



Agenda Date: 2/27/2007
Agenda Placement: 8B
Set Time: 10:00 AM PUBLIC HEARING
Estimated Report Time: 5 Minutes

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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

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.

(CONTINUED FROM DECEMBER 19, 2006; APPELLANT REQUESTS WITHDRAWAL OF THE APPEAL)

EXECUTIVE SUMMARY

On September 22, 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 asserted 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 have been prepared. The appellant presented a variety of arguments in support of its position which require detailed and substantive responses. As a result, the Planning Director requested that the Board open the public hearing and then continue the hearing to February 27, 2007 at 10:00 am in order to permit County staff to prepare detailed responses to the appeal materials and to allow the project applicant to consider changes to the project that could address the appellant's concerns.

Prior to the continued hearing on February 27, 2007, on January 23, 2007, the Applicant, Mark Power, notified the County in writing that he has sold the property that is the subject of the ECP and requested that the County rescind its approval of the ECP. In accordance with the Applicant's request, on January 25, 2007, the County notified Mr. Power in writing that approval of ECP 02253-ECPA was rescinded and all prior approvals invalidated. Based on the County's rescission, Appellant acknowledged in writing that the appeal is now moot and requests withdrawal of the appeal.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

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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.

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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.

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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 requested that the Board open and continue the public hearing for a period of 90 days. This additional time was intended to permit County staff to prepare detailed responses to the appeal materials and to allow the project applicant to consider changes to the project that could address the appellant's concerns.

Prior to the continued appeal hearing, at the Applicant's request, the County rescinded its approval of ECP 02253-ECPA. Therefore, the basis for the appeal is now moot and Appellant requested withdrawal of the appeal on February 2, 2007. Staff recommends that the Board accept Appellant's request for withdrawal of the appeal.

SUPPORTING DOCUMENTS

None

CEO Recommendation: Approve

Reviewed By: Andrew Carey