on a portion of the site. If installed, the approximately 139-acre vineyard would provide an alternative to the prior approved use of the site as a golf course (County Use Permit No. U-24889), would provide for a 170-acre habitat preserve for the California Red Legged Frog, and would meet other conditions specified in the approved erosion control plan.

Pursuant to Napa County Code Chapter 2.88 and Chapter 10 of Napa County's Local Procedures for Implementing the California Environmental Quality Act (CEQA), adoption of a mitigated negative declaration and approval of an erosion control plan may be appealed to the Board of Supervisors, and on October 11, 2006, a timely appeal was received from attorney Thomas Lippe on behalf of EDEN. The appellant asserts that the Planning Director acted improperly in adopting the mitigated negative declaration and approving the erosion control plan, and that an environmental impact report (EIR) should be prepared. The appellant presents a variety of arguments in support of its position which require detailed and substantive responses. As a result, the Planning Director requests that the Board open the public hearing and then continue the hearing for a period of approximately 90 days. As of the date of this Board letter, it appears that February 27, 2007 at 10:00 am would be acceptable to all parties. This additional time will permit County staff to prepare detailed responses to the appeal materials and will allow the project applicant to consider changes to the project that could address the appellant's concerns.

### **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

### **ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: A Mitigated Negative Declaration (MND) has been prepared and adopted pursuant to CEQA, the State CEQA Guidelines, and the County's local procedures. According to the MND, the proposed project would have, if mitigation measures are not included, potentially significant environmental impacts in the following areas: air quality, biological resources, cultural resources, hazards & hazardous materials, and hydrology & water quality. The adequacy of the mitigated negative declaration is the subject of the appeal. If the Board upholds the appeal, the project may be remanded back to the Department of Conservation, Development and Planning for further environmental review which may include preparation of an Environmental Impact Report (EIR). If the Board denies the appeal, it will need to re-adopt the mitigated negative declaration and associated mitigation monitoring program prior to re-approving the project. The project site is not on any of the lists of hazardous waste sites enumerated under Government code section 65962.5.

### **BACKGROUND AND DISCUSSION**

The item before the Board is an appeal of actions by the Planning Director regarding an erosion control plan and CEQA review for earthmoving activities associated with vineyard development proposed by Napa Canyon LLC.

On September 22, 2006, the Director of Conservation, Development and Planning (Planning Director) adopted a mitigated negative declaration and approved an Erosion Control Plan for earthmoving activities associated with establishment of a vineyard on a 317 acre site located northeast of the intersection of American Canyon Road and Flodden Road, east of the City of American Canyon. The proposed project would involve earthmoving and grading for agricultural purposes and installation of erosion control measures, leading to establishment and operation of a vineyard on a portion of the site. If installed, the approximately 139-acre vineyard would provide an alternative to the prior approved use of the site as a golf course (County Use Permit no. U-24889), would provide for a 170-acre habitat preserve for the California Red Legged Frog, and would meet other conditions specified in the approved erosion control plan.

Pursuant to Napa County Code Chapter 2.88 and Chapter 10 of Napa County's Local Procedures for Implementing

the California Environmental Quality Act (CEQA), adoption of a mitigated negative declaration and approval of an erosion control plan may be appealed to the Board of Supervisors, and on October 11, 2006, a timely appeal was received from EDEN.

Napa County Code Section 2.88.080 (Scheduling & Notice of the Hearing) requires that appeals be scheduled for hearing within 90 days after submittal, and Section 2.88.090 (Hearing -- Conduct and Procedures -- Decision) provides for a *de novo* hearing, meaning that the Board will hear the matter fresh, for the first time because there was no hearing on the matter. In light of these requirements and the array of substantive issues raised in the appeal, the Planning Director requests that the Board open and continue the public hearing for a period of 90 days. This additional time will permit County staff to prepare detailed responses to the appeal materials and will allow the project applicant to consider changes to the project that could address the appellant's concerns.

Copies of the mitigated negative declaration (consisting of multiple documents), mitigation monitoring program, erosion control plan, and appeal materials are attached. Because of their size, the exhibits and the attachments to the appeal are on file with the clerk of the board.

### **SUPPORTING DOCUMENTS**

- A . Appeal Application
- B . Erosion Control Plan and Narrative
- C . Erosion Control Maps
- D . Draft Initial Study and Mitigated Neg Dec
- E . Response to Comments on Initial Study

CEO Recommendation: Approve

Reviewed By: Andrew Carey