



Agenda Date: 4/4/2006  
Agenda Placement: 8C  
Set Time: 10:00 AM PUBLIC HEARING  
Estimated Report Time: 30 Minutes  
Continued From: January 31, 2006

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Michael Stoltz for Robert Peterson - Director  
Public Works  
**REPORT BY:** Nate Galambos, Principal Engineer Public Works , 259-8371  
**SUBJECT:** Continued Public Hearing - Dirk Fulton Appeal

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### **RECOMMENDATION**

Consideration and possible action on an appeal filed by Mr. Dirk Fulton to a partial denial by the Director of Public Works of a road improvement modification requested by the appellant in connection with the application for Use Permit # 04065-UP for a property located at 263 Petrified Forest Road, Calistoga. (Assessor's Parcel No. 020-430-006)

**ENVIRONMENTAL DETERMINATION:** The appeal of the Director's determination on the road modification 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 modification 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 NOVEMBER 22, 2005, JANUARY 10, 24 AND 31, 2006)**

### **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. Fulton of the Director's partial denial of his exception request.

The substance of the appeal is that "the disturbance of prime vineyard land and the removal of mature, productive vines is unwarranted and is inconsistent with the intent of the Road and Street Standards and the County's road exception procedure" which protects and preserves the unique features of the natural environment. Public Works interprets this provision as being applicable when addressing wetlands, critical native plant species, or other environmentally sensitive areas such as steep slopes or water courses. The inclusion of "prime vineyard land and the removal of mature, productive vines" as an acceptable criteria would potentially cause the number of roadway standard exceptions to greatly increase given the agricultural nature of the county. This item was

continued from November 22, 2005, January 10, 24 and 31, 2006.

Subsequent to these meetings, the Board gave direction in its March 14 meeting that an ad hoc committee be established to review the exception criteria and notification process for the Road and Streets Standards. It is anticipated that the Board will appoint two members to this committee at today's agenda meeting. This may impact whether there is a request by the appellant to further continue or withdraw the appeal.

### **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

### **ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: The appeal of the Director's determination on the road modification 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 modification 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 November 22, 2005, January 10, 2006, January 24, 2006, and January 31, 2006 to April 4, 2006. The January 24 agenda item included a request to the Board of Supervisors by the appellant to continue the item to March 14, 2006, to allow additional time for the appellant to negotiate a resolution to this matter with their neighbor, Mr. Graeser. Staff had indicated to Mr. Fulton's representative, Mr. Tom Carey with Dickenson, Peatman and Fogarty (DP&F), that the requested continuance was acceptable at the staff level prior to January 24th. Mr. Graeser and his representatives requested that the continuance be denied. The Board of Supervisors decided to continue this item to January 31, 2006, at 1:30 p.m. In light of further testimony on January 31, the Board of Supervisors requested that this item be continued to April 4, 2006, to allow the neighbors additional time for negotiations over the price of the additional easement and to have staff consider additional fire safety mitigations that would off set the requirement for the 20-foot travel width.

Subsequent to this meeting, the Board gave direction in its March 14 meeting regarding a similar appeal issue that an ad hoc committee be establish to review the exception criteria and notification process for the Road and Streets Standards. It is anticipated that the Board will appoint two members to this committee at today's agenda meeting.

The following background information was supplied in the November 22, 2005, January 10, 2006, January 24, 2006, and January 31, 2006 Board letters:

On January 16, 2004, Mr. Dirk Fulton submitted an application to the Conservation, Development, and Planning Department (CDPD) for a winery use permit (use permit number 04065-UP) for his proposed winery called Lazy Susan Vineyards. On February 3, 2004, Public Works (PW) conditioned the use permit (Attachment A) to provide an access drive from the County maintained road (Petrified Forest Road) to the winery that is 18-foot wide with a 1-foot

shoulder on each side in accordance with Napa County Roads and Streets Standards.

On March 2, 2005, PW received a Road Modification Request from Mr. Fulton's representatives, Dickenson, Peatman and Fogarty (DP&F) (Attachment B). The request letter from DP&F asked for a road modification over the entire length of the road from Petrified Forest Road to the Lazy Susan Vineyard's property line. The letter cited the following as justification for granting the modification:

- | existing unique features of the natural environment,
- | the driveway already serves an existing winery (Graeser Winery) and Mr. Fulton's residence, and
- | Mr. Fulton only has a 15-foot wide access easement across the Graeser Winery property that serves his parcel.

After the request, the applicant and his consultants met with representatives from PW, Napa County Fire Marshal (NCFM), and Conservation, Development and Planning Department (CDPD) to discuss the driveway. NCFM also independently met with the applicant. Based upon independent conversations with NCFM, the applicant's consultant submitted a revised Road Modification Request dated September 15, 2005 (Attachment C). The request stated that the applicant would provide turnouts at two locations on the driveway and the remainder of the driveway would remain as it currently exists. The request letter cited the following justification for the request:

- | existing unique features of the natural environment,
- | the presence of mature vines, the driveway already serves an existing winery (Graeser Winery) and Mr. Fulton's residence,
- | Mr. Fulton only has a 15-foot wide access easement across the Graeser Winery property that serves his parcel Mr. Fulton has not been able to obtain the necessary rights of way for the proposed turnouts from the Graeser Winery representative,
- | Fire Department has made the preliminary determination that the existing roadway is adequate, and
- | Fire Department will require the applicant to enter into a deferred improvement agreement with the County for improvements on the driveway should the Graeser Winery obtain a winery use permit and be conditioned to improve the access driveway.

Based upon subsequent site visits, PW issued a Road Modification letter dated October 3, 2005 to Mr. Fulton (Attachment D) granting a modification to the County standards in a 180-foot section of roadway due to unique features of the natural environment. The unique feature was a cluster of mature redwood trees near the roadway edge and fairly steep slopes on both sides of the existing access roadway. The remainder of the access roadway was to be improved to meet the County standards. The reasons for denial of the remainder of the access roadway were as follows:

- | There are no existing environmental constraints (i.e. native trees or geological features such as steep slopes or water courses) that would prevent the installation of roadway improvements to meet minimum County standards. The County does not consider vines as natural features of the environment that warrant a road modification; and
- | The absence of adequate right of way to meet minimum County roadway standards is not a justification for a roadway modification. Section 3 of the Napa County Road and Street Standards states that "Monetary hardship will not be considered a basis for a modification."

The appeal was received on October 21, 2005. The substance of the appeal is that "the disturbance of prime vineyard land and the removal of mature, productive vines is unwarranted and is inconsistent with the intent of the Road and Street Standards and the County's road exception procedure."

In responding to the appeal and reviewing other aspects of this application process, it is important to recognize that the Director of Public Works is ultimately responsible for the application of the Napa County Roads and Streets Standards, and has the ability to modify the standards based upon criteria as set forth within these standards. PW consults with NCFM as an advisory agent with regard to the proposed improvement as to whether the NCFM can conduct their activities with the proposed functionally equivalent improvements. When modifications to standards are requested, PW evaluates:

- | whether exception criteria has been met,
- | the adequacy of the proposed modification and
- | whether proposed modifications provide a functional equivalent to the County Standard.

In this case the NCFM suggested modification was not considered because there is no criteria to warrant such a modification.

The root of the appeal speaks to this issue which is whether "prime vineyard land and the removal of mature, productive vines" is included within the road exception procedure that protects and preserves the unique features of the natural environment. PW interprets this provision as being applicable when addressing wetlands, critical native plant species, or other environmentally sensitive areas such as steep slopes or water courses. The inclusion of "prime vineyard land and the removal of mature, productive vines" as an acceptable criteria would potentially cause the number of roadway standard exceptions to greatly increase given the agricultural nature of the county.

The Director of Public Works therefore recommends that the Board of Supervisors deny Mr. Fulton's appeal and require the access roadway improvements to be installed in accordance with the Road Modification Letter dated October 3, 2005.

### **SUPPORTING DOCUMENTS**

- A . Public Works Inter Office Memo dated 2/3/04
- B . Fulton Modification Request Letter dated 3/2/05
- C . Fulton Revised Modification Request Letter dated 9/15/05
- D . Public Works Modification Letter dated 10/3/05
- E . Fulton Appeal Application
- F . Supplemental Information to Fulton Appeal Application

CEO Recommendation: Approve

Reviewed By: Andrew Carey