



Agenda Date: 4/17/2007
Agenda Placement: 8C
Set Time: 10:30 AM
Estimated Report Time: 30 Minutes

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Hillary Gitelman - Director
Conservation, Development & Planning
REPORT BY: John Woodbury, Principal Planner , 259-5933
SUBJECT: Consideration of recommendation from the Napa County Regional Park and Open Space District to exercise the Oat Hill Mine Road easement for use as a public trail and authorization of a management agreement with the District

RECOMMENDATION

Director of Conservation, Development and Planning recommends, and the Napa County Regional Park District Board requests, the following actions:

1. Adoption of a resolution exercising easement rights to the Oat Hill Mine Road per Resolution No. 78-124;
2. Authorization to utilize up to \$50,000 of Proposition 12 park bond funds available to Napa County; and
3. Approval of and authorization for the Chair to sign Addendum No. 1 to Exhibit "A" of Grant Agreement No. 6782 between the County of Napa and the Napa County Regional Park and Open Space District, adopting a management agreement through which the District may repair, restore and operate the Oat Hill Mine Road and the westernmost 0.27 miles of Aetna Springs Road as a non-motorized recreational trail.

EXECUTIVE SUMMARY

The County Board of Supervisors on May 23, 2006 authorized County staff to investigate the feasibility and process for the County to exercise its easement over the Oat Hill Mine Road for the purpose of allowing non-motorized public recreational use. The investigation indicates it is physically, financially and legally practical for the County to exercise its easement over the Oat Hill Mine Road between Calistoga and the junction of Aetna Springs Road, for public non-motorized recreational use, and to enter into an agreement with the Napa County Regional Park and Open Space District to repair, restore and manage this public right-of-way, together with the westernmost 1/2 mile of Aetna Springs Road. The District Board of Directors will on April 9th be considering (a) recommending that the Board of Supervisors take these actions, and further (b) authorizing a management agreement between the District and the County which will allow the District to undertake repairs, restoration, installation of signage and management of trail use.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	Funding for repairs, erosion control, and installation of signage, fencing and other materials will come from Proposition 12 bond funds available to the County. The funds are available due to savings on other projects previously authorized for Proposition 12 by the Board of Supervisors. The Napa County Regional Park and Open Space District will be responsible for implementing the project, and for on-going management of the facility. The District's costs are included in its budget for FY 2006-07 and its proposed budget for FY 2007-08.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The recommended actions will recognize the reality of existing widespread public use of the trail. It will enable the Park District to organize volunteers and hire contractors to reduce soil erosion and improve water quality, and increase public safety by providing good directional signage, maps and other trail use information. Finally, it will reduce the liability exposure of those property owners who are affected by the public's use of the trail.
Is the general fund affected?	No
Future fiscal impact:	Under the terms of Proposition 12, use of Proposition 12 bond funds to repair and improve the trail will require a commitment to making the trail available for public use for a minimum of 10 years. Under the proposed management agreement with the District, the District would assume this responsibility within its budget. The District's current projected operating budget of approximately \$350,000 per year should be sufficient to meet this obligation. However, should the District's budget be unable to meet this obligation, responsibility for the trail would revert to the County.
Consequences if not approved:	The Park District will not be able to repair and improve the trail, and as a result the trail will continue to erode and pollute downstream areas. The public's right to use the trail will continue to be legally clouded. Finally, liability protections provided to public agencies operating recreational trails will not be applicable, and owners of property over which the trail crosses will continue to have liability exposure.
Additional Information:	

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is exempt from CEQA pursuant to 14 California Code of Regulations 15378 (State CEQA Guidelines) Sections 15061(b)(3), 15300.2(f), 15301, 15323 and 15331. Additional information regarding this determination is provided in the Background section of this memorandum.

BACKGROUND AND DISCUSSION

Oat Hill Mine Road was abandoned by the County as a public road in 1978 after repeated accidents involving off-road vehicles. Resolution 78-124, which abandoned the road, reserved and excepted from abandonment utility and future public road easements.

Despite its closure as a public road, the road's popularity as a hiking and mountain biking trail has grown dramatically. A log book placed near the trailhead several years ago by a community group indicated more than 5,000 people a year were using the Oat Hill Mine Road for non-motorized recreation. Nonetheless, because the County has not exercised its retained easement rights, the public's right to use the trail is legally clouded, the trail is deteriorating and adding sediment to nearby streams, and information that would help ensure safe public use is lacking.

The County Board of Supervisors on May 23, 2006 authorized County staff to investigate the feasibility and process for the County to exercise its easement rights for the Oat Hill Mine Road for public use as a non-motorized recreational trail. The results of this investigation are summarized below. While staff has evaluated the entire length of the Oat Hill Mine Road, extending from Calistoga to the Lake County Line, this discussion and the recommendation for non-motorized recreational use only addresses the Oat Hill Mine Road between Calistoga and the junction with Aetna Springs Road, as well as the westernmost ½ mile of Aetna Springs Road which is currently closed to public vehicular use.

1. Status and location of the Oat Hill Mine Road and Aetna Springs Road

Based on a detailed review of County files and case law, staff is confident of the legal validity and location of the public right-of-way easements for both the Oat Hill Mine Road and the Aetna Springs Road, and the County's right to utilize these easements for non-motorized public recreational use. Public Works, County Counsel and Conservation, Development and Planning staff were all extensively involved in researching this issue.

Oat Hill Mine Road and Aetna Springs Road were established through four road petitions:

- | Petition 102, accepted by the County in 1872, which granted a 60 foot public right-of-way known as the Knoxville-Devilshead Road between Highway 29 in Calistoga and Pope Valley;
- | Petition 172, accepted by the County in 1882, which granted a 60 foot public right-of-way known as the Oat Hill Mine Road between Highway 29 in Calistoga and the Oat Hill Mine a few miles south of the Lake County Line;
- | Petition 201, accepted by the County in 1983, which granted a public right-of-way known as the Aetna Springs Extension between Pope Valley and the Oat Hill Mine; and
- | Petition 155, accepted by the County in 1882, which granted a 60 foot public right-of-way known as the Livermore Road between Highway 29 at Mountain Millhouse and the Oat Hill Mine.

Oat Hill Mine Road between Highway 29 in Calistoga and the Oat Hill Mine was abandoned by the County in 1978, with the reservation of rights to an easement along the route for future public road and utility purposes.

Aetna Springs Road, which connects to the Oat Hill Mine Road approximately eight miles north of Calistoga, has not been abandoned, and continues to be a legal public road up to the junction of Aetna Springs Road and the Oat Hill Mine Road. However, after closure of the Oat Hill Mine Road, the County did informally allow the placement of a private gate across Aetna Springs Road approximately 0.27 miles short of the junction with the Oat Hill Mine Road, because topography made that the best place to block access by off-road vehicles to the Oat Hill Mine Road. A parcel map (PM 4440) recorded in 1991 shows this gate, and does not show the road continuing west of the gate. This gate, together with the parcel map, has led a few of the more recent property owners in the area to believe that Aetna Springs Road stops at the gate. A thorough review of County files and actions, and the knowledge of County staff who were involved with both the placement of the gate and the review of the parcel map, indicates Aetna Springs Road is still legally a public road up to the junction with the Oat Hill Mine Road. The fact that the parcel

map in question did not show either the Aetna Springs or Oat Hill Mine Road easements does not mean these easements were extinguished; they simply were not shown because they were not relevant to the purpose of the map. Further, the entire length of Aetna Springs Road, from Pope Valley Road to the Oat Hill Mine Road, is included in the official list of County-maintained roads filed with the State.

Another issue related to these rights-of-way is determining their location. The owner of the property closest to Highway 29 over which the right-of-way crosses for the first approximately ½ mile leading up out of Calistoga has questioned whether the road accurately follows the right-of-way described by Petitions 102 and 172. Public Works staff has confirmed that the road does in fact not precisely follow the right-of-way described by the petitions. However, this is typical for roads based on surveys that date back to the pre-1900 era. The courts have ruled that in such cases the actual traveled route controls, rather than the original survey description, and the traveled route is in this location clearly and firmly established on the ground.

2. Repairs and improvements needed to permit public non-motorized recreational use

The Oat Hill Mine Road is in surprisingly good condition considering it has not been maintained for nearly 30 years. It can be brought up to acceptable non-motorized trail standards relatively inexpensively.

The worst section of the route is the first 500-700 feet as it rises up from the junction of Highway 29 and Silverado Trail. Here, the combination of improper drainage and the road cut for Highway 29 immediately below the Oat Hill Mine Road route has resulted in several areas of erosion. However, the Oat Hill Mine Road in this section has now mostly eroded down to bedrock and appears to have stabilized. While this has created a surface that is unsuitable for vehicles, major reconstruction is not needed for it to be used for non-motorized recreational use. Although there is no guarantee that there will not be future soil failure, absent such failure a major investment in rebuilding the road or constructing retaining walls does not appear warranted. Some surface regrading and related drainage work should be sufficient to make it suitable for hikers, mountain bicyclists and equestrians. An existing catchment basin and drain at the foot of the trail next to Highway 29 is sufficient to handle storm water runoff from the trail.

Improper grades along much of the trail's length have allowed water to collect and flow along the trail, resulting in numerous small and a few larger erosion gullies on the trail itself, as well as periodic down slope erosion gullies. These problems can be corrected through application of standard trail design techniques, including out sloping of the trail surface, water bars and the like. Trained volunteer crews are fully capable of doing this type of work, though it may make sense to utilize a contractor with mechanized equipment to repair the section closest to Highway 29. The most significant erosion problems should be corrected as soon as possible, but most are not urgent and could be done over a period of several years.

3. Access to the Oat Hill Mine Trail and staging areas

There is sufficient available land for a small gathering area at the base of the Oat Hill Mine Trail next to Highway 29, which could include an information kiosk and a few benches. These would be placed within the 60-foot width of the Oat Hill Mine Road easement. However, the only place to provide sufficient parking at this time is on the opposite side of Highway 29 from the trailhead. While this is not ideal, it is workable, and there is more than enough parking availability to accommodate current usage.

Approximately eight miles up the Oat Hill Mine Trail from Calistoga, Aetna Springs Road provides the connection between the Oat Hill Mine Trail and Pope Valley. While not heavily used at present, this is an important secondary access route for the Oat Hill Mine Trail. The last mile of Aetna Springs Road leading up to the existing gate is narrow and rough, there is limited room for parking at the gate, and there is not an adequate turnaround area for cars or emergency vehicles. With very minor grading conducted as part of the County's annual road maintenance work this could be increased to provide room for possibly 10 cars plus turnaround.

Nearly all current users of the Oat Hill Mine Trail park at the foot of the trail next to Calistoga, at the junction of Highway 29 and Silverado Trail. Some users travel up the trail, and then return the same way. Others set up a car shuttle, starting their trip on the Palisades Trail (owned and operated by California State Parks) where it takes off from Highway 29 at the summit near Mt. St. Helena, and ending their trip at the bottom of the trail next to Calistoga. A smaller number of users, mostly mountain bicyclists, start in Calistoga, travel north up the Oat Hill Mine Trail, then east down to Pope Valley using the Aetna Springs Road, and then returning to Calistoga via Angwin.

An evaluation of the location of the Highway 29 right-of-way, the 60 ft wide Oat Hill Mine Road easement, and private property lines, combined with the topography, indicates that there is not enough public land in the right configuration at the foot of the trail on the east side of Highway 29 to provide sufficient parking for users of the trail. This is why most current users of the Calistoga entrance to the trail park on the west side of the street. While this is not ideal, the intersection of Highway 29, Silverado Trail and Lake Street is currently controlled with a four-way stop, which permits people to safely cross the street.

On Aetna Springs Road, there is a gate approximately 0.27 miles before the end of the Road. As mentioned earlier, the gate was placed in this location because it is the most effective place for blocking motor vehicles from accessing the Oat Hill Mine Road, even though the Aetna Springs Road is legally a public road all the way to the end. While it might at some point make sense to remove the gate and construct a parking lot and staging area at the intersection of Aetna Springs Road and Oat Hill Mine Road, where there is more room, staff does not recommend taking this action at this time.

4. Liability Issues

Exercising the Oat Hill Mine Road easement and designating it for non-motorized recreational use should not increase, and may reduce, County liability, and would certainly reduce private landowner liability. This conclusion is based on discussion with both the County Risk Manager and County Counsel.

Government Code section 831.4 provides public entities with immunity from liability for injuries incurred by people using an unpaved public road or trail for a broad range of recreational activities, including but not limited to hiking, mountain bicycling, and horseback riding. However, this immunity does not apply if the public entity has failed to warn of known dangerous conditions.

In the current situation, the County may have difficulty asserting an immunity right if someone were injured, because the County is not providing clear information, maps or warnings. While the County has not exercised its easement, and thus is not directly liable, it is aware that the general public is using the trail and thinks the trail is a County route open to the public. Exercising the easement, and posting information about potentially hazardous activities and conditions, would clearly bring the County under the protection of Section 831.4, and thus reduce the County's potential exposure.

Private property owners do not enjoy any Government Code immunity related to recreational activities on their land. Because the County has not exercised its easement right, the trail route belongs to the underlying property owners. They could potentially be held liable if someone is injured, even though at least some of the affected property owners have at various times posted no trespassing signs. Thus, a decision by the County to exercise its easement right on the Oat Hill Mine Road, and to designate it as a non-motorized recreational trail, would reduce the liability risk to which property owners along the route are currently exposed.

5. Effects on Property Owners

The recommended actions do not diminish whatever rights other public or private property owners may have to access their property using the Oat Hill Mine Road, or change their rights to use their property.

Most of the eight-plus miles of the Oat Hill Mine Road under consideration cross public land (California State Lands Commission, California State Parks, and Bureau of Land Management). However, there are five owners of private property along the route, and three other property owners who may have the right to access their property using the Oat Hill Mine Road.

Staff has contacted all of the affected property owners, and met with most of them. A few of the affected property owners have informally expressed support for the recommended action. This includes State Parks, Bureau of Land Management, the Land Trust of Napa County, and two of the private property owners. One private property owner has expressed opposition. The position of the others is not known at this time.

Questions that have been raised by property owners include (a) potential liability, (b) problems such as littering, vandalism, wildfire risk, trespass and loss of privacy, and the need for emergency rescues, and (c) restrictions on their ability to access their property using motorized vehicles.

(a) **Liability.** As discussed above, staff believes that the proposed action will actually be beneficial to private property owners in terms of their liability exposure.

(b) **Potential user-caused problems.** Litter, vandalism, trespass and similar problems were very serious when the Oat Hill Mine Road was popular with off-road vehicle users. However, park agencies with extensive experience operating trails consistently indicate that non-motorized backcountry trails experience very few problems. When there are problems, they are nearly always at the trailheads, where people park. The existing Palisades Trail operated by State Parks is a case in point. The trail itself has experienced few problems with inappropriate or illegal activities. However, the trailhead at the summit of Highway 29, which is in a heavily traveled and not very visible location, has had problems with vehicle break-ins. Fortunately, the Calistoga entrance to the Oat Hill Mine Trail, which is where use would be most concentrated, is highly visible and near to other established uses, and the Aetna Springs Road terminus gets very little traffic.

The current lack of maps, official signs delineating public and private property, posted rules, and almost no monitoring of use or assistance provided to users, increase the potential for public users to get lost or hurt, and makes trespass virtually impossible to control. Clear signage, maps and other information would reduce the need for emergency rescues, and reduce the amount of trespass. The experience of other park districts indicates that volunteer trail patrol groups are also effective at monitoring use and helping users stay out of trouble. While these actions will not eliminate all problems, they should result in fewer problems than exist today.

(c) **Restrictions on access and impact on use of property.** As discussed earlier, the recommended action is designed to not affect whatever access rights underlying or nearby property owners may have. Those property owners who currently have the right to access their property with motorized vehicles using the Oat Hill Mine Road and/or Aetna Springs Road will continue to have that right. At the same time, if and when the opportunity presents itself, it would be desirable to obtain conservation easements or fee title from willing property owners to protect the value of the trail as a non-motorized facility.

A few of the properties between the Palisades Trail junction and the Aetna Springs Road junction are used by their owners for hunting. Closing this section of the Oat Hill Mine Trail to general public use during deer hunting season may be warranted to prevent poaching, and to reduce the potential for accidents.

6. Proposed Plan for Improving and Managing the Trail.

The recommended action includes having the County enter into a management agreement with the Napa County Regional Park and Open Space District to to repair and manage the trail. The District is discussing a partnership with a non-profit organization, Volunteers for Outdoor California, to sponsor a major volunteer event this October to install signs, do trail repair work, prune overgrowth, and generally get the trail ready to formally open to the public.

This event would be used as the catalyst for building a local base of volunteers to undertake future maintenance projects and to launch a volunteer trail patrol. The event would also be used to build relations with the business community and seek long-term sponsors for the trail.

Materials and supplies would mostly be donated. Those which cannot be obtained through donations would be purchased using some of the County's remaining Proposition 12 funds.

Much of the requested Proposition 12 funds would be used to hire a contractor to undertake the erosion control, drainage and grading work which is needed in the first 500-700 feet of the trail as it climbs up from Highway 29.

Pursuant to the reasonable accommodation requirements of the Americans With Disabilities Act, the first section of the trail will be graded sufficiently to accommodate people with mobility disabilities, including wheelchairs. A rest area with a bench will be placed at the first overlook. A small amount of the trail above this point may also be accessible for wheelchairs designed for trail use; however, most of the rest of the trail is too rocky and cannot be made more accessible without increasing erosion problems, damaging historic road features (rock walls, wagon wheel ruts) and destroying the technical nature of the trail which makes it so attractive to mountain cyclists.

As part of the management agreement, the District will develop a management plan and trail use policies. These will be developed and modified based on experience, incorporating as appropriate on-going input from both public trail users and potentially affected private property owners. Examples of policies envisioned at this time includes the following:

- | Between Calistoga and the Palisades Trail, the trail would be open to hikers, mountain bicyclists and equestrians, with no special permits required. This is the area of heaviest current and expected usage.
- | Between the Palisades Trail and the gate on Aetna Springs Road, the trail would also be open for hikers, mountain cyclists and equestrians, but a permit may be required. If required, permits could be issued very simply via the internet and through interested businesses. The reason for considering a permit requirement is to (a) provide control over the level of demand, in light of limited parking at the end of the Aetna Springs Road, and (b) facilitate seasonal closure of the trail as warranted due to high fire hazard and/or deer hunting season to minimize conflicts with private property activities.
- | Smoking, fires, camping and unauthorized motor vehicles would be prohibited.
- | Littering or gathering of plant materials would be prohibited.
- | Dogs would be required to be leashed at all times.
- | Signage would be installed marking areas of private property and users would be required to stay on the trail when crossing private property.
- | There would be a 10 mile per hour speed limit for bicyclists.

Monitoring of trail use is proposed to be provided by the District through a part-time, paid trail steward and through a District-organized volunteer trail patrol. There is sufficient funding in the District's proposed budget for FY 2007-08 to contract for a trail steward and organize the trail patrol. Emergency services would continue to be provided as they currently are, through a combination of State Parks (where the trail crosses State Park land), the Napa County Sheriff, the California Department of Forestry, and other agencies through cooperative agreements.

7. General Plan and Zoning

All but a very short section of the trail where it rises up from Highway 29 is designated Agricultural Watershed Open Space in the General Plan and zoned Agricultural Watershed (AW). The first section is designated Agricultural Resource in the General Plan and zoned Agricultural Preserve (AP). The General Plan designations allow recreational uses provided they are compatible with agriculture. Public trails are allowed with a Use Permit in the AW zone. The AP zone does not allow new recreational uses.

The Use Permit requirement for public trails in the AW zone does not apply to County projects. As an existing non-conforming use, recreational use of the section of trail in the AP zone may continue. Therefore, formalizing use of the Oat Hill Mine Trail for recreational purposes is legally consistent with County land use policies.

In terms of the intent of the County's land use policies, none of the lands adjacent to the Oat Hill Mine Trail are suitable for agriculture, and recreational use of the trail should have no adverse impact on any current or future agricultural operation.

Secondly, the General Plan and zoning designations for the first short section of trail where it rises up from Highway 29 appears to be the result of imprecise drawing rather than actual intent, since the area in question is a very steep ridge that is not appropriate for agriculture. Below the ridge to the northwest and the southeast there is flat land which is planted in grapes. As is often the case with old hand-drawn planning lines, more or less straight lines were drawn connecting the two vineyard areas. If the lines were to be drafted with finer precision, consistency with the intent of the General Plan and zoning ordinance suggests the lines should curve around the toe of the ridge.

For these reasons, staff believes using the Oat Hill Mine Road as a recreational trail is consistent with both the legal requirements and the intent of the General Plan and Zoning Ordinance.

8. California Environmental Quality Act

Adoption of the proposed recommendations is exempt from the California Environmental Quality Act (CEQA) pursuant to the following:

(a) **CEQA Guidelines Section 150561(b)(3). General Rule.**

CEQA only applies to projects that have the potential to have a significant effect on the environment. Since the Oat Hill Mine Road and Aetna Springs Road already exist and are already used by the public for the uses contemplated by the recommended actions, there will be no significant physical change to the environment.

(b) **CEQA Guidelines 15300.2(f) Historical Resources.**

The Oat Hill Mine Road is eligible for listing on the National Register of Historic Places. However, the historic features of the Road, including its route, stone retaining walls and wheel grooves cut into the rock, will not be altered in any way, and no uses are planned which do not already exist.

(c) **CEQA Guidelines 15301. Class 1. Existing Facilities.**

The Oat Hill Mine Road is an existing facility, currently in use by an estimated 5,000 people per year. The proposed actions fall within the definition of a class 1 exemption, which applies to the operation, repair, maintenance, permitting, leasing, licensing or minor alteration of existing public or private structures, mechanical equipment or topographical features. The proposed actions are not intended to significantly expand use, but to make the existing use safer, reduce erosion of the existing trail, and limit liability. Example (c) in the Guidelines for Class 1 exemptions include "existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety). The County's Local Procedures for Implementing the California Environmental Quality Act include the following within the definition of a Class 1 exemption: "(h) modifying to improve existing roadside safety features such as curbs, pikes, headwalls, slopes and ditches within the right of way, adding or replacing devices such as fencing, guardrails, safety barriers, guideposts and markers, or installing, removing, or modifying regulatory, warning or informational signs."

(d) **CEQA Guidelines 15323. Class 23. Normal Operations of Facilities for Public Gatherings**

This exemption applies to the normal operations of existing facilities for public uses for which the facilities were designed, and where there is a past history of the facility being used for the same or similar purpose for at least three years. The Guidelines note "This section relates the concept of past history to public expectations for use of the facility in the future. Where the facility has been used for a particular purpose for several years and people expect the use to continue in the future, continuation for that use would not represent a change in the environmental conditions."

(e) CEQA Guidelines 15331. Class 31. Historical Resource Restoration/Rehabilitation

The Oat Hill Mine Road has been identified as having historical value. However, the failure to control erosion is damaging the historic features of the road. The proposed project will enable the County and its agents to undertake erosion control and restoration activities. None of the historic features of the road will be removed or altered, so the project is consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties. A Class 31 exemption covers projected which are limited to the maintenance, repair, stabilization, rehabilitation, restoration, preservation or reconstruction of historic properties. This exemption therefore applies to the proposed actions.

SUPPORTING DOCUMENTS

- A . Map of Proposed Oat Hill Mine Trail
- B . Management Agreement
- C . Resolution

CEO Recommendation: Approve

Reviewed By: Helene Franchi