



Agenda Date: 5/2/2006
Agenda Placement: 8B
Set Time: 9:30 AM PUBLIC HEARING
Estimated Report Time: 1 Hour

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Steven Lederer for Hillary Gitelman - Director
Conservation, Development & Planning
REPORT BY: Steven Lederer, Deputy Planning Director, 253-4417
SUBJECT: Public Hearing - Balloon Ordinance

RECOMMENDATION

First and final reading and adoption of an ordinance adding a new Section 18.104.400 (Hot Air Balloon Launching Site - Findings) and amending Sections 18.120.010, 18.126.030, 18.126.060 and 18.126.070 of the Napa County Code to allow:

1. Balloon launching sites in any zone upon grant of a use permit; and
2. A maximum of thirty-six balloon launchings per year at the same location in any zone upon issuance of an administrative permit.

ENVIRONMENTAL DETERMINATION: Categorical Exemption Class 5 (Minor alterations in land use limitations): It has been determined that this type of project would not have a significant effect on the environment and is exempt from the California Environmental Quality Act. The project will not impact an environmental resource of hazardous or critical concern, has no cumulative impact, there is no reasonable possibility that the activity may have a significant effect on the environment due to unusual circumstances, will not result in damage to scenic resources, is not located on a list of hazardous waste sites, will not cause substantial adverse change in the significance of a historical resource or extract groundwater in excess of the Phase 1 groundwater extraction standards as set by the Department of Public Works. [See Class 5 ("Minor Alterations in Land Use Limitations") which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15305; see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B.]

(CONTINUED FROM MARCH 21, 2006)

EXECUTIVE SUMMARY

The proposed ordinance would permit balloon launching with a use permit where launches would occur more than 36 days per year, and would permit balloon launching with an administrative permit where launches would occur on the same site 36 days or less. For launch sites requiring a use permit, the Planning Commission would hold a public hearing and would make certain findings. For launch sites requiring an administrative permit, the

proposed ordinance would establish a noticing procedure and a certain standards would have to be met. The proposed ordinance and any permits issued pursuant to the ordinance would remain in effect on a trial basis for two years or until May 2, 2008.

On March 15, 2006, the County Planning Commission recommended that the Board of Supervisors not adopt the proposed ordinance, and on March 21, 2006, the Board of Supervisors requested specific changes to the proposed ordinance and continued the public hearing to May 2, 2006. The proposed ordinance reflects the specific changes requested by the Board at the March 21st hearing. Subsequent to that hearing, representatives of the balloon industry and those concerned about its impacts suggested additional modifications, which have not been incorporated into the draft ordinance but may be considered by the full Board at their discretion.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Categorical Exemption Class 5 (Minor alterations in land use limitations): It has been determined that this type of project would not have a significant effect on the environment and is exempt from the California Environmental Quality Act. The project will not impact an environmental resource of hazardous or critical concern, has no cumulative impact, there is no reasonable possibility that the activity may have a significant effect on the environment due to unusual circumstances, will not result in damage to scenic resources, is not located on a list of hazardous waste sites, will not cause substantial adverse change in the significance of a historical resource or extract groundwater in excess of the Phase 1 groundwater extraction standards as set by the Department of Public Works. [See Class 5 ("Minor Alterations in Land Use Limitations") which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15305; see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B.]

BACKGROUND AND DISCUSSION

Supervisor Diane Dillon has suggested that the County address the need of hot air balloonists to find legal launch areas within the County by modifying Section 18.120.010 (Exceptions) of the zoning ordinance to permit establishment of balloon launching sites within any zoning district upon grant of a use permit, provided that certain conditions are met. At a hearing of the County Planning Commission on January 18, 2006, balloonists indicated that they felt this was too restrictive a process, and it became clear that there were a host of different possible outcomes, including:

- Option 1. Make no change and do not permit balloon launching in agricultural areas;
- Option 2. Allow new balloon launching sites to be established, but only with a use permit;
- Option 3. Allow new balloon launching sites to be established without a use permit but with an administrative permit;
- Option 4. Provide balloon companies with a license to launch from any site where the property owner consents.

At Planning Commission hearings on January 18, March 1, and March 15, balloon companies advocated Option 4, and agricultural interests (Farm Bureau, Vintners) advocated Option 1. After some deliberation, County staff

prepared a draft ordinance which would implement a blend of Options 2 and 3.

On March 15, 2006, the Planning Commission heard testimony regarding the draft ordinance from a number of speakers representing various perspectives, including farmers, balloon operators, and neighbors. The Commission also received correspondence from the Balloon Pilots Association and the County's Agricultural Commissioner. Many commenters suggested that balloon activities are not consistent with agricultural activities, and urged either no change to County regulations or only changes which constrain balloon launching activities to a few sites. The Commission voted to recommend that the Board of Supervisors *not adopt* the proposed ordinance, effectively keeping agricultural areas off-limits to balloon launching. This recommendation was forwarded to the Board of Supervisors, and on March 21, 2006 after considering additional public testimony the Board directed staff to make changes to the draft ordinance and continued the public hearing to May 4, 2006.

As originally conceived and as modified, the draft ordinance would permit balloon launchings in any zoning district with a use permit if launches would occur more than 36 days per year, and would permit balloon launchings in any zone with an administrative permit where launches would occur 36 days or less. The thinking behind this hybrid proposal is that: (a) some additional launching sites are required if this important industry is to thrive; (b) neighbors need to receive notice of new launching sites, so simply issuing a license to a company who can use that license anywhere is not sufficient; but (c) a launch site that is used less frequently requires less in terms of processing and review than a site that is used more frequently. The draft ordinance also recognizes that while the County can legally regulate balloon landing sites as well as balloon launching sites, it has limited ability to enforce these regulations because the Federal Aviation Administration (FAA) regulations permit emergency landings to occur any place and the FAA typically defers to the balloon pilot's judgment as to whether the emergency landing was appropriate and required at the time.

For launch sites requiring a use permit, notice would be provided as required for a standard use permit, and a hearing would be held before the Planning Commission. (The Planning Commission's decision would be appealable to the Board.) In addition to the standard use permit findings, the proposed launch site would have to meet additional conditions as follows (changes made at the Board's direction are indicated):

- A. The proposed site is more than ~~4,000~~ 300 feet from any off-site residence or the permittee has received written permission from all off-site residents within 300 feet;
- B. The permittee has agreed to the adopted Code of Conduct (see attached) and has complied with the Code at previously permitted sites;
- C. The permittee has written authorization from the property owner or authorized agent, who has also confirmed that the use will not conflict with any existing or planned agricultural use of the property;
- D. The proposed site is located at least ~~two one~~ one miles from any other launching site, including sites within incorporated areas;
- E. The proposed site would be used only between the hours of 5:30 and 9:30 AM;
- F. The permittee has posted \$2,500 in security to compensate property owners for damage caused by unauthorized landings;
- G. The permittee has provided a certificate of insurance naming the County and the property owner as additional insureds similar to the requirement for use of the County corporation yard.
- H. The permittee has provided a list of intended landing areas that are reasonable and permitted or allowed given the launch location and prevailing winds and agrees to operate such that the County receives no more than three complaints of landings without a property owner's or resident's permission in an annual period.

For launch sites requiring an administrative permit (which is similar to a large temporary event permit), a slightly modified (shorter) list of conditions would have to be met:

- A. The proposed site is more than ~~4,000~~ 300 feet from any off-site residence or the permittee has received written permission from all off-site residents within 300 feet;

B. The permittee has agreed to the adopted Code of Conduct and has complied with the Code at previously permitted sites;

C. The permittee has written authorization from the property owner or authorized agent, who has also confirmed that the use will not conflict with any existing or planned agricultural use of the property;

D. The proposed site would be used only between the hours of 5:30 and 9:30 AM;

E. The permittee has provided a certificate of insurance naming the County and the property owner as additional insureds similar to the requirement for use of the County corporation yard.

F. The permittee has provided a list of intended landing areas that are reasonable and permitted or allowed given the launch location and prevailing winds and agrees to operate such that the County receives no more than three complaints of landings without a property owner's or resident's permission in an annual period.

Also, since an administrative permit does not require a hearing by the Planning Commission, this section of the proposed ordinance would establish a notice procedure similar to that used for a large temporary event. Specifically, a notice of the tentative approval of a launching site would be provided to owners within 300 feet and other interested parties. The notice would explain the appeal procedure, which if exercised would result in a hearing at the Board. It should be noted that if the above conditions are met, the Board would have little discretion to deny an administrative permit. However, revocation of an administrative permit for non-compliance with conditions would be far easier than revocation of a use permit.

As drafted, the proposed ordinance and any permits issued pursuant to the proposed ordinance would remain in effect on a trial basis for two years or until May 2, 2008. After the two year period, the ordinance could be adjusted as appropriate and extended or made permanent if desired.

Staff anticipates some difficulty monitoring incidents of unwanted trespass and has developed a form that property owners or residents would have to use to report such incidents. (See attached.) Upon receipt of a completed form, Planning staff would contact balloon operators and request records of launches and landings (required under the Code of Conduct). Staff would attempt to confirm the incident, identify which launch site was utilized by the balloonist, and if it was a launch site permitted under the proposed ordinance determine whether this constituted the first, second, or third incident. If this process proves unwieldy/ineffective or results in excessive use of staff time, some other system could be devised when/if the ordinance is reconsidered in two years. For launching with a use permit, the proposed ordinance includes a requirement that security in the amount of \$2,500 be posted to compensate property owners for damage that may occur. Staff proposes that claims for compensation be heard by the County's hearing officer. Pursuant to County Code Section 2.22.040, by resolution, the Board may assign the hearing officer the responsibility and duty of conducting hearings of various types. A proposed resolution assigning this responsibility to the hearing officer is listed separately on the Board's agenda under Administrative Items.

GENERAL PLAN CONFORMITY

Three recreational policies in the Land Use Element of the General Plan are directly applicable to recreational uses such as balloon launchings, and are discussed below.

Policy 2.2 Recreational Facilities (page 2-21) states that "The County will plan for and reserve land for recreational facilities, and encourage public and private recreational development and other open space uses that meet the needs of Napa County residents and are beneficial to the residents of Napa County as well as visitors to the County." The proposed zoning amendment would allow any zoning district in the County to potentially be available for recreational hot air balloon rides. Because balloon rides are popular, provide an alternative, non-vehicular means of viewing the Napa Valley, and contribute to the local economy, they are beneficial to tourists and County residents in keeping with this policy.

Policy 2.3 Recreational Facilities on Agricultural Lands (page 2-21) states that "Notwithstanding Policy 2.2, the

County will encourage recreational uses on lands designated agriculture only where those uses will meet the recreational needs of Napa County residents and are beneficial to residents of Napa County, will not deplete or degrade natural resources on which nearby or onsite agriculture depends, and where the type of recreation would not be adversely affected by commencement, intensification, or continuation of local agricultural activity.” At recent hearings, the Board of Supervisors heard testimony from some County residents that they enjoy taking hot air balloon rides and seeing the valley from the air. Other County residents and representatives of the balloon industry have described the balloon industry as an activity engaged in by tourists and explained that a strong tourism industry creates a strong economy, which is beneficial to County residents. Providing additional launch sites in the County would allow more residents to take advantage of balloon rides, prevent residents from having to go out of the County for the experience and could potentially result in more centrally located sites that require less driving time. The launch sites are portable and do not require construction of any infrastructure, structures, impervious surfaces, or rely on groundwater or other natural resources on which agriculture depends. By requiring the types of special conditions discussed above, the County could further ensure that agriculture would not be adversely affected by launchings and that launching sites are not concentrated in certain areas or places that may not be compatible with agriculture in keeping with this policy.

Policy 2.4 Open Space Character of Rural Recreational Uses (page 2-21) states that “Recreational uses permitted on lands designated for agriculture, watershed and/or open space shall be limited in density, intensity, need for public services, impacts on the natural environment, and growth inducement. Such uses shall maintain the character of the surrounding area, require a minimum of public support services (such as paved roads, emergency services, or law enforcement), a minimum of impervious surfaces, structures, natural landform alteration or other introduced or constructed features inconsistent with a rural environment, and shall not significantly contribute to the likelihood that additional non-agricultural uses of agricultural land will be proposed to support or be accessory to the continued existence of the recreational use.” By applying special conditions such as requiring that launch sites be some specified distance apart or they only used for a certain number of days per year, and by requiring that proposed launch sites not conflict with agriculture, and that operators comply with a code of conduct, the County can limit the density and intensity of the use, the need for public services, impacts on the natural environment and growth inducement and maintain the character of the surrounding area, ensuring consistency with this policy.

CEQA DETERMINATION

Categorical exemption pursuant to Class 5 (CEQA Guidelines Section 15303), Minor alterations to land use limitations, and General Rule Exclusion (CEQA Guidelines Section 15061(b)(3)). A prior environmental document associated with balloon launching at the Red Hen site (Use Permit No. 03460-MOD) concluded that there would be no significant environmental impacts associated with the activity and is incorporated herein by reference (copies are available at the Planning Department upon request). Based on this prior analysis and the specific conditions that would apply to any balloon launch facility under the proposed ordinance, it can be seen with certainty that there is no possibility that the proposed amendments to the County Zoning Ordinance may have a significant effect on the environment.

Opponents of the proposed ordinance have argued that unauthorized landings by balloons on private property may have significant adverse environmental effects. While this may be true, the proposed ordinance would not encourage or permit additional unauthorized landings. Instead, it would provide for a greater number of legal launching sites. Since there is a finite market for balloon rides, the addition of launching sites is unlikely to substantially increase balloon activities in general, and the proposed ordinance would tend to reduce the incidence of unauthorized landings due to conditions of approval related to the Code of Conduct and use of authorized landing sites.

SUPPORTING DOCUMENTS

- A . Adopted Code of Conduct
- B . Certification of Unauthorized Trespass
- C . Ordinance (tracked)
- D . Ordinance (clean)

CEO Recommendation: Approve

Reviewed By: Andrew Carey