RESOLUTION NO. 2020 -

A RESOLUTION OF THE NAPA COUNTY PLANNING COMMISSION, STATE OF CALIFORNIA, ADOPTING FINDINGS DENYING USE PERMIT APPLICATION

NO. P19-00303 FOR THE BALLOONS ABOVE THE

VALLEY HOT AIR BALLOON LAUNCHING SITE AT

5360 WASHINGTON STREET, NAPA,

CALIFORNIA, APN 036-130-029

WHEREAS, on June 28, 2019, an application for a use permit was filed with the Napa County Planning, Building and Environmental Services (PBES) Department by Robert Barbarick on behalf of Balloons Above the Valley (Applicant) requesting daily launching of up to eight hot air balloons and related activities between the hours of 6:00 a.m. and 9:30 a.m. (the Project). The PBES Department designated this application as Use Permit No. P19-00303; and

WHEREAS, the Project site is located on a 2.03-acre parcel within the Agricultural Preserve (AP) zoning district, with a General Plan land use designation of Agricultural Resource (AR). The site address is 5360 Washington Street, Napa, California, APN: 036-130-029 (the Property); and

WHEREAS, on October 23, 2019, a New Project Submittal Courtesy Notice was mailed to all property owners within 1,000 feet of the subject property and emailed to those persons on the County’s general California Environmental Quality Act (CEQA) document notification list; and

WHEREAS, on August 11, 2020, the Public Notice for the Napa County Planning Commission (Planning Commission or Commission) hearing and Notice of Intent to adopt a Negative Declaration was mailed to all property owners within 1,000 feet of the subject property as well as any other persons and agencies who had requested notice. Notice was also provided to those persons on the County’s general CEQA document notification list. The Notice was published in the Napa Valley Register on August 12, 2020; and

WHEREAS, on September 2, 2020, the Planning Commission held a properly noticed public hearing on the proposed Project and Use Permit Application No. P19-00303. The Commission heard and considered all public testimony (written and verbal) and all evidence related to the Project. Thereafter, the Planning Commission closed the public hearing, deliberated, and adopted a motion of intent to deny the Project (3:2 AYES: Whitmer, Cottrell and Gallagher; NOES: Mazotti and Dameron). The Commission further directed County Counsel’s office to prepare a resolution containing formal findings in support of the denial and return to the Commission on October 7, 2020 for consideration and adoption of the resolution; and

# WHEREAS, on October 7, 2020, the Planning Commission continued the matter to November 4, 2020; and

# WHEREAS, on November 4, 2020, the Planning Commission considered this proposed

# Resolution denying the Project.

**NOW, THEREFORE, BE IT RESOLVED,** that the Planning Commission finds, determines, concludes and decides as follows:

# SECTION 1. Recitals.

The Planning Commission finds that the foregoing recitals are true and correct.

**SECTION 2. CEQA Determination.**

The Commission finds that denial of the Project is exempt from CEQA pursuant to State CEQA Guidelines Section 15061(b)(4) which exempts disapproval of projects from CEQA review.

**SECTION 3. The Project is Inconsistent with the 2008 Napa County General Plan.**

A) Since the general plan is the constitution for all future development, any decision affecting land use and development must be consistent with the general plan. (*Citizens of Goleta Valley v. Board of Supervisors* *(1990) 52 Cal.3d 553, 570.*) However, a project need not be in perfect conformity with each and every general plan policy. A project must be examined to determine whether overall it is in harmony and agreement with the policies stated in the general plan. (*Sequoya Hills Homeowners Ass’n v. City of Oakland (1993) 153 CA3d 391, 408.)*

B) The Planning Commission finds and determines that while the Project may be consistent with some of the policies and goals contained in the 2008 Napa County General Plan, the Project is inconsistent and not in harmony or agreement with the following General Plan Policies and Goals[[1]](#footnote-1) and is therefore inconsistent overall with the General Plan:

1) Agricultural Preservation and Land Use Element Goal AG/LU-1. Preserve existing agricultural land uses and plan for agriculture and related activities as the primary land uses in Napa County.

2) Agricultural Preservation and Land Use Element Policy AG/LU-4. The County will reserve agricultural lands for agricultural use including lands used for grazing and watershed/open space, except for those lands shown on the Land Use Map as planned for urban development.

3) Agricultural Preservation and Land Use Element Policy AG/LU-12. No new non-agricultural use or development of a parcel located in an agricultural area shall be permitted unless it is needed for the agricultural use of the parcel, except as provided in AG/LU-2, AG/LU-5, AG/LU-26, AG/LU-44, AG/LU-45 and ROS-1.

*Rationale:* The Project would occur on land that has a General Plan designation of Agricultural Resource (AR). The intent of AR designated lands is to continue agriculture as the predominant land use, and preclude uses incompatible with agriculture. The Project site is located in an area surrounded by vineyards in the heart of the agricultural preserve. The Project would result in the conversion of an approximately 2.03-acre parcel of agricultural land to a commercial non-agricultural use. While up to 50 hot air balloon launch days a year already occurs on the site under Administrative Permit No. P19-00235, grant of this use permit would authorize launching of up to eight launches per day year round weather permitting. The Applicant estimated launching would occur 229 days per year or approximately 1,832 launches annually. The Commission finds this significant increase in the level of intensity and activity is a new use that would render the primary use of the parcel as commercial rather than agriculture. Because issuance of a use permit is an entitlement that runs with the land, the Commission also expressed concern that this increased level of commercial activity on this agricultural parcel would in effect permanently remove the land from agricultural use.

# SECTION 4. Findings Supporting Denial of Use Permit for Hot Air Balloon Launching (Napa County Code Section 18.124.070).

Napa County Code Section 18.124.070 contains five findings that the Commission must make prior to issuance of a use permit. These five findings are in addition to seven special use permit findings required by Section 18.104.400 for hot air balloon launch sites. The Commission did not address and decide whether or not the special use permit findings in Section 18.104.400 for hot air balloon launches could be made. Based on the entire record, the Commission finds and determines that it cannot make one of the five required findings contained in County Code Section 18.124.070 as further described below.

A) The Commission finds that grant of Use Permit No. P19-00303 would adversely affect the public health, safety or welfare of the County of Napa (Section 18.124.070 (C)).

*Facts and Rationale:* The launching of up to eight hot air balloons per day is proposed on a 2.03-acre parcel that is located 950 feet north and 880 feet northeast of two residential neighborhoods consisting of approximately 75 residences. Launching would begin at 7 a.m. Once the balloon launch occurs, the balloon operation is subject to Federal Aviation Administration (FAA) regulations. The FAA flight regulations require that the balloons ascend to a minimum altitude of 500 feet or 1,000 feet, depending on the density of the area. (Title 14 Code of Federal Regulations Section 91.119). Once launched the balloons generally fly south of the City of Napa, a path that carries them directly over these two residential neighborhoods that have approximately 75 residences.

The Applicant testified that the balloon pilots attempt to ascend to the FAA minimum altitudes as quickly as possible to avoid disturbing residential areas, but the altitude and direction of the balloon is subject to wind current and weather. The Commission heard and considered testimony, complaints and photographs from residences regarding impacts to their quality of life and disruption of their use and enjoyment of their property resulting from living in the flight path and balloons flying below the minimum altitudes from the 50 launches per year that currently occur from the site. These complaints included a lack of privacy in their homes and yards from the balloon patrons being able to see into their homes and private yards, noise from the balloon passengers talking in the low flying gondolas, and property damage caused by gondolas hitting trees, corners of structures and power lines. Between January 2019 and August 2020, the County received seven complaints regarding the Applicant’s balloons flying too low. The Applicant provided a list of intended landing areas; however, the County does not regulate landing sites. The Applicant testified that while the balloon pilots attempt to land in one of the intended locations, the landing is dependent on weather, wind and other factors, and unexpected landings have occurred. According to records from the Professional Balloon Pilots Association of Napa County between January 2019 and August 2020, there were two occurrences where the Applicant’s balloons landed in unintended areas and/or without permission from the property owners.

The record reveals that the majority of the complaints received by the County focused on activities that occur after the hot balloon has launched. These include flying below minimum FAA altitudes, invasion of privacy and noise generated from balloon patrons in the gondolas. Because the FAA is the agency responsible for monitoring, enforcing and regulating hot air balloon activity after the balloon takes off, the Planning Commission has concerns about the extent to which the FAA would assure compliance and adequately protect the public health, safety and welfare of Napa County residents.

*Conclusion:* Based on the foregoing and evidence in the administrative record, the Commission finds that the grant of a use permit for the Project would adversely affect the public health, safety or welfare of Napa County (Section 18.124.070 (C)).

# SECTION 5. Substantial Evidence.

Substantial evidence supporting each and every finding made herein is contained in the record of proceedings on the proposed Project.

# SECTION 6. Final Determinations.

Based on the foregoing facts, findings, rationales, determinations and conclusions, the Planning Commission hereby:

1) Finds denial of the Project is exempt from CEQA;

2) Adopts the findings of facts and rationales as set forth in this Resolution; and

3) Denies Use Permit No. P19-00303 for the Project.

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# SECTION 7. Effective Date.

This Resolution shall take effect immediately upon its adoption.

**THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED** by the Napa County Planning Commission, State of California, at a regular meeting of said Commission held on the 4th day of November 2020, by the following vote:

AYES: COMMISSIONERS \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NOES: COMMISSIONERS \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ABSENT: COMMISSIONERS \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ABSTAIN: COMMISSIONERS \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAPA COUNTY PLANNING COMMISSION

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DAVID WHITMER, Chair

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| APPROVED AS TO FORM  Office of County Counsel  By: *Laura J. Anderson (e-signature)*  Deputy County Counsel  Date: October 25, 2020 | ATTEST: \_\_\_\_\_\_\_\_\_  Clerk of the Planning Commission  By: |

1. Some of the policies have been abbreviated. Please refer to the actual policy for the complete text. [↑](#footnote-ref-1)