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Agenda Date: 9/6/2017  
Agenda Placement: 8A  
Continued From: 3/1/17 & 5/17/17

## Napa County Planning Commission Board Agenda Letter

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**TO:** Napa County Planning Commission  
**FROM:** Charlene Gallina for David Morrison - Director  
Planning, Building and Environmental Services  
**REPORT BY:** Dana Ayers, Planner III - (707) 253-4388  
**SUBJECT:** Palmaz Personal Use Heliport - Use Permit Application #P14-00261 - UP

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### **RECOMMENDATION**

#### **AMALIA PALMAZ LIVING TRUST / PALMAZ PERSONAL USE HELIPORT / USE PERMIT #P14-00261 - UP**

**CEQA Status:** Consideration and possible certification of a Final Environmental Impact Report (FEIR; State Clearinghouse No. 2015122030). According to the FEIR, the proposed Project would not have any significant environmental impacts after implementation of mitigation measures related to potential impacts to: (a) Land Use and Agricultural Resources; (b) Biological Resources; (c) Cultural Resources; and (d) Noise. This proposed Project site is not on any lists of hazardous waste sites enumerated under Government Code Section 65962.5.

**Proposed Project (Project):** The Amalia Palmaz Living Trust (applicant) requests approval of a Use Permit (P14-00261 - UP) to allow construction and operation of a personal use heliport on approximately 0.5 acres of the 220.4-acre property located at 4031 Hagen Road, Napa (the property). The heliport would include construction of a 60-foot long by 60-foot wide helicopter landing pad (helipad) and an approximately 4,000 square foot hangar and storage building on the property. The heliport is proposed for the private use of the resident owners of the property for up to a maximum of four arrival and four departure flights per week, and it is proposed to be located on a hillside area that is currently occupied by terraced vineyards. Structures and facilities proposed as accessory to the proposed heliport include: (a) a new fire hydrant; (b) a new water line connecting to the existing water line; (c) a stormwater quality bioretention basin; and (d) two 5,000-gallon water tanks for fire suppression. Additionally, the existing, private vineyard road providing access to the proposed heliport would be improved, widened and paved to comply with Napa County Road and Street Standards (RSS). The property at 4031 Hagen Road, Napa, is located approximately two miles east of the City of Napa municipal boundary, has a General Plan land use designation of Agriculture, Watershed and Open Space (AWOS), and is located in the Agricultural Watershed (AW) zoning district (Assessor's Parcel No. 033-110-080).

**Staff Recommendation:** Accept additional public comments on the Project and adequacy of the FEIR, including any recommendations or comments from the Airport Land Use Commission (ALUC). Close the public hearing and take action on certification of the FEIR and the Use Permit request.

**Staff Contact:** Dana Ayers, Planner III, phone 707-253-4388 or email [dana.ayers@countyofnapa.org](mailto:dana.ayers@countyofnapa.org)

**Applicant's Representative:** Brian Russell, Abbott & Kindermann, LLP, phone 707-294-2775 or email [brussell@aklandlaw.com](mailto:brussell@aklandlaw.com)

**(CONTINUED FROM MARCH 1 AND MAY 17, 2017, REGULAR MEETINGS)**

## **EXECUTIVE SUMMARY**

### **Proposed Actions:**

That the Planning Commission:

1. Resume the public hearing on the Project, consider the recommendation from the ALUC, and receive additional oral and written comments and on the adequacy of the FEIR and the Project; and
2. Upon completion of public comment, close the public hearing. Following close of the public hearing, the Planning Commission may take tentative action or may make final decisions with respect to certification of the FEIR and approval or denial of the Project.

### **Discussion:**

On March 1, 2017, the Planning Commission conducted a public hearing to consider the request for a Use Permit (P14-00261 – UP) for the Palmaz Personal Use Heliport. The heliport is proposed to consist of a helipad and hangar building on the property located at 4031 Hagen Road, east of the city of Napa municipal boundary, and it is proposed for exclusive use of the resident owners of the property. If approved, operation of the heliport would consist of a maximum of four inbound and four outbound flights per week, with aircraft fueling and maintenance occurring off-site, at destination airports and a maintenance facility in Woodland, California, respectively.

At the March 1, 2017, hearing, the Commission received comments on the use permit request, as well as the adequacy of the FEIR analysis of the proposed Project's environmental impacts. Following receipt of testimony, the Commission continued the public hearing to a Special Meeting scheduled to be held on March 22, 2017, at which time the ALUC was also anticipated to convene to review the proposed Project and determine whether it was consistent with the Napa County Airport Land Use Compatibility Plan (ALUCP).

Prior to the March 22, 2017, continued meeting date, the applicant requested that the Planning Commission postpone consideration of the matter on March 22 so that all five members of the Commission could be present. After reviewing the Commission's meeting agenda calendar of upcoming scheduled items, staff determined that the next available meeting date that could accommodate the continued hearing on this matter was May 17, 2017. At the March 15, 2017, Commission meeting, staff advised the Planning Commission and public that the item was to be postponed from March 22 to May 17, 2017. Over the course of the rest of that week, staff notified the applicant and interested parties through direct mailing, electronic mailing, and publishing of written notice on the County website and in the Napa Valley Register.

The May 17, 2017, Planning Commission meeting was the second opportunity for interested parties to provide oral or written comment on the merits of the Project and the FEIR. At the May 17 meeting, the Planning Commission was scheduled to consider the ALUC's determination, accept additional public testimony, close the public hearing, deliberate on the necessary findings and render a tentative decision on the Project and certification of the FEIR. The ALUC convened its meeting on May 17, prior to the Planning Commission meeting. After receiving public testimony and closing the public hearing, the ALUC was unable to render a decision on compatibility, due to a tie

vote with Commissioners Scott, Gill and Basayne voting in favor of a motion to find the Mt. George Alternative compatible with the ALUCP and Commissioners Gallagher, Walcker and Cottrell voting against the motion. Without a consistency determination from the ALUC, the Planning Commission resumed its public hearing and took additional testimony but continued the final hearing to a date then uncertain.

The ALUC reconvened on August 2, 2017, disapproved the motion that the ALUC had made on May 17 and continued the item to September 6, 2017, just prior to this meeting of the Planning Commission. Today's Planning Commission meeting is the third opportunity for receipt of public testimony on the FEIR and merits of the Project. The Planning Commission is requested to consider the ALUC's determination, accept public testimony, close the hearing, deliberate on the matter and render a decision on the certification of the FEIR and approval or denial of the Project. At the discretion of the Commission, the Commission's action today may be the final decision on the matter.

Staff continues to believe that the FEIR is adequate and that the Commission can make the necessary findings for certification. Staff does not recommend approval of the Project due to the potential demand for ongoing staff resources to manage compliance with mitigation measures restricting the applicant's flight path and hours of aircraft operation. By contrast, the Alternative to the Project (also referenced as the Mt. George Alternative), would not result in any significant environmental impacts requiring mitigation monitoring beyond the initial construction phase. Without ongoing monitoring of mitigation measures, staff believes the Mt. George Alternative is a better option and provides a better foundation on which to base approval, should the Commission desire to approve the use permit. The FEIR also found the Mt. George Alternative environmentally superior to the Project.

#### **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

#### **ENVIRONMENTAL IMPACT**

A FEIR (State Clearinghouse No. 2015122030) has been prepared. A Draft Environmental Impact Report (DEIR) was prepared, and a public hearing on the DEIR was held during the 45-day (extended to 78- day) public comment and review period thereon. Written responses to comments received during the public review period have been incorporated into a FEIR consisting of the DEIR, public and agency comments on the DEIR, responses to comments, and required clarifications and changes to the text of the DEIR. The Planning Commission will consider approval or denial of the Project following certification of the FEIR.

#### **BACKGROUND AND DISCUSSION**

The March 1, 2017, staff report (Attachment G) includes a discussion of the Project and the Mt. George Alternative; the environmental settings and anticipated environmental impacts of each scenario; the local and federal regulations applicable to each scenario; and the procedure for decision-making on the use permit request.

During and prior to the March 1 public hearing, the Commission and staff received several comments and letters expressing opposition to or support of the requested use permit. Where objections were raised, commenters expressed concerns about lack of consistency of the proposed heliport with General Plan policies and zoning definitions; potential biological impacts, including impacts to birds nesting in the vicinity of the proposed heliport; potential impacts to land values of properties in the vicinity of the proposed heliport; potential noise impacts

beyond those discussed in the FEIR; and monitoring compliance. In the May 17, 2017, staff report (Attachment F) and its attachments, staff provided responsive information to or clarification of prior responses to these points. In addition, that staff report provided clarifications on the definition of a personal use heliport in the context of state law; on the applicant's proposed compliance monitoring program; and on the grounds and process for revoking the use permit (if approved) in the event of a determination of non-compliance with the permit's conditions.

At the May 17 public hearing, speakers reiterated previously-expressed concerns about the proposed Project's impacts with respect to values of surrounding properties and noise effects on humans and livestock. Speakers also repeated concerns about the potentially precedent-setting nature of a decision to approve the request, as well as, concerns about enforceability of recommended conditions of approval (COAs) and whether the ownership of the property and use of the heliport represented a commercial enterprise.

Additional Revisions to Recommended COAs: The staff report from March 1, 2017, included recommended COAs for the Mt. George Alternative. The May 17, 2017, included minor revisions by staff to the recommended COAs to address timing of commencement of operations from the heliport and a requirement that the applicant notify the County regarding any changes to the designated flight paths.

At the May 17, 2017, public hearing, the applicant volunteered an additional COA that would commit the property owner to suspending operations under the use permit, in the event that the parcel on which the Mt. George Alternative is located is sold out of the Palmaz family's control. In such an instance where the property is transferred to another entity, operations from the heliport would not be permitted to resume without approval from the County. This condition proposed by the applicant is incorporated as COA No. 2.9 into the attached recommended conditions. (See Attachment B.)

Since the last hearing, summer blooming season surveys for special-status plants were conducted by Ascent Environmental, consulting planners to the County, to provide additional specificity to recommended Mitigation Measure 3.3-4 of the EIR. The results of the surveys confirmed the presence of two special status plants (holly-leaved ceanothus and narrow-anthered brodiaea) on the Mt. George Alternative site and along its associated access road improvements. Exhibit B-1 (Mitigation Monitoring and Reporting Program, referenced in COA No. 2.1 of the recommended conditions) has been revised to reflect the findings of that survey, as well as, to delete Mitigation Measure No. 3.3-5, as it is not applicable to the Mt. George Alternative site but was inadvertently included in the prior draft of the exhibit.

At the May 17, 2017 hearing, Planning Commissioners raised questions about special pilot certification for the proposed helicopter flight profiles and the circumstances under which a local jurisdiction has authority to impose and enforce restrictions on aircraft operations of an airport. A memorandum from the County's consulting aviation counsel, Barbara Lichman, responds to these questions. (See Attachment I.)

Public Comments: Public comments that were submitted since the last hearing on May 17, 2017, are attached to this staff report as Attachment E.

### **Decision-Making Options:**

The necessary use permit findings and the Planning Commission's decision-making options were provided in the May 17, 2017 staff report. Upon consideration of the ALUC's consistency determination, any additional public comment and close of the public hearing, the Commission may take one of the following actions:

#### Option 1: Approve Applicant's Proposal / the Project.

This option would find that the FEIR adequately analyzed the potential environmental impacts of the Project, certify the FEIR pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15090, adopt CEQA findings

pursuant to CEQA Guidelines Section 15091 and approve the Project subject to the revised COA. The heliport would be constructed on the vineyard site proximate to the applicant's residence and for the applicant's personal use. The applicant would be subject to requirements with respect to the aircraft stage (noise generation) standards, the number of flights per week, and limitations on the hours of operation and flight path. The applicant would also be subject to compliance with the voluntary reporting and monitoring program described above. Each of the mitigation measures identified in the FEIR would be adopted and imposed as conditions of approval of the Project.

Action Required – Take tentative action to certify the FEIR and approve the Project. Direct staff to return with the necessary CEQA findings and use permit findings in support of the Project, as well as, conditions of approval applicable to the Project.

Option 2: Approve the Mt. George Alternative to the Project (**Staff recommended option**).

This option would find that the FEIR adequately analyzed the potential environmental impacts of the Mt. George Alternative, certify the FEIR pursuant to CEQA Guidelines Section 15090, adopt CEQA findings pursuant to CEQA Guidelines Section 15091 and approve the Mt. George Alternative subject to the revised COA. This option would approve construction of the proposed heliport on the Alternative site. Voluntary and imposed elements of the Project would continue to apply to the Mt. George Alternative scenario, including the limitation on the number of weekly flights, requirements of the aircraft stage standards, avoidance of the "No-Fly Zone" below cruising altitude, and compliance with the applicant's proposed reporting and monitoring program. Construction-related mitigations of the Project also apply to the Mt. George Alternative (such as those requiring mitigation for potential impacts to sensitive plant species and cultural resources). Recommended measures limiting noise impacts of the heliport would not be applicable, as the Alternative scenario (unlike the Project) would not have a significant impact on sensitive receptors. Similarly, mitigation requiring preservation of farmland would not be required as no farmland would be converted under the Mt. George Alternative.

Staff recommends approval of the Mt. George Alternative, subject to the revised COAs in Attachment B, because it places the heliport in a more remote location with fewer significant noise impacts compared to the proposed Project site. With the recommended additional clarifications to the COAs as summarized above, flights to and from the heliport by other than the applicant's aircraft would be prohibited, thereby precluding any additional flights (above the eight per week proposed) as part of training exercises for emergency response personnel. The recommended revised COAs would also more precisely define material breaches of the use permit, providing a single violation of the No-Fly Zone, flight paths, or water usage as potential grounds for initiation of revocation thereby reducing the time needed to identify a pattern of violations on which to commence the revocation process. With fewer potential significant impacts, and the absence of necessary ongoing mitigation monitoring related to approach/departure paths or hours of operations, staff believes the Mt. George Alternative is a better option and provides a better foundation on which to base the findings to approve a use permit, as compared to the Project. The FEIR also found the Mt. George Alternative environmentally superior to the Project.

Action Required – Take action to certify the FEIR based on findings 1 through 4 of Attachment A, adopt the CEQA findings set forth Exhibit A-1 to Attachment A, and approve the Mt. George Alternative based on findings 6 through 10 of Attachment A, subject to the conditions of approval that encompass FEIR mitigation measures, as well as other project-specific and standard County conditions of approval attached as Attachment B, as well as, any other conditions identified by the Commission.

Option 3: Deny the Requested Use Permit.

This action would result in no change to existing conditions. Existing vineyards on the Project site would be retained, no heliport would be built on the property, and the applicant would continue to use the Napa County Airport for storage and operation of their helicopter. Similarly, no changes would be made to the Mt. George

Alternative site or its related off-site access roads. No restrictions on the applicant's operation of their helicopter, including restrictions applicable to flight paths, the number of weekly flights, and intrusion into the "No-Fly Zone," would be imposed or enforceable by the County.

Denial of the use permit would introduce no new environmental impacts. Construction of the heliport would not occur, and noise impacts would be the same as what residents in the area experience currently. The aircraft would take off from and land at the Napa County Airport in the south County industrial area, as it currently does, and the applicant would travel by car to the residence.

Under this option, the Commission could either elect to certify the FEIR or not. Denial of a project is exempt from CEQA. (CEQA Guidelines Section 15270 (a).)

Action Required – Take action to deny the use permit based on the Commission's determination that it cannot make the required findings for grant of the requested use permit, or that the Project is inconsistent with the General Plan. Commissioners must articulate the basis for the findings, such as General Plan inconsistency or an adverse effect to public health, safety and welfare. The following are examples upon which denial of a use permit has been upheld by courts.

- | A finding of inconsistency with the General Plan. It is important to note that the goals and policies of the General Plan must be weighed and balanced and that inconsistency with a single policy or goal is generally not sufficient to support an overall finding that a project is inconsistent unless it pertains to a critical or core mandatory policy.
- | Additionally, concern of neighbors is sufficient to constitute substantial evidence that a contemplated use is detrimental to the welfare of the community. Expert testimony on these issues is not necessary. It is appropriate and even necessary for the agency to consider the interest of neighboring property owners in reaching a decision whether to grant or deny a land use entitlement, and the opinions of neighbors may constitute substantial evidence of this issue.
- | Denial based on the "aesthetics" and "neighborhood character" standards of general welfare.
- | Finding that a use would not be compatible with the public interest.

#### Option 4: Continuance Option.

The Commission may continue an item to a future hearing date, at its discretion.

#### **SUPPORTING DOCUMENTS**

- A . Recommended Findings
- B . Revised Recommended Conditions of Approval and Final Agency Approval Memos
- C . Environmental Impact Report
- D . Response to Final EIR Comments Received on March 1, 2017
- E . Public Comments Received After Commencement of May 17, 2017, Hearing
- F . May 17, 2017, Planning Commission Staff Report
- G . March 1, 2017, Planning Commission Staff Report
- H . Supplemental General Plan Consistency Analysis, February 27, 2017
- I . Memorandum from Barbara Lichman, Ph.D, Buchalter

Napa County Planning Commission: Approve

Reviewed By: Charlene Gallina