



Agenda Date: 8/8/2006  
Agenda Placement: 8G  
Set Time: 10:00 AM PUBLIC HEARING  
Estimated Report Time: 30 Minutes

## 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:** Public Hearing - Appeal filed by William Smith

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### **RECOMMENDATION**

Consideration and possible action regarding an appeal filed by Tom Carey of Dickenson, Peatman & Fogarty, on behalf of their client, Mr. William Smith, 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 # 02057-UP for a property located at 1181 Las Posadas Road, Angwin. (Assessor's Parcel No. 025-060-001)

**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 MARCH 14, APRIL 18, AND JUNE 6, 2006; APPELLANT REQUESTS CONTINUANCE TO SEPTEMBER 26, 2006 AT 9:15 A.M.)**

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

The substance of the appeal is that "Exceptions...are intended to serve as an alternate method by which adherence to the Standards may be achieved at the same time as the Department assures compliance with its goal to protect and ensure the preservation of the unique features of the natural environment". The appellant contends that the Bill Smith Winery has been operating under a Temporary Certificate of Occupancy (TCO) for several years and no traffic problems have been encountered to date which may have required a wider roadway. Public Works does not concur that a lack of a recent history at this site (under a TCO) requiring emergency response as sufficient grounds to allow an exception. Public Works interprets the present provision as being

applicable when addressing wetlands, critical native plant species, or other environmentally sensitive areas such as steep slopes or water courses. To include the *lack* of serious emergencies as acceptable criteria would potentially cause the number of roadway standard exceptions to greatly increase causing risk to the public and property in an unforeseen event requiring emergency response. This item was continued from March 14, 2006, April 18, 2006 and June 6, 2006..

On April 4, 2006, the Board created an ad hoc committee to review the process and criteria by which road modifications are evaluated. Staff had anticipated that the ad hoc committee would have reported to the Board in the later part of June 2006 with recommendations.

The appellant requested a continuance to August 8, 2006 in anticipation that the appeal may be resolved depending on the recommendations of the ad hoc committee to the Board of Supervisors. This continuation date was thought to provide sufficient time for the ad hoc committee to make recommendations to the Board. However, staff is continuing to evaluate the potential changes to the road modification process that has been contemplated by the ad hoc committee and as of yet, there are no recommendations to the Board of Supervisors.

The appellant is requesting a continuance again to September 26, 2006 in anticipation that the appeal may be resolved depending on the recommendations of the ad hoc committee to the Board of Supervisors.

### **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 March 14, 2006, April 18, 2006 and June 6, 2006 to August 8, 2006. The continuation was recommended and approved by the Board of Supervisors with the intent of forming an ad hoc committee to review the County Code pertaining to the road modification process. The ad hoc committee was formed at a regularly scheduled Board of Supervisor meeting on April 4, 2006. The purpose of the ad hoc committee is to evaluate and enhance the road modification process to provide more flexibility for staff to work with applicants to satisfy the intent of the code while recognizing the environmental and development characteristics related to each project.

While the ad hoc committee was formed and has met to discuss the road modification process, staff is still in the process of evaluating the potential changes contemplated by the ad hoc committee. Additionally, although staff anticipated that the ad hoc committee may report to the Board in the later part of June 2006, a report to the Board of

Supervisors by the ad hoc committee is now expected to occur in the later part of September 2006. The delay of the ad hoc committee's report to the Board is due mainly to staff's evaluation of the impacts that the potential changes may have on the County.

Staff recommends that the continuance be granted to September 26 at 9:15 AM. This should provide sufficient time for the ad hoc committee to make recommendations to the Board. Should the Board concur with the ad hoc committee's recommendation then staff will take the appropriate action to implement such recommendations and return to the Board at a later date.

The following background information was supplied in the March 14, 2006 Board letter:

On February 20th, 2002 William H. Smith submitted an application to the Conservation, Development, and Planning Department (CDPD) for a winery use permit (#02057-UP) for his proposed winery called Piedra Hill Vineyard. On March 12th, 2002, Public Works (PW) conditioned the use permit (Attachment A) to provide an access drive from the County maintained road (Las Posadas Road) to the winery that is 18-feet wide with 2-feet of shoulder in accordance with Napa County Roads and Streets Standards. The proposed winery was approved May 15th, 2002 by the Planning commission with all PW conditions.

On October 9th, 2002, Napa County PW received a request for an exception to the road standards from Mr. Smith's representatives, Dickenson, Peatman and Fogarty (DP&F) (Attachment B) after approval of the winery use permit. The request letter from DP&F asked for a road modification over the entire length of the road from the Winery site to the connection with Las Posadas Road, however it did not address the distance from the connection with Las Posadas Road to the County Maintained portion of the roadway. The letter cited the following as justification for granting the modification:

- | steep slopes on up hill and down hill sides of roadway
- | removal of native trees and grading in areas of geologic hazard
- | substantial cuts and fills would be required

After reviewing the request staff concluded that the letter failed to illustrate environmental concerns warranting consideration of an exception. Written communication was returned to DP&F with this finding.

On July 18th, 2003 William H. Smith submitted an application to CDPD requesting a modification to the original approved winery conditions. PW recommended that the original conditions from March 12th, 2002 were still applicable. No changes were made to PW conditions.

DP&F returned to PW on February of 2004 to continue the request for a road modification for approximately 600ft of roadway from the Smith property line traveling away from the Smith property with the submittal of a proposed improvement plan with hand drawn sketches (Attachment C). This letter informed the department that full improvements as required by PW had been made to the access road from the Smith property line into the winery site (now operating on a temporary certificate of occupancy [TCO]). This letter sites several perceived constraints such as:

- | power poles
- | mature trees
- | steep slopes

In a letter dated March 9th, 2004 County staff requested that the applicant provide the County with a detailed drawings identifying location of the environmental constraints, utilities, the existing and proposed road widths, the existing structural sections of the road, and topographical information from the end of the County maintained road to the project site so that a determination could be made regarding the roadway.

On September 6th, 2005 DP&F provided a response to the March 9th communication providing staff with a detailed drawing of the roadway from the winery site to the La Jota Winery.

County staff visited the winery site on December 13th, 2005 with representatives from DP&F and reviewed the proposed plan. Based on the site visit the only constraints recognized by staff were large established trees. All steep slopes were manmade and thus could be made a little larger to conform to County requirements. County provided DP&F with a letter of modification dated December 15th, 2005 granting in part and denying in part the reduced road widths over several sections of the roadway and once again requested that a full plan be submitted showing proposed improvements all the way out to the County maintained roadway (Attachment D).

The appeal was received on January 5th, 2006. The substance of the appeal is that "Exceptions...are intended to serve as an alternate method by which adherence to the Standards may be achieved at the same time as the Department assures compliance with its goal to protect and ensure the preservation of the unique features of the natural environment". The appellant contends that the Bill Smith Winery has been operating (under a TCO) for several years and no traffic problems have been encountered and therefore does not warrant a disturbance to the environment.

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 application of the Napa County Roads and Streets Standards, and has the ability to modify the standards base upon criteria as set forth within these standards. PW consults with the Napa County Fire Marshal (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

The request for the modification is based on considerations that the Winery is operating without traffic problems for an extended period on a TCO. Emergency response has not been required at the Bill Smith Winery site so it is premature to contend that the road is sufficient to serve the operating facility in the event of emergency response to the Winery or during fire fighting operations. This winery was approved by the Planning Commission in 2002 based on PW conditions that a full width roadway is warranted. The applicant accepted the conditions at that time, and again in 2003 when a modification was submitted to CDPD and approved for changes to the winery. The letter of modification dated December 15th, 2005 applies the exception process in favor of the applicant in the interest of "preserving the unique features of the natural environment." This department still lacks sufficient information to consider the remaining roadway from the La Jota winery to the County maintained roadway and will not comment on this section beyond the original conditions set forth in the March 12th, 2002 memo to CDPD.

**SUPPORTING DOCUMENTS**

- A . Attachment A
- B . Attachment B
- C . Attachment C
- D . Attachment D

CEO Recommendation: Approve

Reviewed By: Andrew Carey