



Agenda Date: 7/26/2005  
Agenda Placement: 8A  
Set Time: 9:00 AM PUBLIC HEARING  
Estimated Report Time: 2 Hours

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Cathy Gruenhagen for Hillary Gitelman - Director  
Conservation, Development & Planning  
**REPORT BY:** Mary M Doyle, Principal Planner , 299-1350  
**SUBJECT:** Appeal of Erosion Control Plan #99323 & Certification of the EIR for the Robert Mondavi Properties Vineyard Project

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### **RECOMMENDATION**

Consideration and possible action regarding an appeal filed by the Law Offices of Thomas N. Lippe representing Earth Defense for the Environment Now (EDEN) of decisions by the Director of Conservation, Development and Planning to certify an Environmental Impact Report (EIR) and to approve Erosion Control Plan No. 99323-ECPA for earth moving activities on slopes greater than 5% associated with the Robert Mondavi Properties' Vineyard Project. (Assessor's Parcel No. 046-400-034)

**ENVIRONMENTAL DETERMINATION:** The Board has been provided with a Final Environmental Impact Report (FEIR), which has been prepared and certified pursuant to CEQA, the State CEQA Guidelines, and the County's local procedures. The adequacy of the FEIR is the subject of the appeal. If the Board upholds the appeal, the FEIR will be remanded back to the Department of Conservation, Development, and Planning for revision. If the Board denies the appeal it will need to affirmatively re-certify the FEIR pursuant to State CEQA Guidelines Section 15090. **(CONTINUED FROM JUNE 21, 2005)**

### **EXECUTIVE SUMMARY**

On March 28, 2005, the Director of Conservation, Development, and Planning (Planning Director) certified a FEIR for earth moving activities on slopes greater than 5% associated with an 85-acre vineyard project proposed by Robert Mondavi Properties, Inc. for a property located south east of the City of Napa, on the east side of State Route 221 and north of its intersection with Kaiser Road (Assessor Parcel No. 046-400-034). On the same day, the Planning Director approved Erosion Control Plan No. 99323-ECPA proposed for the property and analyzed in the FEIR.

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), certification of an EIR and approval of an ECP may be appealed to the Board of Supervisors, and on April 15, a timely appeal was received from the Law Offices of Thomas N. Lippe representing EDEN (Appellant).

The appellant claims that the Director acted improperly in certifying the FEIR and approving the ECP, and presents a variety of arguments in support of its position. The appeal hearing is to consider these arguments, the adequacy of the EIR, and the appropriateness of the Director's decisions to certify the EIR and approve the ECP.

### **FISCAL IMPACT**

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Conservation, Development & Planning Clerk of the Board County Counsel
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	Yes
Future fiscal impact:	None
Consequences if not approved:	The County is required by State Law to allow for appeals of EIR Certifications.
Additional Information:	None.

### **ENVIRONMENTAL IMPACT**

An Environmental Impact Report (EIR) has been prepared and certified pursuant to CEQA, the State CEQA Guidelines, and the County's local procedures. The adequacy of this document is the subject of the appeal. If the Board upholds the appeal, the EIR will be remanded back to the Department of Conservation, Development, and Planning for revision. If the Board denies the appeal it will re-certify the EIR pursuant to State CEQA Guidelines Section 15090.

### **BACKGROUND AND DISCUSSION**

The item before the Board is the appeal of actions by the Planning Director regarding an erosion control plan and CEQA review for earthmoving activities associated with vineyard development proposed by Robert Mondavi Properties, Inc.

#### **Procedural Background:**

On March 28, 2005, the Planning Director certified an FEIR for earth moving activities associated with a vineyard project proposed by Robert Mondavi Properties, Inc. on a property located south east of the City of Napa, on the east side of State Route 221 and north of its intersection with Kaiser Road (Assessor Parcel No. 046-400-034). On the same day, the Planning Director approved Erosion Control Plan No. 99323-ECPA proposed for the property and analyzed in the FEIR.

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), certification of an EIR and approval of an ECP may be appealed to the Board of Supervisors, and on April 15, a timely appeal was received from the Law Offices of Thomas N. Lippe representing EDEN (Appellant).

#### **Current Status & Possible Actions:**

Napa County Code Section 2.88.080 (Scheduling & Notice of the Hearing) requires that appeals be scheduled for hearing within 90 days after submittal. The public hearing was opened on June 21, 2005 and continued to the present date at the request of the Appellant, County staff, and the Applicant. Since the Planning Director's decisions to certify the FEIR and approve the ECP was not based on a noticed public hearing, Napa County Code Section 2.88.090 (Hearing -- Conduct and Procedures -- Decision) provides for a de novo hearing, meaning the Board will hear the matter fresh, for the first time. Following the hearing, the Board of Supervisors may affirm, reverse, or modify the decisions by the Planning Director.

### **Stated Basis for the Appeal & Staff Response:**

The following is a summary of issues raised by the Appellant and staff's responses. For more complete information, please refer to Appellant's appeal of April 15, 2005 and to the attached staff report. Copies of the Draft EIR and the Final EIR have been provided to the Board of Supervisors and are on file with the Clerk of the Board.

1. Groundwater Issues: Appellant contends that the FEIR fails to provide adequate information about the environmental setting (non-consumptive uses of groundwater, rainfall data, proximity and similarity to the Milliken Sarco Tulucay "MST") and provides expert opinion from a hydrologist that "there is a significant possibility" of "overdraft conditions." Appellant further claims that the FEIR's analysis of cumulative impacts is flawed and that there is insufficient evidence to support issuance of a groundwater permit. Appellant also believes that the County's "fair share" methodology is inappropriate and that its related thresholds are "arbitrary and illusory."

Responses: As detailed further in the staff report, County staff and FEIR consultants have affirmed that the FEIR's analysis of potentially significant impacts related to groundwater is reasonable and supportable:

- Reasonable assumptions inherent within the EIR calculations (See Draft EIR Appendix C and FEIR pp. 2-103) address consumptive uses of ground water.
- The rainfall data used is appropriate due to the site's location and elevation as explained on FEIR pp. 2-75 through 2-78.
- The FEIR discloses and considers the site's proximity to (and location outside of) the MST boundaries established by the USGS many years ago, and reexamined by them in 2003 (See DEIR p. 5.8-10 and FEIR p. 2-102 through 2-103).
- The EIR hydrologist, Mr. Tom Burke P.E., has reviewed all available information and concluded that irrigation associated with the project would not exceed the rate of groundwater recharge, and thus that no significant groundwater impacts would occur (see Draft EIR pp. 5.8-19 and Appendix C; Final EIR pp. 2-75 through 2-79).
- The EIR hydrologist has indicated that consideration of a 637-acre portion of the watershed is appropriate for the cumulative effects analysis because (1) the remainder of the watershed south of Route 221 is completely developed and uses City water, so it's unlikely to have future groundwater impacts; and (2) although aquifers do not exactly follow surface watershed delineations, in this portion of Napa County, groundwater, like surface water, tends to run "down gradient," towards the Napa River. Thus, as you get closer to the Napa River, aquifer boundaries generally mirror the watershed boundaries, particularly near the Robert Mondavi site, which extends from the top of the watershed down almost to the river itself.
- The FEIR's conclusion that there is no significant adverse groundwater impact is based on the finding that the rate of use will not exceed the rate of recharge. It does not rely on the County's "fair share" methodology or thresholds as suggested by Appellant. The DEIR simply reports the project's compliance with a "fair share" principle. (See DEIR p. 5.8-19.)
- The County's "fair share" policy and the thresholds used to implement that policy are based on the information available at the time they were adopted in 1991. During over ten years of use, these thresholds have not been demonstrated to be inadequate or insufficient for purposes of implementing the County's groundwater ordinance or for determining General Plan conformity (Appellant cites Open Space and Watershed Policy 1.9).

2. Geology and Soils Issues: Appellant claims that the FEIR's analysis of sediment yield (the amount of

sediment transported off site) is inadequate due to: (a) its assumptions regarding the capacity of natural land forms referred to as aggradation basins or CAVs; and (b) assumptions regarding the maintenance of erosion control features. Appellant contends that the failure to describe maintenance activities renders the EIR's project description inadequate and leaves open the question as to whether additional mitigation measures (potentially resulting in secondary impacts) would be required.

Responses: As detailed in the staff report, County staff and the FEIR consultants have affirmed that the FEIR's analysis of potentially significant impacts related to sedimentation is reasonable and supportable:

- The presence and effectiveness of the off site CAVs has been affirmed by the EIR geologist/geomorphologist, Martin Trso R.G., and described at length in response to Appellant's comments on the DEIR (See FEIR pp. 2-95 through 2-98 for example).
- Maintenance activities are specified in the ECPA analyzed in the FEIR (see ECPA revision dated February 1, 2005, p. SP-7), and some activities, such as reseeded of cover crop, removal of debris from drop inlets, and repair of damaged racks and grates are described further in DEIR pp. 3-11 and 3-12.
- No secondary impacts due to maintenance activities are identified.

3. Biological Issues: Appellant claims that the FEIR fails to identify potential impacts to wildlife and habitat due to mercury contamination and claims that the mercury sampling undertaken by the County's consultants is inadequate. Appellant also contends that there would be potentially significant impacts related to the use of pesticides and fungicides and that the FEIR's reliance on anticipated integrated pest management practices is inappropriately terse and either constitutes deferred mitigation or fails to provide an adequate project description. Appellant refers to the FEIR's "failure to analyze" potential impacts on the Napa River and the federally endangered and threatened fish species it supports, and contends that the EIR should be re-circulated due to information about biological resources included in the FEIR as a result of comments received on the Draft EIR.

Responses: As detailed in the staff report, County staff and FEIR consultants have affirmed that the FEIR's analysis of potentially significant adverse impacts related to biological resources is reasonable and supportable:

- As stated in the FEIR (p. 2-20), there is no evidence such as stockpiles, residue, tailings piles, or exploration pits to suggest that mercury mining or processing occurred on the site, despite the identification of potential kilns in a cultural resources survey.
- Nonetheless, sampling and analysis for total mercury was conducted using a methodology referred to as CVAFS (FGS-069 or EPA 1631 mod). This sampling and analysis was summarized in the FEIR and is also contained in the file as a memorandum from Frontier Geosciences Inc. to Hydrologic Systems dated August 25, 2004 (cited on FEIR p. 5-1 as Hydrologic Systems Inc., 2004). As reported in the FEIR (p. 2-18 and 2-19), concentrations were found at close to background levels and were not considered hazardous. When consulted, staff of the RWQCB did not express concern (phone communication with Richard Looker, September 21, 2004, cited FEIR p. 5-2).
- The project is described in sufficient detail to permit a thorough analysis, and the EIR does not defer mitigation. Integrated Pest Management is a pest management strategy that focuses on the long-term suppression of pest problems with the minimum affect on human health, the environment and non-target organisms. The vineyard proposes to use a IPM approach to pest and disease issues compatible with viticultural practices. The family of materials anticipated to be used is described (DEIR pps. 2-3 & 4, 3-11 &12, 4-23 through 4-25 and FEIR pps. 12-67 and 2-68). More specific information is not available, and speculation regarding specific individual chemicals that might be used would be inappropriate. Nonetheless, the DEIR presents a list of the most common chemicals used in Napa County vineyards (DEIR pp. 5.7-3 through 5.7-5) and DEIR Appendix C contains the results of water quality testing downstream from operating vineyards in the area and found no cause for concern.
- A detailed table of plant and animal species observed on the site was included in the FEIR at the request of commenters (FEIR p. 3-1 through 3-5). The information had been available to the public as part of the project file in the Planning Department. This information would require recirculation of the EIR only if it constituted "significant new information" such as information about a new significant impact. In the present instance, no

special status species were identified on the project site, and the information merely amplifies the Draft EIR's conclusion that no potentially significant impacts related to biological resources would occur. Pursuant to State CEQA Guidelines Section 15088.5(b) recirculation is not required.

- The FEIR fully assesses the proposed project's potential to affect off-site resources such as the Napa River, its tributaries, and the special status species it supports. Please see the discussions of geology and soils regarding the potential for impacts due to off-site sedimentation and discussions of hydrology and water quality regarding the potential for impacts due to runoff.

4. Project Alternatives/Other Issues: Appellant contends that the FEIR fails to assess a reasonable range of alternatives, including alternatives requested by the Appellant such as using recycled water and configuring vineyard blocks differently. Appellant states that the use of recycled water was improperly rejected without finding it to be infeasible and that alternative vineyard block configurations were improperly rejected without evidentiary support (of the conclusion that they would cause greater impacts) and without public review. Appellant also claims that the FEIR failed to respond to one of EDEN's two comment letters (one dated July 2, 2004), and that a report used in the County's groundwater analysis and cited in the FEIR was not made available as part of the public record.

Responses: As detailed in the staff report, County staff have affirmed that the alternatives included in the FEIR satisfy the requirements of CEQA, the State CEQA Guidelines and local procedures, that all substantive comments have been responded to in accordance with these requirements, and that all information available to the EIR preparers has been included in the public record and made available to the public:

- CEQA Guidelines Section 15126.6 requires that EIRs describe a range of reasonable alternatives that would attain most of the project objectives but avoid or substantially lessen any significant impacts. The FEIR analyzes three alternatives to the proposed ECP (Draft EIR Chapter 8) despite concluding that no significant impacts would occur, thus exceeding the legal requirement.
- An alternative requiring the use of recycled water, if feasible, would have appropriately been described in the EIR if potential water-supply impacts, such as groundwater use in excess of recharge, were identified. No such impacts were identified, so this alternative was not considered (FEIR pp. 2-49 and 2-87). Nonetheless, there is nothing about the proposed project or the FEIR that would prevent the Napa Sanitation District from making recycled water available to the property, or prevent the property owner from arranging for its use similar to the adjacent property owner identified by the appellant as Soscol Springs North. In fact, the property owner has acknowledged its willingness to consider recycled water should it become available.
- Similarly, the FEIR does not identify any significant impacts that would be reduced or avoided by reconfiguring the vineyard blocks as suggested by the appellant, and thus no such alternative is required. Nonetheless, the FEIR does consider two vineyard proposals: the proposed ECP and the Resource Conservation Alternative, which was ultimately adopted in lieu of the proposed project. In addition, the FEIR explains that a third configuration was considered but rejected because of its greater level of impacts (DEIR p. 8-21).
- Two comment letters submitted by Thomas N. Lippe on behalf of EDEN and dated July 2, 2004 are included and responded to in the Final EIR, one on pp. 2-62 through 2-114 and one on pp. 2-43 through 2-53. A third letter was inadvertently omitted from the FEIR, although its one comment addressed chemical use and was responded to in the FEIR (p.2-67 and 2-68). Attachments to the letter were not specific to the current project, although both the letter and attachments have been included within the materials provided for the Board's review.
- The citation on pp. 5.8-10 of the Draft EIR incorrectly refers to an aquifer pump test completed by Richard C. Slade & Associates on March 26-28 2001, and should have referred to the County's Initial Study for the Soscol Springs North project, since the original pump test was not available to the EIR preparers. The following documents about water availability by Richard Slade & Associated are now available for review as part of the public record: (a) a February 2001 Hydrogeologic Evaluation (received by the County on February 16, 2001); (b) an April 2001 report titled "Results of Aquifer Testing" received by the County sometime after the DEIR publication; and (c) an October 11, 2001 letter summary (received by the County on October 15, 2001). These materials do not change the analysis or conclusions presented in the FEIR.

**Staff Recommendation:**

The Department of Conservation, Development, and Planning recommends that the Board of Supervisors adopt a motion of intent to deny the appeal and uphold the Planning Director's decisions to certify the FEIR and approve the ECP, and also request County Counsel to prepare findings re-certifying the EIR and approving the ECP for consideration and adoption at a future Board meeting.

**SUPPORTING DOCUMENTS**

- A . Summary of Appeal & Staff Responses
- B . Findings
- C . Findings #1 Mitigation Monitoring Reporting Program
- D . Findings #2 Plan Drawings
- E . Findings #3 Project Revision Statement
- F . Approval Letter
- G . Frontier Letter
- H . Lippe Appeal

CEO Recommendation: Approve

Reviewed By: Andrew Carey