



Agenda Date: 11/15/2005
Agenda Placement: 8E
Set Time: 2:00 PM PUBLIC HEARING
Estimated Report Time: 1 Hour

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Michael Stoltz for Robert Peterson - Director
Public Works
REPORT BY: Michael Stoltz, Deputy Director of Public Works, 299-1365
SUBJECT: Public Hearing - Balloon Launch facilities - Neg Dec

RECOMMENDATION

Director of Public Works requests the following actions regarding the establishment of a balloon launching facility on County owned property adjacent to the Roads Division Corporation Yard on Silverado Trail near Yountville for a six month evaluation period:

1. Conduct a Public Hearing regarding Draft Initial Study and Negative Declaration prepared (#CDP05-0177);
2. Adoption of the negative declaration;
3. Adoption of a resolution approving the non-exclusive license agreement for temporary use of a portion of the County of Napa Corporate Yard Facility on Silverado Trail and authorizing the Director of Public Works or the Director's designee to enter into such agreements; and
4. Provide further direction regarding pursuing change options in Napa County Code Section 18.120.

EXECUTIVE SUMMARY

Based upon Board direction received on September 13, October 4 and November 1, 2005, staff has continued to work with the balloon industry representatives to bring forth this requested action. A summary of the key issues follows:

1. Code of Conduct - The Professional Pilot's Association has further refined this document based upon Board direction on November 1.
2. Risk Manager Review - The Risk Manager has continued to exercise due diligence in reviewing what insurance carriers are acceptable to the County and can provide this specialized insurance coverage. The Risk Manager stands by the original recommendations made as part of the October 4 presentation to the Board. Clarifying language pertaining to the insurance has been added in the License agreement.
3. Feedback from California Highway Patrol - County staff met with Mark Rasmussen, the Area Commander, of the California Highway Patrol on November 8. Mr. Rasmussen shared his concern that a balloon launching facility adjacent to Silverado Trail may cause a visual surprise and distraction that

could contribute to additional traffic accidents and fatalities. As part of this dialogue it was felt that this concern could be addressed through signage placed on Silverado Trail advising motorists of potential balloon launchings. Should the Board so direct, County staff will install these signs (to be paid for by the balloon industry).

4. Other changes to the license agreement, termination clause - Based upon the Board discussion on November 1, this clause has been further refined.
5. Launching fee structure - County staff had originally proposed a flat fee of \$67.50 per launch. Based upon feedback from the balloon industry staff had agreed to look at an alternate proposal where fees may be graduated based upon the number of passengers. The Professional Balloon Pilots Association of Napa County (PBPANC) has submitted a proposal that a three tier system be utilized. After reviewing this proposal, staff is proposing a two tier system.
6. Pursuing other code change options in 18.120. - County Counsel has opined that "At the Board's discretion, the zoning ordinance could be amended to allow hot air balloon launchings to occur in any zoning district upon grant of a use permit. To enact such an ordinance, the Board would have to conclude that it was consistent with the County's General Plan, a conclusion that could be supported in staffs' view. The ordinance would not require a Measure J vote." Conservation, Development and Planning staff has indicated that, if directed by the Board, this issue could be brought back for action between sixty to ninety days, with another thirty days for the ordinance to become effective.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Negative Declaration Prepared. According to the proposed Negative Declaration, the proposed project would have no potentially significant environmental impacts.

BACKGROUND AND DISCUSSION

Based upon Board direction received on September 13, October 4 and November 1, 2005, staff has continued to work with the balloon industry representatives to bring forth this requested action. A summary of the key issues follows:

1. Code of Conduct - The Professional Pilot's Association has further refined this document based upon Board direction on November 1. The following additions/deletions have been made:
 - a. Under flight operations, the phrase "Maintain a 500' or higher altitude when over-flying these areas unless necessary for take-off or landing" has been deleted, and replaced with "Comply with the minimum altitudes required by FAR § 91.119".
 - b. Under individual company responsibilities, the phrase " Place the identifying 12" high N number, as prescribed by the Federal Aviation Regulations, of each company balloon on the bottom of each gondola for identification purposes. Display the company name on each balloon chase vehicle." has been added.
 - c. Under PBPANC Responsibilities, the phrase "Provide a copy of the log to the County Board of Supervisors on a quarterly basis." has been added.
2. Risk Manager Review - The Risk Manager has continued to exercise due diligence in

reviewing what insurance carriers are acceptable to the County and can provide this specialized insurance coverage. Based upon this review, the Risk Manager states "it is the recommendation of this office that any balloon company utilizing County property for launching, provide evidence of coverage by a company with an A.M. Best rating of A:VII or better in the amount of One Million Dollars for the operation of balloons carrying up to ten (10) passengers with an additional \$100,000 for each passenger for any balloon carrying more than ten. In the event a company only has One Million Dollars of commercial coverage, the County could accept a Letter of Credit or a Certificate on Deposit for the additional coverage. This will provide County with the maximum protection while still complying with AB 2430, the 2004 urgency legislation that made changes to requirements for balloon insurance." The Risk Manager stands by the original recommendations made as part of the October 4 presentation to the Board. Clarifying language pertaining to the insurance has been added in the License agreement.

3. Feedback from California Highway Patrol - County staff met with Mark Rasmussen, the Area Commander, of the California Highway Patrol on November 8. Mr. Rasmussen shared his concern that a balloon launching facility adjacent to Silverado Trail may cause a visual surprise and distraction that could contribute to additional traffic accidents and fatalities. As part of this dialogue it was felt that this concern could be addressed through signage placed on Silverado Trail advising motorists of potential balloon launchings. Should the Board so direct, County staff will install these signs (to be paid for by the balloon industry). Staff has also added language to the agreement that provides that the Public Works Director "shall have the ability to immediately terminate or suspend this Agreement, if, in the Director's judgment, the launch operations are reasonably found to constitute a threat to the health, safety, or public welfare."
4. Other changes to the license agreement, termination clause - Based upon the Board discussion on November 1, this clause has been refined to state "If Licensee shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within one (1) day of receipt of written notice from Licensor describing the nature of the breach, Licensor may, in addition to any other remedies it may have, terminate this Agreement. Successive breaches of this Agreement shall also be grounds for immediate termination of this Agreement. Notice of termination shall be provided by the Director of Public Works, or the Director's designee. ... Licensee may appeal the termination/suspension to the Board of Supervisors in accordance with Chapter 2.88 of the County Code, except the provisions of Section 2.88.050(F) and (G) shall not apply. The filing of an appeal shall not operate as a stay of the termination or suspension. Licensee waives any claim for damages or expenses it may have arising out of such termination or suspension."
5. Launching fee structure - County staff had originally proposed a flat fee of \$67.50 per launch. Based upon feedback from the balloon industry staff had agreed to look at an alternate proposal where fees may be graduated based upon the number of passengers. The Professional Balloon Pilots Association of Napa County (PBPANC) has submitted a proposal that a three tier system be utilized where passenger loads of 12-16 passengers be charged \$67.50, passenger loads of 7-11 passengers be charged \$35, and passenger loads of 6 or fewer passengers be charged \$15. In reviewing this proposal, staff is concerned that there may not be a correlation between the number of passengers and the cost to the county to review the manifest and the appropriate insurance waiver documents. Staff is also mindful that Washington Square in Yountville presently assesses a flat fee to balloon operators at its site regardless of the number of passengers. Given these concerns, staff is proposing a two tier system where passenger loads of 9 or more passengers be charged \$67.50 and passenger loads of 8 or less passengers be charged \$40.
6. Pursuing other code change options in 18.120. - County Counsel has opined that "At the Board's discretion, the zoning ordinance could be amended to allow hot air balloon launchings to occur in any zoning district upon grant of a use permit. To enact such an ordinance, the Board would have to conclude that it was consistent with the County's General Plan, a conclusion that could be supported in staffs' view. The ordinance would not require a Measure J vote. Because of the differences between hot air balloons and other aircrafts, the ordinance would not likely be considered a violation of equal protection of the law." Conservation, Development and Planning staff has indicated that, if directed by the Board, this issue

could be brought back for action between sixty to ninety days, with another thirty days for the ordinance to become effective.

SUPPORTING DOCUMENTS

- A . Notice of Intent to Adopt Negative Declaration
- B . Resolution
- C . Exhibit One to Resolution (License Agreement)
- D . County Counsel Memorandum
- E . Code of Conduct (Redline Changes)
- F . Risk Manager's Analysis

CEO Recommendation: Approve

Reviewed By: Andrew Carey