



Agenda Date: 3/1/2005
Agenda Placement: 8G
Set Time: 2:30 PM PUBLIC HEARING
Estimated Report Time: 30 Minutes
Continued From: Continued from Jan. 25, 2005

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Kim Henderson for Robert Peterson - Director
Public Works
REPORT BY: Nate Galambos, Principal Engineer Public Works , 259-8371
SUBJECT: Appeal filed by Tom Futo

RECOMMENDATION

Consideration and possible action on an appeal filed by Mr. Tom Futo to a partial denial by the Director of Public Works of a road improvement exception requested by the appellant in connection with the application for Use Permit # 04029-UP for property located at 1575 Oakville Grade (Assessor's Parcel No. 027-360-018).

ENVIRONMENTAL DETERMINATION: The appeal of the Director's determination on the road exemption is not a "project" as defined in CEQA Section 15378. Section 15378(c) sets forth that the term "project" refers to an activity which is being approved, and does not mean each separate governmental approval. In this case, the Board's determination on the road exception merely establishes how existing regulations are being interpreted, and will not result, either directly or indirectly, in a physical change in the environment. This code interpretation is necessary to establish the scope of the "project" that will then be subject to CEQA evaluation.

(CONTINUED FROM JANUARY 11 AND JANUARY 25, 2005)

EXECUTIVE SUMMARY

Pursuant to Section 3 of the Napa County Road & Streets Standards revised August 31, 2004, by Resolution 04-150, decisions regarding exceptions to road and street standards by the Director of Public Works may be appealed to the Board of Supervisors in accordance with Section 2.88 "Appeals," of Napa County Code. This hearing has been scheduled as a result of the appeal filed by Mr. Futo of the Director's partial denial of his exception request. This item was continued from January 11 and January 25, 2005.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

The appeal of the Director's determination on the road exemption is not a "project" as defined in CEQA Section 15378. Section 15378(c) sets forth that the term "project" refers to an activity which is being approved, and does not mean each separate governmental approval. In this case, the Board's determination on the road exception merely establishes how existing regulations are being interpreted, and cannot result by itself, either directly or indirectly, in a physical change in the environment. This code interpretation will only establish the scope of the "project" that will then be subject to CEQA evaluation during the use permit process.

BACKGROUND AND DISCUSSION

This item was continued from January 11 and January 25, to March 1, 2005 at 2:30 p.m. at the request of the applicant and recommendation of the Public Works Department in an attempt to reach resolution to the issue. To date, discussions have not provided a mutual agreement. Following is the background on the issue.

On January 14, 2004, Oakford Vineyards submitted a Use Permit application to the Conservation Development and Planning Department (CDPD) for a 3,600 gallons/year winery in a 10,775 square foot area including 2,350 square feet of caves. The application proposed two full-time and two part-time employees, an average of 10 visitors per week and an average of 7 deliveries per week. The application also proposed a number of marketing events with a minimum of 25 people attending and a maximum of 40 people.

The application was routed to Public Works for comment. On February 9, 2004 Public Works responded to CDPD conditioning the project to conform to the Napa County Road and Street Standards (see attached). To comply with such Standards, Condition No. 2 required an 18-foot wide access drive with a two-foot shoulder for a total access width of 20-feet and the roadway was required to provide a minimum structural section of 5 inches Class II Aggregate Base plus a double chip seal coat or equivalent from Oakville Grade Road to the project site (Napa County Road and Street Standards, page 9 paragraph 12).

A revised application was routed to Public Works in June 2004 that proposed increasing the production to 5,000 gallons/year, the addition of one custom crush entity, and an increase in building floor area. Public Works responded that the original conditions dated February 9, 2004 were still applicable. On June 17, 2004, Public Works received a request from the applicant's representative, Ms. Donna Oldford, for an exception to the standards requiring an 18-foot wide road with a 2-foot of shoulder (see attached). The request stated that the access road, at its present width of an average of 13 feet, provided the same overall practical effect as the Road Standards and protected significant natural elements such as streams and mature trees. The request proposed no improvements to the access drive.

Over the course of three months, Public Works staff, in partnership with the County Fire Marshall and CDPD, had many conversations with the applicant and applicant's representatives, including numerous visits to the site. During visits to the site, Public Works staff evaluated the existing conditions on the road which serves eight parcels, including Harlan Winery and a service access for Far Niente Winery. Staff considered the environmental impacts of the required improvements and worked diligently with the applicant's engineers in an attempt to formulate a fair and reasonable response. For example, staff evaluated the original plan submitted by the applicant to determine the limits of grading for an 18-foot wide road with a two-foot shoulder. Additionally, efforts of staff included counting trees that would potentially be removed and considered property boundaries that may overlap the improvements.

After several plan revisions, the applicant's engineers submitted a revised exception request on August 3, 2004 (see attached). The new request proposed installation of 3 turnouts and the widening of the existing road

in 6 sections. Public Works consulted with the County Fire Marshall and CDPD regarding the proposed improvements, overall safety of the road, and the environmental impacts.

On August 13, 2004, Public Works responded to the revised exception request (see attached). Public Works granted an exception to the standards on approximately 40% of the access road, requiring little or no improvements in these sections. Given the existing environmental constraints associated with the existing access road, Public Works believed that the sections of road that were granted an exception provided the same overall practical effect as the standards with proposed turnouts. As for the remaining portions of the road, Public Works either felt that the same overall practical effect could not be achieved with the requested exception, there were no environmental constraints justifying an exception, or the need for protection of the public health, safety and welfare at the level provided by the Road Standards far outweighed the alleged environmental constraints.

The conditions of the exception actually require fewer improvements than the August 3, 2004 request from the applicants. Public Works, did however, require that the first 400 feet of the access drive be improved to County Road Standards. The distance between this section and the first turnout is over 700 feet. The County's Road & Street Standards require that when an access drive is less than 18 feet wide with 2 feet of shoulders, inter-visible turnouts must be installed every 400 feet. In addition, the first 400 feet of the access drive is the most significant part of the road due to the fact that it has the highest traffic volume. The road as-is provides no room for two vehicles to pass each other and the nearest turnout, which is not visible from this section, is 700 feet away.

The applicants, while satisfied with a majority of the exception decision, responded in a letter on September 14, 2004 (see attached) requesting that the first 400 feet and a 200-foot section toward the end of the common access road be re-evaluated. The request stated that the required improvements would involve the removal of 38 trees and grading on slopes of 50% in some areas. In conjunction with the revised road improvement request, the applicants also revised the use permit application to reduce private tours and tasting from 40 persons per week to 24, reduced food and wine events to two per year with a maximum of 20 people, and auction related events to two per year with 28 persons and shuttle buses to be used.

On September 15, 2004 Public Works staff met with the applicants' representatives to discuss the sections in question. Public Works recommended that the applicants resubmit plans of the proposed improvements, in detail, demonstrating the limits of grading and the amount of trees that would need to be removed as well as expand the maximum attainable width. Public Works received the plans on September 22, 2004.

After revisiting the site, Public Works responded to the new request on September 30, 2004 (see attached). Public Works noted that any improvements less than what was required in the August 13, 2004 Exception letter would not provide the same overall practical effect as the Road Standards. The driveway serves more than a few commercial, residential, and agricultural uses, which dictates that the roadway must meet the minimum County standards or provide the same overall practical effect. Public Works has indicated that the applicant can achieve the road width required by the Road Standards on this portion of the access roadway without incurring environmental damage through tree removal by instead installing a post and lagging retaining wall, potentially ranging from 1.5 feet to 4 feet in height.

Since the Road Standards can be met on the portion of roadway which is the subject of this appeal through a feasible engineering solution having minimal or no environmental impacts, Public Works believes that to preserve the health, safety, and welfare of the public, only the roadway exception previously granted to the applicant for the other portions of the roadway should be applied to the project which is the subject of the pending use permit application and the denial of an exception for the remaining portions should be upheld.

SUPPORTING DOCUMENTS

- A . Attachment A
- B . Attachment B
- C . Attachment C
- D . Attachment D
- E . Attachment E
- F . Attachment F

CEO Recommendation: Policy Issue

Reviewed By: Michael Stoltz