Planning Commission Mtg.
SEPTEMBER 2, 2020
Agenda Item # 7A

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August 31, 2020

Emily Hedge, Planner III
Napa County Planning, Building &
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Napa, California 94559
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RE: ***USE PERMIT REQUEST – BALLOONS ABOVE THE VALLEY***
Napa County Planning Commission Agenda – September 2, 2020
Use Permit P19-00303

Dear Ms. Hedge:

I am writing you on behalf of a coalition of homeowners, business owners and farmers in the Napa Valley who oppose the above referenced Use Permit Request. Our organization is known as the Neighbors Against Privacy Abuse (N.A.P.A.) Coalition. Our group members include many citizens of Napa who have been and will be negatively impacted by the proposed operations of Balloons Above the Valley and its owner, Robert Barbarick.

I respectfully request that this letter and the attached exhibits be included in the administrative record related to the Commission's consideration of this request. (See, California Code of Civil Procedure §1094.5; Public Resources Code §21167.6(e); *Madera Oversight Coalition Inc. v. County of Madera* (2011) 199 Cal.App.4th. 48, 63-64.) Please anticipate that the approval of the proposed Use Permit could result in litigation.

This correspondence also refers to requests previously made to the County of Napa under the California Public Records Act (Government Code § 6250, *et seq.*) Those requests and responses are in the official County records. To avoid the excess copying of those documents, they are not re-submitted here. However, I request that these official Napa County documents be included in the administrative record.

In a similar manner, I make reference to the Codes and/or Ordinances of the County and the applicable hot air balloon Code of Conduct published by the County. I request that those documents be included in the administrative record, as well. If you desire, I can send you copies of these documents as a courtesy. Please let me know if you want copies of those documents.

Of course, the members of the N.A.P.A. Coalition greatly desire to avoid litigation and request that the Commission postpone a final decision to allow greater community dialogue regarding this

proposal. It is hoped further discussions between the proponent and members of the community could result in a solution that could be acceptable to all.

Unfortunately, the proposal as currently presented, is defective on multiple grounds. The application, supporting documents, staff report and proposed resolution are internally incompatible and contradictory. There is no adequate basis to support the proposed findings, as many of the assumptions are false or deceptive. The staff report fails to alert the Commission about applicable law and potential liability for nuisance, trespass, unconstitutional violations of privacy and inverse condemnation. Moreover, given the current conditions of the Covid-19 pandemic, the interested citizens are not provided with the traditionally available rights to participate in an open public meeting. Those with limited access to computer facilities, or limited computer skills or knowledge will face impediments to sharing their important insights on this issue of high public interest.

1. Inadequate Environmental Analysis

As a preliminary matter, it is the responsibility of the County to comply with the California Environmental Quality Act ("CEQA") and its implementing regulations to support California's strong policy of protecting the environment. (*Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, 285.) As the Court recently explained in *Save the Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665, 674-675:

> "At the `heart of CEQA' is the requirement that public agencies prepare an EIR for any `project' that `may have a significant effect on the environment.'" (*Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 944.) "Given the statute's text, and its purpose of informing the public about potential environmental consequences, it is quite clear that an EIR is required even if the project's ultimate effect on the environment is far from certain." (*California Building Industry Assn. v. Bay Area Air Quality Management Dist., supra,* 62 Cal.4th at pp. 382-383, italics omitted.) Accordingly, "`if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.'" (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1111, quoting CEQA Guidelines, § 15064, subd. (f)(1); see also *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 171 ["`If the agency's initial study of a project produces substantial evidence supporting a fair argument the project may have significant adverse effects, the agency must ... prepare an EIR.'"].)

Members of the N.A.P.A. Coalition assert that the proposed project requires an Environmental Impact Report (EIR) due to the ultimate effect of this proposed use is far from certain. Conditions in Napa County have changed since 1980 when the Board of Supervisors first considered allowing balloon launch permits. Areas which were open fields then, now have new neighborhoods filled with homes or

multi-family residences. Other areas have been put to more intensive agricultural uses with supporting infrastructure.

These changed conditions limit the areas where balloons can safely land, as the "wide open" spaces have disappeared over the last 40 years. One appreciates more each passing year the wisdom of prior Boards of Supervisors which sought to protect the unique heritage of Napa agriculture in adopting an Agricultural Preserve.

The applicant may wish that the members of the Commission will only envision a hot air balloon as a harmless colorful "cloud" that gently floats in the breeze high above the valley. Yet, the reality near ground level where the balloons expend most of their flight time is quite different. These low altitude conflict areas are where the true balloon operations must be studied. Unfortunately, these are the areas where the staff report has failed to properly evaluate the true environmental impacts of the proposed project.

2. Inadequate Analysis of Aesthetics.

To truly assess the aesthetic issues of the project, one must understand the size and dimensions of the several balloons which are proposed to be launched at the site. The envelope (inflated part) of a typical FAI Category AX-9 hot air balloon which can carry 6-10 people is 69 feet tall and 66 feet wide. (See Exhibit N-1, FAA Balloon Handbook, title page and pages 2-14 and 2-15.) To this height another 12-15 feet should be added for the lower section of the balloon structure which includes a gondola (passenger area) and the related support for the burners which serve as the engines for the balloon. So, an AX9 balloon would have a total height of about 84 feet.

The staff report, on page 18, claims that each proposed balloon can accommodate 11-15 guests. So, this is a larger balloon than an AX9. In contrast, the applicant's own website in its "frequently asked questions" portion (https://balloonrides.com/faqs/) states: "We have different size balloons that can accommodate 10, 12, 16 or 22 passengers." (Exhibit N-2 contains a copy of this portion of the applicant's official website.) Based on this, one must disregard the inaccurate report assumption and adopt the applicant's official public assertion that its balloons hold 22 passengers. The County in evaluating the impact of the project should consider the most intense use of the property reasonably possible under the proposed permit. (See, for example, *County of San Diego v. Bressi* (1986) 184 Cal.App.3d 112, 123.) So, the total number of anticipated passengers should be increased by 47% over the amount assumed in the staff report.

Industry officials claim that a balloon capable of holding 22 passengers would be in the FAI AX-12 category. Balloon manufacturer, Cameron Balloons has an AX-12 balloon (model A-400) which has an envelope 99 feet high and 95 feet wide. (See Exhibit N-3 for these technical details.) Adding for the gondola, the total balloon structure would be over 110 feet tall. On page 19 of the permit application, the project proponent confirms that most of his balloons are the Cameron model A-400.

Thus, each of the applicant's balloons to be used at the site would be taller than a 10-story building, a building height otherwise prohibited throughout the County (For example, County Ordinance 18.104.120 limits building structures plus associated towers to less than 50 feet.) Zoning restrictions prohibiting such tall buildings and structures in the County have been supported, in part, by a finding that structures of this height would not be aesthetically pleasing.

Therefore, any analysis of the aesthetic quality of the structures to be repeatedly erected on the site must address the presumption in the County zoning regulations that structures above 50 feet must be prohibited. The staff report completely omits that the height of the proposed structures does not conform to zoning guidelines. They are more than twice the height of what otherwise would be allowed. It appears that the applicant has not informed the County of this condition of the project, rendering the environmental review to be fatally deficient.

Yet, this is not the only omission in the staff report. In order to inflate each of these large structures, encompassing some 400,000 cubic feet, the powerful jet burners on a balloon must be fully ignited, sending bright 10-foot flames into the air. The photo taken from the applicant's website and submitted as Exhibit N-4 shows just one of these burners ignited. The project proposes at least eight of these huge flames being used to inflate these enormous structures. This is a "new source of substantial light" in the early morning hours when flights are planned to occur. The staff report does not acknowledge these characteristics of the proposed use in Part I (d). Again, no indication is given as to whether the proponent honestly disclosed these conditions to County officials.

Also ignored is the fact, as explained more fully below, that hot air balloons are aircraft. Thus, the proposed launch site is a personal airport, a place for aircraft to take flight. The voters in Napa, in the recent election in 2018 adopting Measure D, made the following findings: "The people find that any proliferation of personal use airports or heliports would be inconsistent with and detrimental to the rural, agricultural and peaceful character of Napa County." (Measure D, adopted these findings as part of the County Ordinances and should be incorporated in the record.)

As acknowledged below, the adoption of Measure D may not have prevented the issuance of a balloon launch permit. Yet, the staff report ignores these special findings of the electorate in the most recent election. The voters have spoken about the issue of aesthetics. The members of the N.A.P.A. Coalition strongly object to the significant adverse effect the proposed project will have to the aesthetics of the area as being "…inconsistent with and detrimental to the rural, agricultural and peaceful character of Napa County."

3. Inadequate Analysis of Impacts to Agricultural and Forest Resources.

Part II of the staff report also improperly omits a proper analysis of the project's conflicts with existing zoning for agricultural use. The staff report correctly notes that this property is in the Agricultural Preserve. Obviously, the proposed use is not agricultural.

Specifically, the staff report fails to analyze that the proposed use is not static. In other words, the use does not remain on the proposed site. As explained in the application, the proposed use only commences at the launch site. What remains unanalyzed is the impact of the use when balloons leave the site. Thus, the study area is too limited or restricted, as the proposed use involves impacts in the entire flight path of the balloons to, and including, any proposed landing site. Note that the application is relatively vague about where the balloons would land. On page 9 of the permit application, landing areas are referred to as "target areas" which could "change on a daily basis."

The project proponent makes no specific indication where the balloons will land, other than a general description of a large area, because he is incapable of doing so. This is not a negative reflection on the proponent himself, as no intelligent person can predict with accuracy about where a hot air balloon will land. This is part of the unpredictable nature of ballooning that still employs the rudimentary technology of centuries past.

To further clarify, each large proposed balloon envelope must contain enough hot air to lift the substantial metal burners, framework and passenger gondola weighing at least 8000 pounds (4 tons). (See Exhibit N-3 submitted herewith.) The massive 400,000 cubic foot envelope is essentially a 360-degree sail that is pushed by the wind. Yet, unlike a sailboat, the hot air balloon has no rudder and has no mechanism to change the shape of this monstrous sail. Therefore, the pilot of a hot air balloon has no direct ability to harness the wind to change the balloon's course of flight.

As centuries passed, other aircraft were designed with movable wings, tailfins, movable rotors, and even changeable jet propulsion systems to allow the pilot to control the direction of flight. Hot air balloons contain no such technology.

The pilot may only choose to descend by releasing hot air from the balloon or ascend by using the jet burners to heat up the air inside the balloon. The pilot makes shifts in altitude in an attempt to catch the wind that is blowing in the desired course of travel. It is a well-known phenomenon that wind may change directions depending on the altitude from the surface of the ground. For example, the FAA Balloon Handbook shows an example on page 4-14 in which the wind near the surface of the ground blows in the exact opposite direction of the wind at a higher altitude. (See, Exhibit N-5, attached.)

Exhibit N-5 demonstrates that wind patterns can shift or change. This means that a balloon when launched may often go one direction as it ascends before it catches the prevailing wind at altitude to carry the balloon on the desired course in an opposite direction. Again, the pilot cannot anticipate every change in wind patterns, as they are completely out of the pilot's control. The pilot may only respond or react to these wind changes when they occur. Due to the variable and unpredictable nature of wind currents, the FAA has established safety standards or "zones of safety" to protect the public from these conditions and to a create an area for the pilot to safely land his aircraft. These regulations are found in the Federal Aviation Regulations (F.A.R.).

Specifically, F.A.R. §91.119 designates minimum safe altitudes to permit "…an emergency landing without undue hazard to persons or property on the surface…." Subsection (b) of this regulation

requires a safety zone of "…an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft..." for residential areas such as those near the proposed launch site. As shown in Exhibit N-7, this recommended 2,000-foot safety encompasses many residential homes whose owners and occupants were not contacted for comment on this permit. The Coalition objects to the lack of notice to these impacted neighbors.

The changing winds can also force a balloon pilot to land quickly in the surrounding areas. (For example, see Exhibit N-6 which describes an accident on August 15, 2020 in which a balloon landed in the hills near Sulphur Springs Road.) Not only can the winds change, pilots may experience "sudden downdrafts" that, as shown in Exhibit N-8, can result in serious injuries to balloon passengers. As noted in the staff report, the area around the proposed launch site is within the Agricultural Preserve. Balloons have often landed in agricultural areas destroying valuable farming assets. Members of the N.A.P.A. Coalition include nearby grape growers who oppose the project for the unnecessary risks these activities create.

The project creates actual conflicts with farming operations in the Agricultural Preserve which were not addressed in the inadequate initial environmental review.

4. False Assertions Regarding Zoning Compliance

Also in Part II, the staff analysis asserts in this review that: "In 2006, the Napa County Board of Supervisors approved Ordinance #1276, permitting hot air balloon launchings…." It also contains the false statement that: "The site … conducts hot air balloon launchings in compliance with Administrative Permit P19-00235."

Ordinance #1276, in part, approved changes of the Napa County Code of Ordinances, including Ordinance 18.126.060 pertaining to the prerequisites for the issuance of a permit. Part "O" of this Ordinance relates to a permit for hot air balloon launchings and prohibits their issuance unless the application complies with at least eight (8) enumerated standards. Item 2 on the list of prerequisites requires the applicant to comply with the County's Code of Conduct ("CoC") for hot air balloon operations for the prior year. This applicant has not, and could not, truthfully assert to the Commission that he has been complying with this Code of Conduct.

For example, the CoC required the company to: "Immediately report any and all third party damage occurring as the result of a balloon flight and/or ground operations to Professional Balloon Pilots Association of Napa County, Inc. ("PBPANC"), along with a description of how the incident was resolved." The PBPANC, in turn, is required to report quarterly to the County Board of Supervisors regarding all calls or contacts about such flight operations.

The County has responded to a Public Records Act Request (#19-323) issued by this law office indicating that the PBPANC has not provided a single quarterly report to the County in the last five (5) years. Since there have been no reports from the PBPANC to the County, the claimed listing of reports

in Exhibit "I" to the application appears to be a complete fabrication created after December 2, 2019 when the County responded to the Public Records request.

When Mr. Barbarick applied for the earlier permit, P19-00235, he certified that his company had not been involved in any balloon flight operations resulting in damages for one year prior to June 6, 2019. If there were such an incident, his company would have been required to report it to the PBPANC and that entity would have reported it to the County in accordance with the CoC.

The National Transportation Safety Board ("NTSB") has provided information confirming the inaccuracy of Mr. Barbarick's presumed certification. In their Aviation Accident Preliminary Report (Accident Number WPR19LA104), the NTSB confirmed that Balloons Above the Valley operated a balloon on April 1, 2019, resulting in serious injuries to one of its passengers and additional injuries to two others. A copy of this report is attached and marked as Exhibit N-8. The FAA document confirms that the applicant was flying a Cameron A-400 model described above.

The report of serious injury caused by the applicant also contains the notation that the flight originated from a private vineyard in Napa. Since Balloons Above the Valley did not have a launching permit in April 2019, it appears that the launch from a "private vineyard" was also illegal and/or a violation of the CoC. For these reasons alone, the permit should not have been issued.

I wrote to the Planning Department on December 4, 2019, alerting Mr. Morrison of this illegal permit. Since the County now continues to advise the public that the applicant was in "full compliance" with the prior permit, its misrepresentation of the facts is knowingly and intentionally false.

Additionally, the CoC requires all operators to place an identifying 12-inch high N number, prescribed by the Federal Aviation Regulations on each company balloon on the bottom of each gondola for identification purposes. The applicant has not complied with this requirement. For example, Exhibit N-9 contains photos of the applicant's balloons from its website. The bottom of the gondola clearly contains no required markings required by the County's regulations. Again, the proposed project is based on false assumptions of code compliance.

Item 7 of Part O of County Ordinance 18.126.060 purports to define the phrase "in good standing with the county;" yet it is defectively ambiguous. At first, it appears to relate to the proper compliance by the permittee with all provisions of the CoC and complaints related thereto. Then, it inexplicably requires any complaint to be related to an improper landing of a balloon, disregarding all other requirements of the CoC.

The County's official complaint form is entitled "Certification of Unauthorized Trespass Associated with Hot Air Balloon Operations." While the CoC requires reports to be made to the PBPANC, it also adds another layer of bureaucracy by requiring property owners to submit duplicate complaints to the planning department. I requested that the County establish a procedure to log all other types of complaints regarding violations of the CoC. I am cognizant of a number of complaints submitted from Napa County property owners submitted about the Balloons Above the Valley

operations. Some of these complaints are listed on the Summary of Complaints list. However, the report did not solicit incident report from any other local agencies, including fire or police departments. This is a material omission from the report. I request that the staff report be amended to include all the complaints received from the public about the operation of this applicant's business.

The staff report, under "Recommended Findings" contains the bald and unsupported assertions that PBES Staff reviewed the 17 or more complaints about this operator violating property rights, creating damage, and causing injuries to its passengers, and found the operator to be in "good standing." Without more, the Commission is unable to determine the basis for finding these incidents as "non-actionable." It is believed that the PBES staff determined that the violations were within the jurisdiction of other agencies, such as the FAA. That would mean that the operator had violated laws or regulations within the jurisdiction of other agencies, but because none of these other agencies were contacted, the County desires to intentionally ignore them in its analysis.

Please note that the failure to notify other agencies to obtain their evaluation of these 17 reported incidents, is a willful disregard of potentially illegal activity by the operator. The County cannot escape liability by simply disavowing their jurisdiction to prosecute violations of law. The environmental review process requires a knowing investigation of all environment impacts which the County is ignoring.

More disturbing is the County's omission of any analysis of the functioning of the PBPANC. This organization is tasked in the CoC to be the "…central contact point for local residents, landowners and government officials, and to be a clearinghouse for information sharing among balloon companies regarding concerns and complaints about specific balloon operations or operators." The introduction to the Code of Conduct emphasizes the crucial role of the PBPANC with these words:

> The major public agencies which have contact with the balloon industry (Police Dispatch, Sheriff's Department, Community Resources/Recreation and Parks, Fire Department, Unified School Districts, CDF, State Department of Fish and Game, and the FAA) have all adopted policies of referring questions, concerns and complaints about ballooning to the Pilots Association for investigation, mediation and management. Recently, private organizations such as the Farm Bureau have developed a similar working relationship with the Association. <u>All of these parties agree to continue using PBPANC as the referral of first resort in addressing individual complaints from residents and landowners</u>. (<u>emphasis in the original</u>)

As pointed out above, the PBPANC has not performed its envisioned role for more than five (5) years. A simple review of the online records of the California Secretary of State will reveal the organization is "suspended." This defunct organization does not respond to phone calls or written inquiries from my office. In reality, there is no PBPANC.

Since the CoC requires the functioning of the PBPANC, there is no practical way to comply with the CoC. Since the permit also requires compliance with the CoC, there can be no honest finding that the

applicant can or has done so. The CoC is a sham and a finding in the staff report of compliance with the CoC is likewise illusory.

The Commission, like other public agencies has an implicit duty to engage in a good faith and judicious consideration of the pros and cons of an issue and to render a decision buttressed by substantial evidence. Courts will overturn the decision of a public agency that is merely a "rubber stamp" a predetermined result. (See, for example, *Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.App.3d 1121.)

Simply put, the County's zoning ordinance requires the permit to be denied if the applicant cannot comply with the CoC. As it is impossible to comply with the CoC with a defunct PBPANC, by the County's own regulations, the permit must be denied until this defect is remedied.

5. Inadequate Study of Air Quality Issues.

Part III of the staff report contains an extensive analysis of air quality issues based on faulty assumptions. As explained above, the number of passengers is 47% greater than assumed in the study. The number of vehicles required to deliver the passengers would also need to be increased by 47%. This means that there are three vehicles required to transport passengers per balloon, not two vehicles as incorrectly stated in the report. This increases the number of vehicles arriving at the site to 30 (not 24) and a trip count of 60, not 48.

Still, the deficiencies do not stop there. This is only one-half of the total daily traffic impact for the proposed project. Again, the balloon operation is not static. The balloons leave the site and arrive somewhere else in the County. The landing site also requires vehicles to go to that site and return from that site. This puts another daily 60 trips into the County at longer distances which would not be taken without the project. So, the total daily traffic impact for the proposed project is 120 trips, not 48.

This, of course, assumes that the balloons land in an area accessible to vehicles on paved roads. Occasionally, the balloons land in areas only accessible on non-paved roads. The dust and debris for 60 trips on dirt roads is not examined. Also, unexamined are the situations when the balloons land in areas only accessible by helicopter. (Exhibit N-10 is another example of this occurrence.)

6. Inadequate Analysis of Impact to Biological Resources.

Section IV of the report makes the same error in limiting the project site to the launch area. Balloons land in riparian habitat and wetlands. (Exhibit N-10.) They land in woodlands and canyons. (Exhibit N-6.) They land on agricultural operations. The applicant's operations hit power poles (Exhibit N-8) and sometimes in collisions, its balloons catch on fire. (Exhibit N-11 is another FAA accident report pertaining to the applicant.) Exhibit N-11 also confirms that the applicant flies balloons with at least 21 people on board.

The full extent of the impacts to biological resources might be ascertained if there were a functioning PBPANC maintaining accident records as required by County code. Yet, there is not. Information about these events could be maintained by the Napa County Sheriff's Department, the Fire Department, other County department, the California Highway Patrol (which has rescued balloon passengers), other State agencies and departments, the Federal Aviation Administration, other federal agencies, or local cities and towns. However, not even one of these agencies was contacted to ascertain this important information (page 2, Item 11 of the staff report).

The study is inadequate for the failure to properly investigate biological impacts alone.

7. Inadequate Analysis of Impact to Cultural Resources

Section V contains the same flaw as other areas in the report. There is a failure to consider the true impact of the project to cultural resources by ignoring the fact that the balloons land at various sites throughout the County. The project contemplates the continued random impacts to hundreds of unknown sites. These are a total of 1,832 landings (229 days with 8 balloon launchings) with 40,304 passengers walking over potentially culturally important areas each year.

The impact of these landings must be considered as required by CEQA guidelines. The fact that these impacts are ignored renders the study legally deficient.

8. Failure to Study Energy Alternatives

Section VI does not inquire if there are other fuel sources for aerial sightseeing operations. No alternatives are considered that do not employ open flame propane-burning engines.

9. Failure to Evaluate Impact to Geology and Soils

Section VII is also defective for failing to consider the impact of 1,832 random landings throughout the County.

10. Study of Greenhouse Gas Emissions Inadequate

Section VIII does not consider the 1,832 landings or the real impact of the new 120 daily trips.

11. Inadequate Analysis of Airport Impact

Section IX requires an analysis if the project is within an airport land use plan or within two miles of a public airport or public use airport. Hot air balloons are classified as aircraft and their in-flight operations are regulated by the Federal Aviation Administration.

However, the regulation of land uses around aircraft launch sites resides with local public agencies. For example, the Napa County Airport Land Use Commission (ALUC) establishes land use

policies for areas located within the flight path surrounding Napa County airports for fixed wing aircraft and helicopters. As required by the State Aeronautics Law, the ALUC reviews land use compatibility issues for development within airport influence zones guided by the Napa County Airport Land Use Compatibility Plan. Airport compatibility issues include safety, noise, overflight and airspace protection.

Napa County contains an entire section in its ordinances regulating airspace near public airports (See, Chapter 18.24). As explained above, the County established the Napa County ALUC in compliance with Public Utilities Code § 21670, *et seq*. to fulfill its statutory duties to "…minimize the public's exposure to excessive noise and safety hazards within areas around public airports…."

Now, there is an important distinction between the terms recited in the State Aeronautics Act and the Napa County Code. The Act specifically *excludes* hot air balloons from its definition of "aircraft;" yet, the Napa County Code ("NCC") does not. Hot air balloons are considered aircraft within FAA regulations (14 C.F.R., Part 103). While the Act excludes a balloon launch site as an "airport" within its definitions (PUC § 21013), the NCC specifically *includes* each balloon launch site within its definition of "airport." Specifically, Section 18.08.050 states:

> "Airport" means any area of land or water which is used, or is intended for use, for the landing and takeoff of *aircraft*, including helicopters and similar *aircraft* capable of approximately vertical ascent and descent. It includes appurtenant areas which are used, or are intended for use, for airport buildings or other airport facilities or rights-of-way, and all airport buildings and facilities located thereon.

It is true that there are sections of the NCC which describe and purport to authorize use permits for balloon launch sites. Nevertheless, the terms of the NCC are contradictory, as such sites are also defined as airports. Measure D, adopted as Ordinance No. 2018-02, clarified in Section 1 thereof that it was not intended to make changes to existing law. It explained: "This Ordinance is intended to prohibit any ***new*** personal use airports or heliports." Thus, to resolve the conflict in the NCC, the voters did not revoke the County's authority to permit solely commercial balloon launch sites as previously permitted under Section 18.120.010(D). The use permits for balloon sites granted prior to the adoption of Measure D were not made unlawful. The adoption of the new Ordinance simply prohibited any ***new*** such sites.

Accordingly, as a new permit is being sought, it appears that the Commission is without legal authority to grant the request as being prohibited under Measure D.

12. Failure to Assess Impacts to Property Rights

Before the election, the Napa County Board of Supervisors authorized outside legal counsel, Sean Marciniak, to provide a legal analysis of the provisions of Measure D. In his report to the Board of February 20, 2018, (requested to be included in the administrative record here) Mr. Marciniak provided the following legal guidance:

Note that, where an ambiguity surfaces, the County Code requires the County to interpret provisions so as "to avoid unconstitutionality wherever possible" (NCC, § 1.04.110), and that no provision of the code "shall be construed as being broad enough to permit any direct or indirect taking of private property for public use" (NCC, § 1.04.130). Similarly, the County Code provides that it "is not the intent of the board of supervisors, in its administrative capacity, to condone or permit the violation of the constitutional rights of any person, nor to condone or permit the taking of private property for public use without payment of just compensation in violation of either the United States or California Constitutions." (NCC, § 1.04.140.)

To properly evaluate the present application, members of the Commission should understand the legal rights to airspace immediately adjacent to private property. The State Legislature has defined the rights of California citizens in the State Aeronautics Act ("Act"). As part of this Act, California Public Utilities Code § 21402 states: "The ownership of the space above the land and waters of this State is vested in the several owners of the surface beneath, subject to the right of flight described in Section 21403." Section 21403 allows for flight in aircraft, but Section 21012 of the Act specifically excludes hot air balloons from its definition of aircraft. Therefore, while the FAA permits flights of hot air balloons, State law prohibits their use above private property and below the minimum altitude of "navigable airspace."

The United States Supreme Court has affirmed a property owner's right to the "superadjacent airspace," meaning that area below navigable airspace above the land. (*United States v. Causby* (1946) 328 U.S. 256, 66 S. Ct. 1062, 90 L. Ed. 1206; *Griggs v. Allegheny County* (1962) 369 U.S. 84, 82 S. Ct. 531, 7 L. Ed. 2d 585; and *Sneed v. County of Riverside* (1963) 218 Cal. App.2d 205, 212, 32 Cal.Rptr. 318.) These cases also support the proposition that a taking of these rights without just compensation is unlawful and would support a cause of action for inverse condemnation.

As explained above, the citizens of this State own and control the air beneath navigable airspace. Not only does a property owner have the legal ownership of this superadjacent airspace, she or he may protect those rights despite claimed federal regulations. The California Supreme Court has squarely addressed this question, holding that a nuisance cause of action brought against a municipality for personal injuries and emotional distress caused by aircraft noise is *not* barred by federal preemption. (*Smart v. City of Los Angeles* (1980) 112 Cal.App.3d 232, 239, cert. den. Oct. 6, 1980, 449 U.S. 820 [66 L.Ed.2d 22, 101 S.Ct. 77].)

As a balloon launch permit must be evaluated to consider the likelihood of a potential taking of private property rights, the administrative approval without consideration of necessary avigation easements would be defective. "An avigation easement is a specific easement granted to accommodate air traffic." (CEB, *California Easements and Boundaries*, § 3.25.) For example, the County of Napa requires avigation easement is zones near airports. (See NCC, Sections 18.80.050; -.060; and -.070.)

The County has recognized the importance of requiring avigation easements as nearby "…residents may experience inconvenience, annoyance or discomfort arising from the noise of such operations…" (NCC, Section 17.14.265.) The acquisition of avigation easements serves to establish just

compensation for property rights taken and to resolve claims of public or private nuisance for air flight operations. (*Institoris v. City of Los Angeles* (1989) 210 Cal.App.3d 10, 23.)

To clarify, the property owners in the entire flight zone of the proposed balloon operations have a right to exclude balloons up to 1000 feet above their property. By allowing balloon flight operations beneath these heights, the County must compensate the owners for this taking of their property rights. (*U.S. v. Causby* (*supra*) 328 U.S. 256; Public Utilities Code § 21652.) For example, the accident list contained with the staff report as Exhibit I, details a complaint of the operator flying within 50 feet of his home. This is clearly a violation of the owner's property rights.

13. Unacceptable Noise Impacts

Part XIII does not adequate address noise impacts. For example, the study found that the noise level from the operation of multiple balloon launches of four balloons in one hour to be excessive before 7:00 a.m. However, the company can launch more balloons than at the studied rate. For example, the photo from the applicant's website shows at least five balloons being launched almost simultaneously. (Exhibit N-12.) As the permit allows launches of up to 8 balloons, the noise study is insufficient.

A California public entity may be held liable for the creation or maintenance of a nuisance. (See, Civil Code §§ 3479-3503; *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920 *("Nestle")*; *Greater Westchester Homeowners Ass'n v. City of Los Angeles* (1979) 26 Cal.3d 86, 100 (*"Westchester"*); *Andrews v County of Orange* (1982) 130 Cal.App.3d 944 (*"Andrews"*).) Please note that in each of these cases, *Nestle*, *Westchester*, and *Andrews*, the Courts affirmed the potential nuisance liability of public entities for the vibration, fumes and noise from the operation of aircraft activities.

14. Liability for Invasion of Privacy Rights

I also believe that the Commission is failing to comply with their legal duty to establish a permitting procedure that would not foster criminal activity, nor encourage the violation of the neighbors' constitutionally protected rights of privacy. The permit does not include the necessary analysis of the codification of amendments to Civil Code Section 1708.8 by AB 856 in 2015. This new State law prohibits the physical invasion above the land of another person, the attempted physical invasion, or the inducement thereof, which results, among other things, in obtaining an impression of another engaging in a private, personal, or family activity.

The balloon operators are routinely violating this law by encouraging their passengers to bring cameras aboard their flights, resulting in the very offenses AB 856 was enacted to prevent. For example, the applicant itself on its website encourages patrons to bring cameras onboard the balloons, to take lots of pictures, and to publish them on social media. (Exhibit N-13.) Balloon operators, such as the project proponent here, insist that they are entitled to engage in low altitude flights during landings and takeoffs, facilitating the expressly prohibited use of private airspace. Significant legal fines are authorized by Section 1708.8, in addition to punitive damages under Section 3294. Again, these State laws protect private airspace and are not superseded by any federal regulations.

15. Failure to Evaluate Public Risk

The County of Napa established specific safety protocols to protect the public during the Covid-19 pandemic. Included in these protocols were specific standards established by County health officials for the hot air balloon industry. (Please include this official County document in the administrative record.) In the County health regulations, each hot air balloon operator was required to submit an outline of its plan of compliance to the County. My office sent a public records request for copies of the submitted plans by each hot air balloon operator. The County's official response to Request 20-234 (which is requested to be included in the administrative record) shows that the applicant did not comply with this safety order.

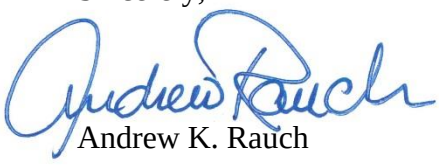
The Commission should include in its environmental analysis that the project proponent has a documented history of willful disregard for compliance with County regulations. As shown above, the company does not comply with the CoC or County health regulations, it presents fraudulent attestations of its compliance, and it misleads the County about impacts of its proposed project, including the size and scope of proposed operations.

16. Reservation of Other Objections

As the record is incomplete without the required reports from the many impacted federal, State, and local agencies, there may be many more impacts that members of the Coalition were unable to describe in greater detail. Thus, the Coalition members and I reserve the right to bring other complaints about the deficient environmental review. Nevertheless, given that the staff report does not take into account the consideration for just compensation for violation of private airspace, the potential need for avigation easements, nor the anticipated violations of privacy rights, this administrative permit process fails to provide adequate standards to ensure that the proposed use does not have a detrimental effect on their surroundings or adjacent uses.

The environmental review is completely deficient and should be rejected.

Sincerely,



Andrew K. Rauch

EXHIBIT N-1

N.A.P.A. COALITION OPPOSITION

TO PERMIT APPLICATION P19-00303

Balloon Flying Handbook

2008

U.S. Department of Transportation
FEDERAL AVIATION ADMINISTRATION
Flight Standards Service

- Repairing upholstery and decorative furnishings of the balloon basket interior when the repairing does not require disassembly of any primary structure or operating system or interfere with an operating system or affect primary structure of the aircraft.
- Replacing seats or seat parts with replacement parts approved for the aircraft, not involving disassembly of any primary structure or operating system.
- Replacing prefabricated fuel lines.
- Replacing and servicing batteries.
- Cleaning of balloon burner pilots and main nozzles in accordance with balloon manufacturers' instructions.
- Replacement or adjustment of nonstructural standard fasteners incidental to operations.
- The interchange of balloon baskets and burners on envelopes when the basket or burner is designated as interchangeable in the balloon Type Certificate Data Sheet (TCDS), and the baskets and burners are specifically designed for quick removal and installation.

Repairs and Alterations

Repairs and alterations are classified as either major or minor. 14 CFR part 43, appendix A, describes the alterations and repairs considered major. Major repairs or alterations shall be approved for return to service on FAA Form 337, Major Repair and Alteration, by an appropriately rated certificated repair station, an FAA certificated A&P mechanic holding an Inspection Authorization, or a representative of the Administrator. Minor repairs and minor alterations may be approved for return to service with a proper entry in the maintenance records by an appropriately certificated repair station or FAA certificated A&P mechanic.

For modifications of experimental aircraft, refer to the operating limitations issued to that aircraft. Modifications in accordance with FAA Order 8130.2, Airworthiness Certification of Aircraft and Related Products, may require the notification of the issuing authority.

Airworthiness Directives (ADs)

A primary safety function of the FAA is to require correction of unsafe conditions found in an aircraft, aircraft engine, propeller, or appliance when such conditions exist and are likely to exist or develop in other products of the same design. The unsafe condition may exist because of a design defect, maintenance, or other causes. 14 CFR part 39, Airworthiness Directives (ADs), define the authority and responsibility of the Administrator for requiring the necessary corrective action. ADs are the means used to notify aircraft owners and other interested persons of unsafe conditions and to specify the conditions under which the product may continue to be operated. ADs may be divided into two categories:

1. Those of an emergency nature requiring immediate compliance prior to further flight.
2. Those of a less urgent nature requiring compliance within a specified period of time.

ADs are regulatory and shall be complied with unless a specific exemption is granted. It is the aircraft owner or operator's responsibility to ensure compliance with all pertinent ADs. 14 CFR part 91, section 91.417 requires a record to be maintained that shows the current status of applicable ADs, including the method of compliance; the AD number and revision date, if recurring; the time and date when due again; the signature; kind of certificate; and certificate number of the repair station or mechanic who performed the work. For ready reference, many aircraft owners have a chronological listing of the pertinent ADs in the back of their aircraft maintenance records.

Choosing a Balloon

Many companies manufacture balloons that are type-certificated by the FAA. A type-certificated balloon has passed many tests, has been approved by the FAA, and conforms to the manufacturer's TCDS. Balloon size is rated by envelope volume with categories defined in metric units. *Figure 2-16* illustrates the most popular size ranges in use today (volumes are provided in cubic meters, as well as cubic feet).

FAI Category	Cubic Meters	Number of People	Cubic Feet
AX5	900–1,200	1	31,779–42,372
AX6	1,200–1,600	1–2	42,372–56,372
AX7	1,600–2,200	2–4	56,496–77,682
AX8	2,200–3,000	4–7	77,682–105,930
AX9	3,000–4,000	6–10	105,930–141,240

Figure 2-16. *Popular balloon size ranges.*

Advantages of Balloon Sizes

Different balloon sizes offer different advantages. The size of the balloon purchased should be determined according to planned use(s). Most pilots think smaller balloons are easier to handle, fly, and pack up. Bigger balloons use less fuel, operate cooler, and last longer. Higher elevations or hotter climates or passengers indicate a larger balloon. Balloon competitions and sport flying require a smaller balloon. *[Figure 2-17]*

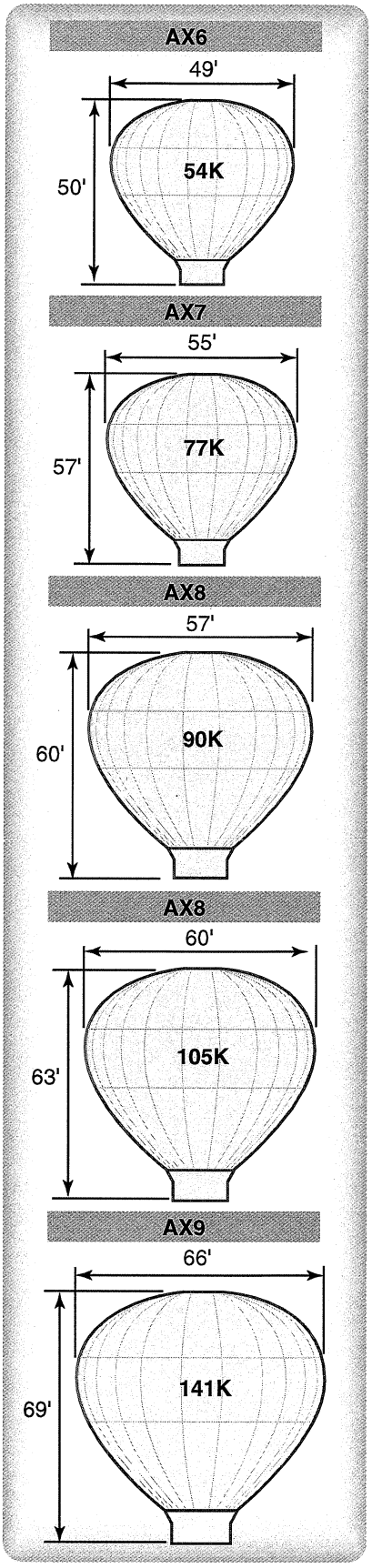


Figure 2-17. *Comparison of balloon sizes.*

Selecting a New or Used Balloon

The cost is the most obvious difference between new and used balloons. Some new pilots buy a used balloon to gain proficiency, and then purchase a new balloon when they have a better idea of what they want or need.

Prior to purchasing any used balloon, it is important to ensure that the balloon is airworthy, to avoid purchasing an aircraft which may be nearing, or perhaps past, its useful life. Most balloon envelopes are constructed of fabrics that last well into the 300–400 hour range, with some newer fabrics exceeding that life span. It would be prudent to have the balloon inspected by a reputable repair station or qualified inspector prior to purchase.

Balloon Brands

The level of after sales service available—locally and from the manufacturer—is an important criterion in deciding which brand of balloon to purchase. Talk to local pilots and ask questions. How does the local balloon repair station feel about different brands? Do they stock parts for only one brand? Does the manufacturer ship parts and fabric for balloons already in the field, or do they reserve these parts and fabric for new production? Do they ground older model balloons for lack of materials while new balloons are being built?

There are other criteria that could be considered, such as altitude at which the balloon will be flying, climate, and interchangeability of components, to give some examples. Before making the final decision, talk to people with different kinds of balloons who do different kinds of flying. Crewing for different balloons is an excellent way to learn about balloons and can help in the decision on what first balloon to purchase.

Chapter Summary

This chapter gives the reader common terminology for use in the ballooning community. Many times, confusion exists between the student pilot and the instructor, due to differences in terminology used, and it is hoped that the discussions here resolve those issues. The reader also should have an understanding of the physics of hot-air ballooning, as well as a good understanding of the support equipment involved with ballooning activities.

Propane information has also been included in this chapter, and it is recommended that all pilots review this on a recurring basis, perhaps as part of a yearly safety seminar. Additionally, proper documentation, and inspection requirements have been covered. Each pilot should become knowledgeable in these areas.

EXHIBIT N-2

N.A.P.A. COALITION OPPOSITION

TO PERMIT APPLICATION P19-00303

How much time should I allow for my adventure?

How high will we go?

What should we wear?

Where do we launch from?

Can we bring cameras and video cameras?

Can I bring my child with me?

How many people will be in our basket?

We have different size balloons that can accommodate 10, 12, 16 or 22 passengers. We bring out the balloons that will best accommodate the number of passengers that we have scheduled on a given day. Each basket is configured the same with the pilot and his

equipment in the center and then each corner is sectioned off for anywhere between 2 and 5 passengers. This way everyone has a corner view and there is no one who is stuck in the center and unable to see.

How do you get the balloon inflated? ⊕

Is it quiet in the balloon? ⊕

Are expectant women able to fly? ⊕

What fabric is used for the balloon? ⊕

Does the basket sway when flying? ⊕

What if I can't fly? ⊕

What are you waiting for?

EXHIBIT N-3

N.A.P.A. COALITION OPPOSITION

TO PERMIT APPLICATION P19-00303

ENVELOPES (3)

CAMERON BALLOONS

A-TYPE

Purpose-built for passenger operations, the A-Type offers a range of envelopes that will lift from 5 to 18 persons. Twenty slightly bulbous gores provide tremendous strength without compromising the artwork potential. Its horizontally cut panels offer a huge variety of color patterns.

As with all Cameron models, the A-Type boast a large "loaded" mouth and a nomex Pressure Scoop, which together make even the windiest inflations easy.

	Gores	Volume Cu. Ft.	F.A.I. Category	FAA Certifed Weight	Envelope Weight Standard	Envelope Weight Top 1/3 Hyperlast	Height	Diam.	Top Full Panel
A-77	20	77,500	AX-7	1550	195	220	57	55	M
A-90	20	90,000	AX-8	1800	222	245	60	58	N
A-105	20	105,000	AX-8	2100	246	271	64	61	N
A-120	20	120,000	AX-9	2400	269	297	66	64	O
A-140	20	140,000	AX-9	2800	297	330	70	67	P
A-160	20	160,000	AX-10	3200	334	372	73	70	Q
A-180	20	180,000	AX-10	3600	368	401	76	73	R
A-210	20	210,000	AX-10	4200	417	451	80	77	R
A-225	20	225,000	AX-11	4500	445	475	82	79	S
A-250	20	250,000	AX-11	5000	468	498	85	81	T
A-275	20	275,000	AX-11	5500	499	525	88	84	U
A-300	20	300,000	AX-11	6000	530	552	90	87	V
A-315	20	315,000	AX-11	6300	537	576	92	88	V
A-340	20	350,000	AX-12	7000	605	645	94	90	W
A-375	20	375,000	AX-12	7500	628	670	97	93	W
A-400	20	400,000	AX-12	8000	674	720	99	95	X

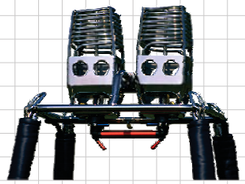
O-TYPE

A slightly bulbous 12-gore design, the O-Series is ideally suited for fun-flying, passenger-carrying, or promotional work. It provides the ideal compromise between the engineering efficiency of larger gores, and the advertising effectiveness of the smoother N-Series envelopes.

	Gores	Volume Cu. Ft.	F.A.I. Category	FAA Certifed Weight	Envelope Weight Standard	Envelope Weight Top 1/3 Hyperlast	Height	Diam.	Top Full Panel
O-42	12	42,000	AX-5	840	128	143	50	44	K
O-56	12	56,000	AX-6	1120	152	172	53	50	M
O-65	12	65,000	AX-7	1300	162	183	56	53	N
O-70	12	70,000	AX-7	1400	170	194	57	54	N
O-77	12	77,500	AX-7	1540	194	215	58	55	N
O-84	12	84,000	AX-8	1680	213	239	60	57	O
O-90	12	90,000	AX-8	1800	224	248	62	58	O
O-105	12	105,000	AX-8	2100	238	257	64	61	O
O-120	12	120,000	AX-9	2400	262	285	68	62	P
O-140	12	140,000	AX-9	2800	300	320	71	66	Q
O-160	12	160,000	AX-10	3200	344	365	75	68	R

BURNERS (1)

CAMERON BALLOONS



	Monoblock Construction	Double-Seal™ Blast Valves	Replacable Jets	Crossflow Valve	One-Hand operation of Two Burners	# of Pilot Lights	Vapor Pilot Light	Liquid Pilot Light	Piezo Ignitors	Whisper™ Burners	Adjustable burner frame option	EasyUp Frame (removable Burner)	Gimbal Style	Gimbal Angle (front/back)	Gimbal Angle (left/right)	Weight (lbs)*
Ultra™ Single	✓	✓	✓	-	n/a	2	opt.	✓	1	2	✓	-	std.	180°	100°	37
Ultra™ Double	✓	✓	✓	✓	-	2	opt.	✓	2	2	✓	opt.	ctr.	180°	60°	53
Ultra™ Triple	✓	✓	✓	✓	opt.	3	opt.	✓	3	3	-	opt.	ctr.	170°	60°	97
Ultra™ Quad	✓	✓	✓	✓	opt.	4	opt.	✓	4	4	-	opt.	ctr.	170°	60°	115
Stratus™ *Single*	✓	-	✓	-	-	2	-	✓	2	2	✓	opt.	ctr.	170°	60°	35
Stratus™ *Double*	✓	-	✓	-	✓	2	-	✓	2	2	✓	opt.	ctr.	170°	60°	53
Stratus™ *Triple*	✓	-	✓	opt.**	✓	3	-	✓	3	3	-	opt.	ctr.	170°	60°	97
Stratus™ *Quad*	✓	-	✓	-	✓	4	-	✓	4	4	-	opt.	ctr.	170°	60°	115
Safire™ *Double* §	✓	-	✓	-	✓	2	-	✓	2	2	✓	opt.	ctr.	170°	60°	64
Safire™ *Triple* §	✓	-	✓	-	✓	3	-	✓	3	3	-	opt.	ctr.	170°	60°	112
Safire™ *Quad* §	✓	-	✓	-	✓	4	-	✓	4	4	-	opt.	ctr.	170°	60°	135
Hopper Burner	✓	-	✓	n/a	n/a	1	-	✓	1	1	n/a	n/a	n/a	-	-	n/a
Sirocco Double***	✓	✓	-	-	✓	2	-	✓	2	2	✓	opt.	ctr.	180°	60°	54
Sirocco Triple***	✓	✓	-	-	✓	3	-	✓	3	3	-	opt.	ctr.	180°	60°	98
Sirocco Quad***	✓	✓	-	-	✓	4	-	✓	4	4	-	opt.	ctr.	180°	60°	116
Super Double***	✓	✓	✓	✓	-	2	✓	✓	2	2	✓	-	std.	180°	70°	54
Super Triple***	✓	✓	✓	✓	-	2	✓	✓	2	2	✓	-	std.	180°	70°	54
Super Quad***	✓	✓	✓	✓	-	2	✓	✓	2	2	✓	-	std.	180°	70°	54
MK IV Std. Single***	-	-	✓		n/a	1	✓	n/a	1	1	✓	-	std.	180°	100°	36
Mk IV Std. Double***	-	-	✓	✓	-	2	✓	n/a	2	1	✓	-	std.	180°	100°	54

* Weight with typical burner frame and carabiners

** Requires larger hose diameter and TEMA fitting

*** No longer available, but shown for comparison

§ Requires High-flow valves and fittings

EXHIBIT N-4

N.A.P.A. COALITION OPPOSITION

TO PERMIT APPLICATION P19-00303

EXHIBIT N-5

N.A.P.A. COALITION OPPOSITION

TO PERMIT APPLICATION P19-00303

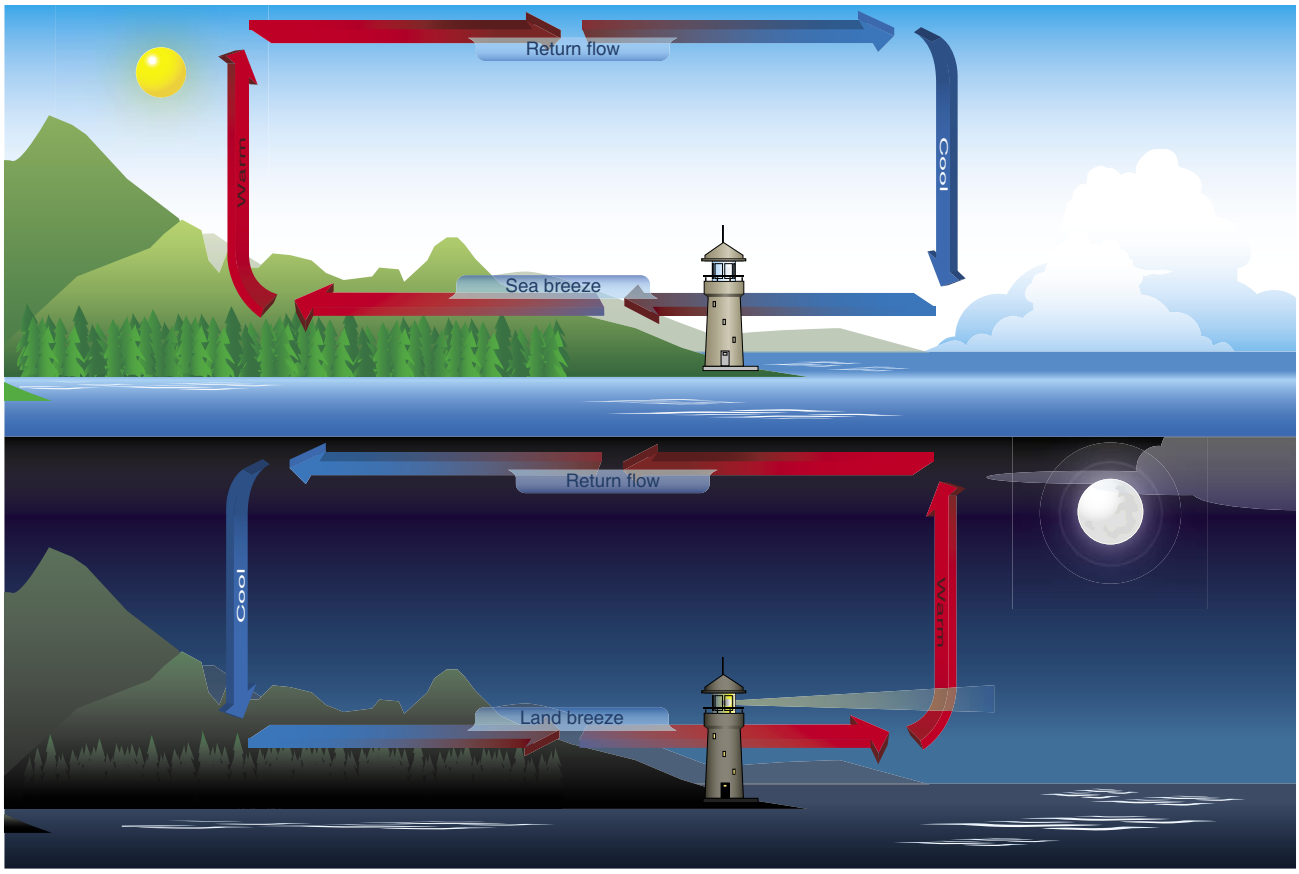


Figure 4-14. *Land-sea breezes.*

Local and Small-Scale Winds

Gradient Winds

Pressure gradients initiate the movement of air and as soon as the air acquires velocity, the Coriolis force deflects it to the right in the Northern Hemisphere. As the speed of the air along the isobars increases, the Coriolis force becomes equal and opposite to the pressure gradient force. After a period of time, the air moves directly parallel to the curved isobars if there is no frictional drag with the surface. The air no longer moves toward lower pressure because the pressure gradient force is completely neutralized by the Coriolis force and the centrifugal force.

Orographic Winds

The term "orographic" has multiple meanings, when placed in the context of weather phenomena. In a general sense, according to the American Meteorological Society, wind flows that are caused, affected, or influenced by mountains may be said to be orographic winds flows. The term has come to mean any winds that are affected by terrain, not just mountains; this definition is probably the most frequently used, when discussing balloon flight.

As a specific term, "orographic lifting" is defined as an ascending air flow caused by mountains. The mechanisms that produce the orographic lifting fall into two broad categories:

1. The upward deflection of horizontal large-scale air flow by the terrain acting as an obstacle or barrier, or
2. The daytime heating of mountain surfaces to produce an anabatic flow (see below) along the slopes and updrafts in the vicinity of mountain peaks.

This definition, while strictly referring only to lifting by mountains, is sometimes extended to include the effects of hills or long sloping terrain. When sufficient moisture is present in the rising air, Orographic fog or clouds may form.

Anabatic Winds

Anabatic winds are those that blow up a steep slope or mountain side. It is sometimes referred to as an upslope flow. These winds typically occur during the daytime in calm,

EXHIBIT N-6

N.A.P.A. COALITION OPPOSITION

TO PERMIT APPLICATION P19-00303

Napa Valley Register

Helicopter assists rescue of hot-air balloon passengers, pilot in rural Napa County

- Howard Yune
- Aug 16, 2020 Updated Aug 18, 2020

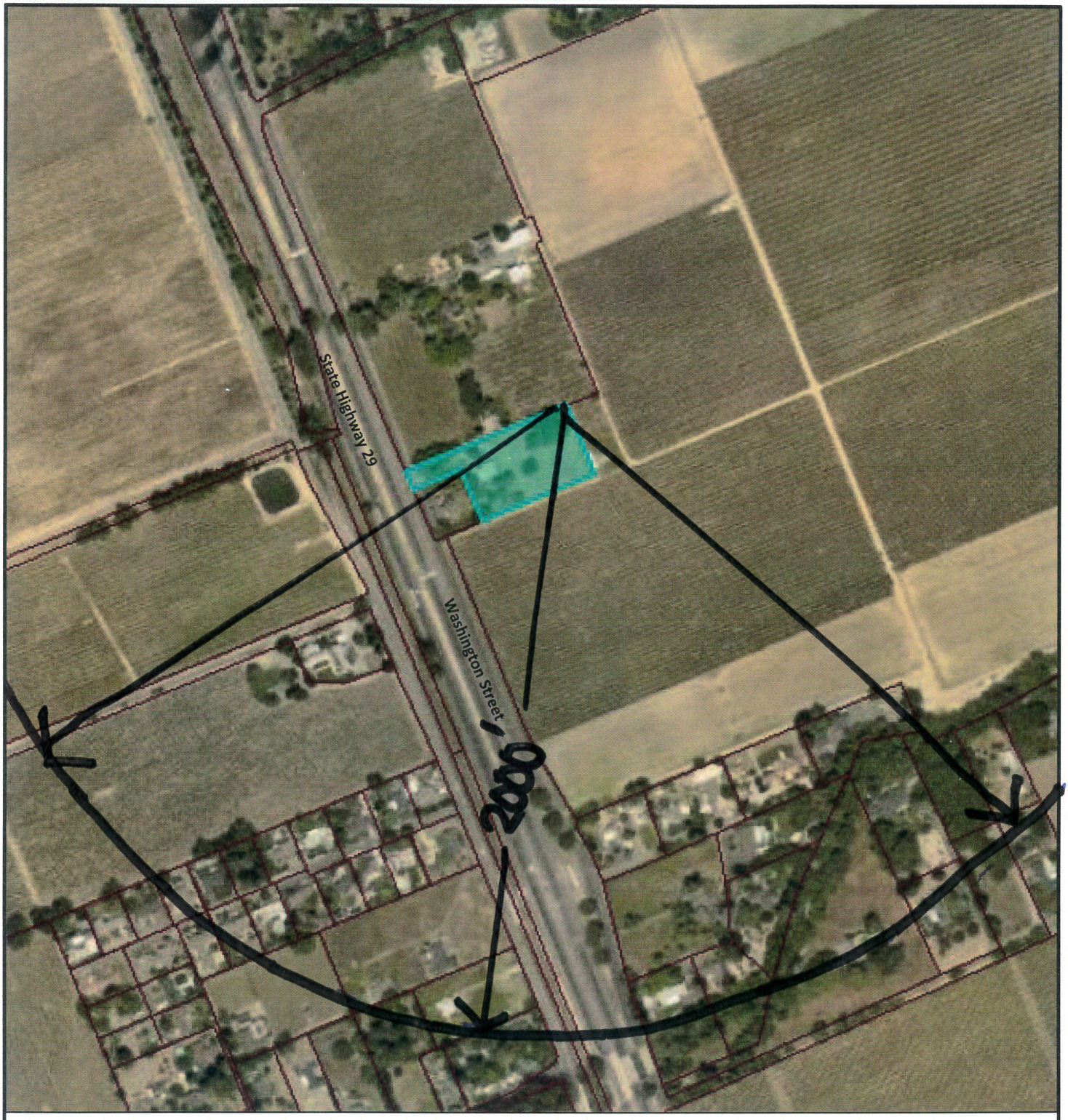
A California Highway Patrol helicopter crew hoisted a pilot and four passengers from a hot-air balloon that landed in a remote area of rural Napa County Saturday morning, the agency reported.

CHP dispatchers were notified at 8:38 a.m. that the balloon had come down in a wooded area near a waterfall, in the hills near Sulphur Springs Road, according to a Facebook posting by the agency's Golden Gate Division Air Operations. A helicopter was called to the scene, along with personnel from Napa County Fire, St. Helena Fire, the Napa County Sheriff's Office and American Medical Response.

The helicopter crew searched the area and found the balloon in a steep, inaccessible canyon, according to CHP. The passengers and pilot were hoisted from the ravine and flown to waiting first responders.

CHP reported the balloon pilot suffered injuries during the landing, although the extent was unclear.

The sheriff's office is investigating the incident.



N

Aerial

P19-00303 Balloons Above the Valley

APN: 036-130-029

National Transportation Safety Board
Aviation Accident Preliminary Report

Location:	Napa, CA	**Accident Number:**	WPR19LA104
Date & Time:	04/01/2019, 0757 PDT	**Registration:**	N6954Y
Aircraft:	Cameron A-400	**Injuries:**	1 Serious, 2 Minor, 17 None
Flight Conducted Under:	Part 91: General Aviation - Business		

On April 1, 2019, about 0757 Pacific daylight time, a Cameron Balloons US, A-400 hot air balloon, N6954YA, impacted power lines during flight near Napa, California. The pilot and 16 passengers were not injured, one passenger sustained serious injuries and two passengers sustained minor injuries. The balloon was not damaged. The balloon was registered to and operated by Balloons Above the Valley under the provisions of Title 14 *Code of Federal Regulations* Part 91 as a sightseeing flight. Visual meteorological conditions prevailed and no flight plan was filed for the local flight that originated at 0730 from a private vineyard in Napa.

In a telephone conversation with the National Transportation Safety Board investigator-in-charge, the pilot stated that the balloon encountered a sudden downdraft and the bottom of the basket contacted the nearby power lines. The pilot subsequently landed the balloon uneventfully.

The passenger with serious injuries reported to the police officer that she grabbed onto the power line when she tried to push the basket away from it.

The pilot reported no mechanical failure or malfunction with the balloon that would have precluded normal operation.

Aircraft and Owner/Operator Information

Aircraft Make:	Cameron	**Registration:**	N6954Y
Model/Series:	A-400 No Series	**Aircraft Category:**	Balloon
Amateur Built:	No		
Operator:	On file	**Operating Certificate(s) Held:**	None

Meteorological Information and Flight Plan

Conditions at Accident Site:		**Condition of Light:**	
Observation Facility, Elevation:	KAPC, 14 ft msl	**Observation Time:**	
Distance from Accident Site:	10 Nautical Miles	**Temperature/Dew Point:**	
Lowest Cloud Condition:		**Wind Speed/Gusts, Direction:**	/ ,
Lowest Ceiling:		**Visibility:**	
Altimeter Setting:		**Type of Flight Plan Filed:**	None
Departure Point:	Napa, CA	**Destination:**	Napa, CA

Wreckage and Impact Information

Crew Injuries:	1 None	**Aircraft Damage:**	None
Passenger Injuries:	1 Serious, 2 Minor, 16 None	**Aircraft Fire:**	None
Ground Injuries:	N/A	**Aircraft Explosion:**	None
Total Injuries:	1 Serious, 2 Minor, 17 None	**Latitude, Longitude:**	38.375000, -122.336667 (est)

Administrative Information

Investigator In Charge (IIC):	Maja Smith
Additional Participating Persons:	
Note:	The NTSB did not travel to the scene of this accident.

EXHIBIT N-9

N.A.P.A. COALITION OPPOSITION

TO PERMIT APPLICATION P19-00303

EXHIBIT N-10

N.A.P.A. COALITION OPPOSITION

TO PERMIT APPLICATION P19-00303

Napa tourists rescued after hot air balloon makes emergency landing

NAPA, California -- Tourists who were taking in the scenic Napa Valley on a hot air balloon ride Tuesday had their journey turn into a rescue mission when the balloon went off course and made an emergency landing near the Napa River, CBS San Francisco reported.

"They got a nice balloon ride and a free helicopter ride," California Highway Patrol flight officer Tom Lipsey told CBS SF.

Lipsey said as CHP helicopters were out training, he noticed something colorful from the flight hanger.

"We looked over there, saw a hot air balloon that was pretty far south of where we normally see them," he recalled.

A helicopter found the balloon on a remote levee, miles off course, near the Napa River. The pilot told Lipsey he didn't have enough fuel to lift off.

"The winds were kind of shifting all over as we were landing, so I think it was just a really strange day for winds and maybe caught them off guard," Lipsey said.

The balloon belongs to Napa Valley Balloon Inc. Representatives told CBS SF the people on the balloon ride were tourists that were part of a Robert Mondavi wine tasting trip.

The helicopter had to make multiple trips to rescue the 16 tourists and the pilot.

One of the tourists posted on Instagram a selfie from the chopper.

"I know they were taking a lot of selfies and videos of us flying over there so I am sure they got good memories there," Lipsey said.

Napa Valley Balloon Inc. said the strong winds forced their pilot to land on the levee, but no one was ever in danger.

EXHIBIT N-11

N.A.P.A. COALITION OPPOSITION

TO PERMIT APPLICATION P19-00303

National Transportation Safety Board
Aviation Accident Final Report

Location:	Napa, CA	**Accident Number:**	WPR14CA097
Date & Time:	12/29/2013, 0830 PST	**Registration:**	N65298
Aircraft:	CAMERON BALLOONS US A-400	**Aircraft Damage:**	Substantial
Defining Event:	Windshear or thunderstorm	**Injuries:**	21 None
Flight Conducted Under:	Part 91: General Aviation - Other Work Use - Sightseeing		

Analysis

The pilot was flying the balloon as a commercial revenue sight-seeing flight with 20 passengers on board. The pilot reported that during the inflation of the hot air balloon about 30 minutes prior to the accident, the weather was clear skies and calm wind.

The pilot reported that he was about 10 minutes behind the other balloons, so he was able to observe their flight path through the valley. Prior to the accident, the pilot noted the airspeed was about 16 miles per hour, which he thought unusual for the location of the flight. As he had observed the other balloonists do, he placed his balloon in a controlled descent, with the intent of traversing the same section of the valley as the other balloons. This part of the tour would take them over the vineyards and through the center of the valley. During the controlled descent, the pilot reported that it felt like the balloon was being pushed down, which he attributed to wind shear. The bottom portion of the balloon's basket subsequently contacted the top of a 30-foot wooden power pole and simultaneously the backside of the envelope was pushed toward the burners, which caused several structural panels to be burned. The pilot continued the flight for another 1.5 miles in order to make a safe landing in a park. The pilot landed the balloon without further incident.

The company indicated that the pilot received his weather briefing from the National Weather Service, but did not say at what time; only that the wind was calm. Thirty minutes before departure, recorded weather at a nearby airport indicated that the wind was calm. Approximately 30 minutes after the accident, the recorded weather at the same airport reported that the wind was from the west at 5 knots.

Probable Cause and Findings

The National Transportation Safety Board determines the probable cause(s) of this accident to be: Failure to maintain clearance from obstacles during a descent that resulted in an inadvertent collision with a pole.

Findings

Aircraft	Altitude - Not attained/maintained (Cause)
Environmental issues	Pole - Response/compensation (Cause)
	Sudden wind shift - Contributed to outcome

Factual Information

History of Flight

Enroute-cruise	Windshear or thunderstorm (Defining event)
	Collision with terr/obj (non-CFIT)

Pilot Information

Certificate:	Commercial	Age:	62
Airplane Rating(s):	None	Seat Occupied:	None
Other Aircraft Rating(s):	Balloon	Restraint Used:	
Instrument Rating(s):	None	Second Pilot Present:	No
Instructor Rating(s):	None	Toxicology Performed:	No
Medical Certification:	None	Last FAA Medical Exam:	
Occupational Pilot:	Yes	Last Flight Review or Equivalent:	06/15/2012
Flight Time:	3500 hours (Total, all aircraft), 398.5 hours (Total, this make and model)		

Aircraft and Owner/Operator Information

Aircraft Make:	CAMERON BALLOONS US	Registration:	N65298
Model/Series:	A-400 NO SERIES	Aircraft Category:	Balloon
Year of Manufacture:		Amateur Built:	No
Airworthiness Certificate:	Balloon	Serial Number:	6694
Landing Gear Type:		Seats:	
Date/Type of Last Inspection:	03/08/2013, Annual	Certified Max Gross Wt.:	
Time Since Last Inspection:		Engines:	
Airframe Total Time:	90 Hours as of last inspection	Engine Manufacturer:	
ELT:	Not installed	Engine Model/Series:	
Registered Owner:	BALLOONS ABOVE THE VALLEY	Rated Power:	
Operator:	BALLOONS ABOVE THE VALLEY	Operating Certificate(s) Held:	None

Meteorological Information and Flight Plan

Conditions at Accident Site:	Visual Conditions	**Condition of Light:**	Day
Observation Facility, Elevation:	APC, 35 ft msl	**Distance from Accident Site:**	8 Nautical Miles
Observation Time:	1554 UTC	**Direction from Accident Site:**	155°
Lowest Cloud Condition:	Clear	**Visibility**	10 Miles
Lowest Ceiling:	None	**Visibility (RVR):**	
Wind Speed/Gusts:	Calm /	**Turbulence Type Forecast/Actual:**	/ None
Wind Direction:		**Turbulence Severity Forecast/Actual:**	/ N/A
Altimeter Setting:	30.14 inches Hg	**Temperature/Dew Point:**	4°C / -1°C
Precipitation and Obscuration:	No Obscuration; No Precipitation		
Departure Point:	Napa, CA	**Type of Flight Plan Filed:**	Unknown
Destination:	Napa, CA	**Type of Clearance:**	VFR
Departure Time:	0823 PST	**Type of Airspace:**	

Wreckage and Impact Information

Crew Injuries:	1 None	**Aircraft Damage:**	Substantial
Passenger Injuries:	20 None	**Aircraft Fire:**	None
Ground Injuries:	N/A	**Aircraft Explosion:**	None
Total Injuries:	21 None	**Latitude, Longitude:**	38.325000, -122.342778 (est)

Administrative Information

Investigator In Charge (IIC):	Tealeye Cornejo	**Report Date:**	04/23/2014
Additional Participating Persons:	Richard T Dilbeck; Federal Aviation Administration; Sacramento, CA		
Publish Date:	01/21/2016		
Note:	This accident report documents the factual circumstances of this accident as described to the NTSB.		
Investigation Docket:	http://dms.ntsb.gov/pubdms/search/dockList.cfm?mKey=88681		

EXHIBIT N-12

N.A.P.A. COALITION OPPOSITION

TO PERMIT APPLICATION P19-00303

EXHIBIT N-13

N.A.P.A. COALITION OPPOSITION

TO PERMIT APPLICATION P19-00303

How much time should I allow for my adventure?

How high will we go?

What should we wear?

Where do we launch from?

Can we bring cameras and video cameras?

Yes! Prepare to take many pictures! We encourage you to share your pictures on our social media sites!

Can I bring my child with me?

How many people will be in our basket?