A Tradition of Stewardship
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Agenda Date: 12/15/2020
Agenda Placement: 6N

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 Easement Agreements for the Vine Trail with various private property owners

RECOMMENDATION

Director of Public Works requests that the Board:

1. Approve Vine Trail Easement Agreements with Sutter Home Winery; Silver Oak Wine Cellars; the James P. Panek and Cynthia M. Panek Trust of 1994; C. Mondavi & Family; Realty Income Properties 2, LLC; DeConinck Vineyards; the Eulalie F. Ahern Trust and Albert Ahern Trust; and Jackson Family Estates for the segment from Calistoga to St. Helena; and authorize the Chair to execute these easement agreements and related documents on behalf of Napa County.
2. Approve the Funding Agreement with the Vine Trail Coalition for the purchase of insurance for private property owners along the Vine Trail, and authorize the Chair to execute the Funding Agreement.
3. Find that the Board has met its obligation as a Responsible Agency under CEQA by considering the Initial Study and Mitigated Negative Declaration prepared by the NVTA for the Vine Trail section between Calistoga and St. Helena, reaching its own conclusions on whether and how to approve the project, and finding that none of the triggers for subsequent or supplemental CEQA review have occurred since NVTA's approval of the project and CEQA documents on August 19, 2020.

EXECUTIVE SUMMARY

On March 12, 2019, the Board approved a form Vine Trail Easement Agreement to be entered into with individual landowners to facilitate the implementation of the Vine Trail between Calistoga and the Town of Yountville. The Vine Trail Coalition then engaged in discussions with various landowners, which resulted in proposed changes to the easement agreement, primarily dealing with termination and indemnity. On November 10, 2020, the Board approved a revised, final form Easement Agreement; approved and authorized the Chair to execute six individual easement agreements; and found that the Board had met its obligations as a Responsible Agency under CEQA.

The Vine Trail Coalition engaged in additional discussions with the remaining landowners, each of which has now signed or agreed to sign easement agreements, with modifications as described in this report. There is one outstanding easement needed from the State of California for property occupied by CalFIRE that is anticipated to be ready for BOS approval in Spring 2021. In the meantime NVTA will proceed with construction on State property with a Right-of-Entry agreement.

The County and the Vine Trail Coalition have also prepared a funding agreement, whereby the County will provide the previously-agreed funds ($75,000/year + CPI) for the Vine Trail Coalition to purchase liability insurance for property owners granting easements to the County. The funding agreement will commit the Coalition to purchase an insurance policy for all property owners, or to pay property owners to supplement their own insurance policies to account for the Vine Trail if that alternative is cheaper and the property owners consent.

This item requests BOS approval of the remaining private property easement agreements for the Vine Trail segment between Calistoga and St. Helena, and approval of the funding agreement. At the time of writing this agenda item, it is believed that all easements will be ready for Board approval. If any are not ready, the Board will be notified and those unsigned agreements will need to come back at a later time.

FISCAL & STRATEGIC PLAN 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 per year, 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, at an additional cost estimated to be $12,000/mile/year for which the Vine Trail Coalition has committed to paying half. The Board has already committed $693,000 towards construction of the Calistoga to St. Helena segment, and $4,500,000 towards construction of the St. Helena to Yountville section.
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.

County Strategic Plan pillar addressed:

Additional Information:

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: For the Calistoga to St. Helena section, on August 19, 2020, the Napa Valley Transportation Authority (NVTA), as lead agency for the project, approved a Final Mitigated Negative Declaration (SCH 2020060572) and adopted a Mitigation Monitoring and Reporting Program for the Napa Valley Vine Trail Project: St. Helena to Calistoga Section, by Resolution 20-17. These environmental documents may be found at this link: nvta.ca.gov/vinetrail. Through this action, the Board will meet its obligation as a Responsible Agency under CEQA by considering the Initial Study and Mitigated Negative Declaration, reaching its own conclusions on whether and how to approve the project, and determining whether any of the triggers for subsequent or supplemental CEQA review have occurred since NVTA's approval of the project and CEQA documents.

For the St. Helena to Yountville section, 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 modifies a form agreement and approves a funding 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 this section of 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 this Vine Trail segment, as has been done for all other Vine Trail segments.

BACKGROUND AND DISCUSSION

The Napa Valley Vine Trail (Vine Trail) is a proposed 47-mile multi-use trail that is proposed to extend from the City of Calistoga to the Vallejo Ferry Terminal. 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 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 design of the next segment of the Vine Trail, from Calistoga to St. Helena, is nearly complete. Construction is planned to start and complete in 2021. Portions of this segment cross privately-owned vineyard properties. The route has been refined, staying along Highway 29 and eliminating a potential detour onto Ehlers Lane.

On March 12, 2019, the Board approved a form Vine Trail Easement Agreement to be entered into with individual landowners to facilitate the implementation of the Vine Trail between Calistoga and the Town of Yountville. The Vine Trail Coalition then engaged in discussions with various landowners, which resulted in proposed changes to the easement agreement, primarily dealing with termination and indemnity. On November 10, 2020, the Board approved a revised, final form Easement Agreement; approved and authorized the Chair to execute six individual easement agreements; and found that the Board had met its obligations as a Responsible Agency under CEQA.

The Vine Trail Coalition engaged in additional discussions with the remaining landowners, each of which has now signed or agreed to sign easement agreements. These property owners request additional changes to the easements documents approved on November 10, which include:

- Acknowledging the easements granted to the County are subject to all matters of record and any matters that would be apparent from an accurate survey of the easement.
- Clarifying that the County must not only begin efforts to cure any breach of the agreement within 90 days of receiving notice, but also complete such efforts within a reasonable amount of time.
- Allowing property owners to terminate the easement if the County assigns its obligations under the easement agreement to someone else without the prior approval of the property owners. The property owners will not unreasonably withhold or condition such approval.
- Clarifying that motor vehicles prohibited on the Vine Trail include electric or motorized scooters.
- Specifying that the date after which the property owners may terminate the easement if construction is not completed on their properties, previously indicated as seven (7) years after completion of the environmental documents, is August 19, 2027.
- Clarifying that the County's obligation to maintain the Vine Trail includes making repairs, and that such repairs will be done in a "workman-like manner."
- Clarifying that property owners may cross the easements to access their properties.
- Clarifying that property owners may grant other easements that do not interfere with the Vine Trail.
- Changing the property owners' representations from indicating they have made a reasonable inquiry into whether there are encumbrances or hazardous materials that would interfere with the easement, to indicating that to the actual knowledge of an officer (to be named in the document) of the property owner, there are no off-record agreements or hazardous materials that would interfere with the intended use of the easement.
- Specifying that the insurance to be funded by the County covers not only the property owners, but also their agents and contractors.
- Clarifying that the County's general liability policy will be in effect prior to entry onto the easement area (the County's policy is already in effect).
- Clarifying that the County's obligation to indemnify the property owners against claims from users of the Vine Trail includes indemnifying the property owners' successors and assigns.
- Clarifying that the property owners are not responsible for the design, construction, or use of the Vine Trail.
- Clarifying that the County is operating, maintaining, and repairing the Vine Trail with the goal of reducing liability and preserving the legal immunities associated with recreational facilities.
- Eliminating the property owners' obligation to notify buyers about the Vine Trail in any deed conveying the property, or to notify the County if the property is sold.
- Clarifying that the easement agreement is to be interpreted to safeguard both public access and agricultural rights.

There is one outstanding easement needed from the State of California for property occupied by CalFIRE that is anticipated to be ready for BOS approval in Spring 2021. According to NVTA, an appraisal of the easement on State property will be completed this month. The State is anticipated to complete its review and prepare a draft easement agreement for County review in February 2021. In the meantime NVTA will proceed with construction on State property with Right-of-Entry agreement.

The County and the Vine Trail Coalition have also prepared a funding agreement, whereby the County will provide the previously-agreed funds for the Vine Trail Coalition to purchase liability insurance for property owners granting easements to the County between Calistoga and Yountville. The easement agreements obligate the County to provide $75,000 annually (as adjusted by CPI) for 30 years. The funding agreement will commit the Coalition to purchase an insurance policy for all property owners, or to pay property owners to supplement their own insurance policies to account for the Vine Trail if that alternative is cheaper and the property owners consent. The funding agreement also obligates the County, the Vine Trail Coalition, and property owners (at their option) to meet and discuss alternate means of providing insurance if at some time during the next 30 years the funding provided by the County is insufficient to purchase insurance.

SUPPORTING DOCUMENTS

A . Funding Agreement with Vine Trail Coalition

CEO Recommendation: Approve

Reviewed By: Susan Kuss