



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 3/12/2019

Agenda Placement: 10A

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors

FROM: Steven Lederer - Director of Public Works
Public Works

REPORT BY: Steven Lederer, Director, Public Works - 259-8228

SUBJECT: Approval of a form Easement Agreement with private property owners in support of the Napa Valley Vine Trail segments from Calistoga to Yountville.

RECOMMENDATION

Director of Public Works requests approval of a form easement agreement with private property owners in support of the Napa Valley Vine Trail segments from Calistoga to Yountville, which includes a provision for the County to pay \$75,000 per year, with annual adjustments based upon consumer price index (CPI), for thirty years to the Vine Trail Coalition (Coalition) for the Coalition to purchase additional insurance coverage on behalf of the Coalition, County, and all easement grantors.

EXECUTIVE SUMMARY

Strategic Action 2(B) of the Napa County Strategic Plan 2019-2022 directs staff to "Advance recreational amenities for local residents, including completion of trails, such as the Vine Trail, recreational development of Lake Berryessa, and the acquisition of Skyline Park."

Consistent with this direction, staff has negotiated the form of a Trail Easement Agreement with the nonprofit Napa Valley Vine Trail Coalition to facilitate the Vine Trail between Calistoga and the Town of Yountville. Under the form agreement with individual landowners, the County would agree to defend and indemnify landowners for all conditions of the easement area but not for the landowners' own negligence or willful or malicious conduct. Landowners could engage in all lawful agricultural operations, and protect trail users through temporary trail closures and new fencing that would be paid for either by the project or the County as part of project design. The County would also pay \$75,000 per year (adjusted annually by the consumer price index (CPI)) for thirty years to the Vine Trail Coalition to procure general and pollution liability coverage for activities including the normal operation of farm equipment and pesticide applications. The insurance would name the Vine Trail Coalition, County, and all easement grantors between Calistoga and Yountville as named insureds.

PROCEDURAL REQUIREMENTS

1. Staff report.
2. Public Comments.
3. Motion, second, discussion and vote on the item.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	Funding would be appropriated each year from the General Fund. The Board is already required to appropriate 6.67% of "Measure T equivalent" funding in order to obtain Measure T sales tax funding for roads. This expense does not qualify as part of the 6.67% funding, so would be in addition to that amount. All costs associated with obtaining the easements are the responsibility of the Coalition.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Consistent with Strategic Action 2(B) of the Napa County Strategic Plan, approval of the form agreement will support the Vine Trail and better protect the safety of future trail users.
Is the general fund affected?	Yes
Future fiscal impact:	\$75,000, increasing annually based on the consumer price index (CPI) for 30 years. At the end of 30 years, the future Board may continue this arrangement to maintain the use of the easements. The County would also be obligated to operate and maintain a future trail, and post and maintain warning signs, at additional cost.
Consequences if not approved:	Private property owners between Calistoga and Yountville may not grant easements for the Vine Trail. This could result in loss of a current \$6.1M state grant and delay completion of the trail.
Additional Information:	

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable. The proposed action merely approves a form agreement over property for a potential future trail, which will only be constructed if funding is available, full CEQA review is conducted, and the trail is approved by all required public agencies. The County has not committed to approving the Vine Trail or any potential Vine Trail alignment, or any other specific project that may result in a potentially significant physical impact on the environment. A detailed CEQA review will be conducted prior to approval of any Vine Trail segment, as has been done for all other Vine Trail segments. See the 121-page CEQA document for the Oak Knoll segment and other environmental review documents at <http://www.nvta.ca.gov/vinetrail>.

BACKGROUND AND DISCUSSION

The Napa Valley Vine Trail (Vine Trail) is a proposed 47-mile multi-use paved trail that is proposed to extend from the City of Calistoga to the Vallejo Ferry Terminal. The concept of a multi-use trail connecting all the communities of Napa Valley was initially evaluated by the then-named Napa County Transportation & Planning Agency (NCTPA) in the 2008 Napa Greenway Feasibility Study. The Study identified multiple benefits of a Countywide Class I trail including:

- | Reduced traffic congestion. A complete trail would provide an alternative transportation route in Napa Valley, reducing motor vehicle trips from both residents and tourists on Highway 29, Silverado Trail, and local roadways.
- | Environmental benefits. Replacing motor vehicle trips with bicycle trips would reduce emissions of greenhouse gases and other air pollutants.
- | Public health. Active transportation modes can increase physical activity, improving health and reducing public health care costs.
- | Connectivity. A complete Vine Trail would parallel and interconnect with existing bus, ferry and train networks and increase their ridership.

Several segments of the Vine Trail have been completed, including the “Oak Knoll Segment” connecting the Town of Yountville and the City of Napa. The final alignment of that segment was approved after substantial CEQA review, including a 121-page negative declaration that evaluated and mitigated all potential environmental impacts. The Oak Knoll and other existing sections in the unincorporated County were built primarily on land already controlled by a public agency and did not require easements from any private property owners.

The next segment of the Vine Trail, from Calistoga to St. Helena, is currently in design and supported by a \$6.1 million state grant secured by the Napa Valley Transportation Authority (NVTA) and the Napa Valley Vine Trail Coalition, a nonprofit group created in 2008 to design, fund and implement the conclusions of the Greenway Feasibility Study. This segment (as well as the segment that could be constructed at some future time between St. Helena and Yountville), may cross privately-owned vineyard properties, depending on the alignment.

The Vine Trail Coalition has been attempting for several years to obtain easements that may be necessary for the Calistoga and St. Helena segments. The Vine Trail Coalition initially believed that “Land owners are protected from liability in California by Civil Code 846” (Source “Napa Valley Vine Trail Case Statement” prepared by the Napa Valley Vine Trail Coalition (VTC) and presented to the Board of Supervisors on 5/11/2010). In 2010, however, the California Supreme Court held that the immunities provided by Civil Code section 846 do not extend to injuries caused by a landowner’s own negligence, nor release landowners or their employees from their basic duty to use due care while engaged in potentially hazardous activities. (Klein v. United States (2010), 50 Cal.4th 68, 72, 81.) The Vine Trail Coalition responded by requesting that the County agree to defend and indemnify landowners when they actively or intentionally injure trail users.

Strategic Action 2(B) of the Napa County Strategic Plan 2019-2022 directs staff to “Advance recreational amenities for local residents, including completion of trails, such as the Vine Trail, recreational development of Lake Berryessa, and the acquisition of Skyline Park.” As a result, staff from Public Works, Risk Management, and County Counsel have spent considerable time and energy working with Board member liaisons and the Vine Trail Coalition to resolve this issue. Staff and Board member liaisons engaged in multiple negotiation sessions with the Vine Trail Coalition, conducted a site visit to potential Vine Trail alignments, and exhaustively investigated indemnification and insurance options that might induce the Vine Trail Coalition and property owners to support the granting of trail easements.

Staff's only limitation in these discussions is that the County cannot and will not pay damages or unlimited legal costs when property owners intentionally or negligently injure trail users. Doing so would remove a powerful incentive for people to act safely and take responsibility for their own actions, likely resulting in more accidents and injuries to trail users. No other public entity has agreed to anything similar for a trail with this level of public use and adjacent agricultural activity, and such an agreement could violate Civil Code section 1668, which provides that contracts are invalid to the extent they purport to exempt anyone from their own willful or negligent violations of the law.

After considerable discussion, staff and the Vine Trail Coalition have reached agreement on the form of a Trail Easement Agreement with the following key provisions:

- I Indemnification. The County would agree to defend and indemnify property owners from all costs, damages, or attorneys' fees arising out of the design, maintenance, or condition of the easement area. The landowners would have no responsibility for the operation, maintenance, or repair of the easement area, warning of hazardous conditions, or protecting the public from risks relating to a condition of the easement area. The State of California has adopted statutory immunities that are intended to protect the County from claims arising from these activities. The County's indemnification would not extend to losses resulting from active negligence or willful or malicious conduct, or where the injured parties were invited or given special permission to enter the easement area.
- I Temporary trail closures. Landowners may temporarily block public access to the easement area in accordance with prudent agricultural practices or if they are engaged in abnormally dangerous conditions.
- I Agricultural operations and fencing. Landowners may engage in all lawful agricultural operations and may request fencing during the Vine Trail's design phase to separate agricultural operations from trail users.
- I Insurance for agricultural activities. The County would pay \$75,000 per year (adjusted annually by the consumer price index (CPI)) to the Vine Trail Coalition to procure general and pollution liability coverage for activities including the normal operation of farm equipment and pesticide applications. The insurance would name the Vine Trail Coalition, County, and all easement grantors between Calistoga and Yountville as named insureds. The County would make the first payment upon acceptance of all easements necessary for the construction of a contiguous trail from Calistoga to St. Helena, and would make annual payments every year thereafter for 30 years. Following the 30th anniversary of the Vine Trail's opening between Calistoga and Yountville, the County could continue making the payments, cease the payments, or negotiate a different agreement with the future landowners.
- I Temporary construction easements. The form agreement includes a provision and exhibit requested by the NVTCA regarding the granting of temporary construction easements from property owners to the NVTCA.

Staff and the Vine Trail Coalition believe these provisions represent a proper compromise to protect future trail users and incentivize all parties to act safely and responsibly. The provisions regarding indemnification and temporary trail closures mirror language in an easement accepted by the City of St. Helena for a portion of the Vine Trail on land currently operated by Beringer Vineyards. That easement has safely operated for 26 years without significant injury or incident. The fencing and insurance provisions offer additional protection to landowners concerned about potential future injuries resulting from honest mistakes and normal agricultural activities, and the additional insurance funded by the County, under a future separate agreement with the Vine Trail Coalition, would supplement existing insurance carried by property owners, vineyard contractors, and spraying companies.

The form agreement has been approved by both the Vine Trail Coalition Board of Directors and the Napa County Farm Bureau.

Next Steps

If the form agreement is approved by the Board, the Vine Trail Coalition would contact landowners between Calistoga and Yountville and seek to obtain easements for one or more potential trail alignments. The Board will have final approval over any potential or recommended alignment, and the Vine Trail Coalition should seek this approval at the earliest practical step in the design process. The NVTa will assist in identifying the best possible alignment options for the relevant trail segments, undertake significant environmental review under CEQA, and make a recommendation to the Board as to whether to approve relevant segments.

A copy of the form agreement is attached for Board review.

SUPPORTING DOCUMENTS

A . Form Vine Trail Easement Agreement

CEO Recommendation: Approve

Reviewed By: Leigh Sharp