



Agenda Date: 8/8/2006  
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Set Time: 1:30 PM  
Estimated Report Time: 90 Minutes

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Hillary Gitelman - Director  
Conservation, Development & Planning  
**REPORT BY:** John McDowell, Program Planning Manager, 299-1354  
**SUBJECT:** Napa Flea Market - Proposal to Initiate Amendment to AIA Specific Plan

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### **RECOMMENDATION**

Director of Conservation Development and Planning requests the following:

1. Approval of and authorization to initiate an amendment to the Airport Industrial Area Specific Plan to allow continued operation of the Napa Flea Market at 303 South Kelly Road as a conditionally permitted use; and
2. Provide direction to staff regarding the continued operation of the flea market at its present size during preparation and consideration of the Specific Plan amendment.

### **EXECUTIVE SUMMARY**

In December 1995, the County approved a Certificate of Legal Non-Conformity (CLN) for the Napa Flea Market, an open-air retail market located between Highway 29 and South Kelly Road in the Napa County Airport Industrial Area. The Flea Market has long been established at this location, but has illegally expanded over the course of approximately the last two decades. The 1995 CLN contained three critical components: 1) a detailed listing of all legally established uses; 2) a detailed listing of all illegal uses; and 3) a provision that all illegal uses could continue for 10 years before being terminated. The 10 year phase out period ended in December 2005. In May of 2006 as part of ongoing zoning enforcement negotiations, the applicant was informed of their right to seek amendment to land use regulations as an alternative to conforming with current regulations.

The current property owners, the sons of the original property owner who applied for that 1995 CLN, are requesting that the Board of Supervisor authorize processing of a specific plan amendment to legitimize the existing operation in essentially it's current configuration, but with certain conditions to address County concerns. In addition, the owners are requesting that they be allowed to continue the use in it's current configuration while the specific plan amendment is being processed.

### **FISCAL IMPACT**

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	Zoning enforcement actives are presently funded out the Conservation, Development and Planning Department budget. Conservation, Development and Planning Department staff have spent approximately 60 hours to date on the project since March of this year.
	If a specific plan amendment is initiated, the applicant will be required to fund all County staff time and material costs, including any consultants necessary to complete required CEQA analysis.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	If the Board of Supervisors authorizes processing of the amendment, County processing of the application will not proceed until such time the applicant has filed the required processing fee deposit.
Is the general fund affected?	No
Future fiscal impact:	None
Consequences if not approved:	If the amendment is not initiated, zoning enforcement action will continue until such time all unauthorized acitivites are abated.
Additional Information:	None

### **ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: Initiation of the specific plan amendment is not subject to a CEQA determination pursuant to Section 15378(c) of the California Environmental Quality Act. However, a CEQA document will be prepared, and must be adopted prior to any County action approving the specific plan amendment.

### **BACKGROUND AND DISCUSSION**

The Napa Flea Market, located between Highway 29 and South Kelly Road in the Napa County Airport Industrial Area, is a non-conforming open-air retail use that has been in continuous operation for approximately 50 years. Over approximately the last two decades unauthorized expansions of the facility have occurred.

In December of 1995, after lengthy zoning enforcement proceedings seeking to rectify the unauthorized expansions, the Board of Supervisors approved (on appeal) a Certificate of Legal Non-conformity (CLN) which, in addition to specifically identifying both the legal and illegal uses, authorized a 10-year phase period to discontinue all illegal uses. The historic legally established project size is approximately 35-40% the size of the current operation. All unauthorized activities were to cease by the end of December 2005. In March 2006, the Planning Division reinitiated zoning enforcement action because the required phase out was not implemented.

The Board of Supervisors is being asked to consider initiating an amendment to the Airport Industrial Area Specific Plan that would legalize the Flea Market at its current size. Two questions are before the Board: First, does the Board wish to initiate processing of the proposed amendment, which given the scope of the project, will take

approximately 6 to 12 months to process if the applicant provides necessary funding (for fees and consultants) in a timely fashion? Second, if a specific plan amendment is initiated, should the currently unauthorized activities be allowed to continue operation while the amendment is being processed?

The flea market currently operates one day per week, on Sundays, and is extremely popular, serving a large segment of the community. However, county staff have several concerns regarding the current operation. In brief: 1) traffic during operation of the use not only results in temporary severe congestion, but can pose a safety risk to drivers and pedestrians; 2) The Sheriff and California Highway Patrol resources are taxed as a result of illegal parking, crowd control, and other activity; 3) the unauthorized expansions have not been approved by the utility provider as mandated by State law (City of American Canyon is the water and sewer provider); 4) the existing unauthorized improvements do not meet most development standards that were applicable at the time they were installed (standards including landscape setbacks from Highway 29, etc.); 5) the existing improvements do not meet American Canyon Fire Department standards (site is in the American Canyon Fire District); 6) the density of use has not been assessed for conformance with the Airport Land Use Compatibility Plan, and involves large numbers of people directly under the final approach path of an airport runway; 7) staff routinely receive complaints from adjoining property owners regarding trash and trespassing; 8) staff routinely receive complaints from Napa County residents regarding traffic congestion and hazard; and 9) although presently no health code violations are in process, the use has a lengthy history of ongoing food service violations that result in regular additional Environmental Management resources being dedicated to monitoring the facility.

Considerable support for the use has been expressed by local residents and from persons throughout the region. A petition with roughly 6,000 signatures in support of the use has been submitted. In addition, approximately two dozen letters in support have also been received.

It appears that there are essentially three options for the Board of Supervisors to consider as follows:

1. grant the applicant's request and allow the continuation of the use while a specific plan amendment is processed;
2. initiate the specific plan amendment, but require the property owner to cease unauthorized activities while the specific plan amendment is processed (a process that will take approximately 6 months to a year to complete); or
3. deny the request, and direct staff to abate unauthorized activities. (In response to support for the flea market attendees, if the Board selects the abatement option, the Board may also direct staff to assist in finding a new home for a flea market either in Napa County or another jurisdiction.)

The Board should be aware that initiation of the specific plan amendment does not predispose the Board to approve the final plan that will ultimately be presented for consideration. The Board retains the authority to approve, approve with conditions, modify, or deny the specific plan amendment. However, if initiated, County Staff request direction on how to craft the proposal, assuming major issues can satisfactorily be addressed. The final project could be designed as a "holding" or interim use by essentially making only the minimum number of improvements and operation changes necessary to rectify issues, or could involve extensive capital improvements essentially committing the site to the use for the foreseeable future.

It is clear that the Flea Market has value as a local and regional resource. However, there are huge issues that at this point it is not known if they can be satisfactorily resolved. By proceeding with the requested specific plan amendment, the applicant will be given fair opportunity to address issues and rectify problems. It will also provide an appropriate forum to fully vet the merits of the proposal. Thus, staff recommends that the Board initiate processing of the amendment, and allow the flea market to continue its operations on an interim basis under certain conditions (Option 1, above).

Staff further recommends that the Board direct the applicant to work with staff to craft a list of conditions

that shall be in place until the specific plan amendment is prepared and ultimately adopted or denied by the Board. These conditions should be presented to the Board for their approval within 30 days, and should at a minimum address concerns related to litter, traffic operations, and parking. Complying with the conditions may require converting some space currently used for vendors to parking, and should include a requirement that the applicant file all required applications (Specific Plan Amendment & Conditional Use) and diligently pursue their consideration by the County.

**SUPPORTING DOCUMENTS**

- A . Applicant's Proposal Letter
- B . 1995 Certificate of Legal Non-Conformity

CEO Recommendation: Approve

Reviewed By: Andrew Carey