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**March 1, 2017 Napa County  
Staff Report**



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Agenda Date: 3/1/2017

Agenda Placement: 8A

## 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:** Open the public hearing; accept public comments on the Project and adequacy of the FEIR. Upon completion of public comment, refer the matter to the Airport Land Use Commission (ALUC) for its consideration at a special ALUC meeting to be held on March 22, 2017, and a determination of whether the Project

is consistent with the Airport Land Use Compatibility Plan (ALUP). Continue the item to a special meeting of the Planning Commission to be held on March 22, 2017 (after the ALUC meeting), for decisions on the Project and FEIR.

**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)

## **EXECUTIVE SUMMARY**

### **Proposed Actions:**

That the Planning Commission:

1. Open the public hearing on the Project, receive oral and written comments thereon and on the adequacy of the FEIR;
2. Upon completion of public comment, provide staff with any comments or preliminary direction with respect to adequacy of the FEIR and approval or denial of the Project;
3. Refer the matter to the ALUC for its consideration at a special meeting of the ALUC scheduled for March 22, 2017, and a determination regarding the Project's consistency with ALUP; and
4. Continue the item to a Special Meeting of the Planning Commission to be held on March 22, 2017 (after ALUC), so that the Commission can consider the ALUC's determination and additional public testimony, prior to making its final decisions on certification of the FEIR and approval or denial of the Project.

### **Discussion:**

The County Planning Division has received a request for a use permit to construct and operate a personal use heliport, consisting of a helipad and hangar building, on the property. The heliport 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 designated maintenance facility in Woodland, California, respectively.

Napa County, assisted by the consulting firm of Ascent Environmental, has completed a FEIR that analyzes the potential environmental impacts of approving the Project. The County released a Draft Environmental Impact Report (DEIR) for a public and agency review and comment period that began on April 29 and ended on July 15, 2016. The County received over 100 comment letters and emails, in addition to verbal comments that were accepted at a Planning Commission public hearing that occurred on May 25, 2016.

The FEIR encompasses each of the oral and written comments received during the 78-day comment period on the DEIR, as well as responses to the environmental comments on the DEIR. The FEIR also includes corrections, revisions, and other clarifications and amplifications to the DEIR, including Project updates, made in response to these comments and as a result of the applicant's ongoing planning and design efforts. Revisions to the DEIR included: (1) clarification of noise mitigation and discussion thereof; (2) revision to text of biological resources mitigation to incorporate information obtained from biological surveys conducted after the public comment period on the DEIR; (3) clarification of the Project description to delete references to on-site vehicle fueling, and revision of the description to delete the Project requirement for an exception to Napa County Road and Street Standards (due to amendment of the Standards approved by the Board of Supervisors in November 2016); and (4) revision to the text of the DEIR Alternatives chapter, to reflect that the No Project Alternative would meet some, but not all, of the Project objectives. Revisions noted in the FEIR also corrected typographical errors in the DEIR.

Prior to approving a project for which an EIR has been prepared, there are two procedural steps that must be satisfied under CEQA: (1) certification of the EIR; and (2) adoption of CEQA findings. The first step consists of certifying that the FEIR complies with CEQA, the State CEQA Guidelines and the County's Local Procedures for Implementing CEQA; that the decision-maker (here, the Planning Commission) reviewed and considered the FEIR prior to taking an action on the proposed Project; and that the FEIR reflects the Planning Commission's independent judgment and analysis (CEQA Guidelines Section 15090). The second step, after certification, is for the Planning Commission to: (a) adopt findings pursuant to CEQA and, if necessary, a statement of overriding considerations; (b) reject Project alternatives, if necessary; (c) approve the proposed Project, an alternative, or a combination thereof; and (d) adopt a mitigation monitoring and reporting program. In addition to the CEQA procedural steps, the Planning Commission must: (a) conduct a hearing to accept public testimony on the requested use permit; and (b) consider the determination of the ALUC regarding the Project's consistency with the ALUP. ALUC review is required because the request encompasses a proposed new heliport, and state law requires that the ALUC assess the proposal and determine whether it is consistent with the Airport Land Use Compatibility Plan. This assessment must precede any final decision on the use permit request.

Staff believes that the impact analysis in the FEIR is adequate and that the Commission can make the necessary findings to certify that document. Staff is challenged to support the proposed Project, as described above, due to the potential for ongoing staff resources to manage compliance with FEIR mitigation measures restricting the applicant's flight path and hours of aircraft operation. By contrast, the Alternative (or Mt. George Alternative), would not result in significant impacts requiring mitigation monitoring beyond the initial construction phase, and monitoring of the flight path and hours of operation would not be necessary because the Alternative is in a more remote location for which the FEIR did not identify any significant noise impacts. Without ongoing monitoring of mitigation measures for identified significant impacts, staff believes the Mt. George Alternative is a better option and provides a better foundation on which to base the necessary findings, should the Commission desire to approve the use permit. The FEIR also found the Mt. George Alternative to be environmentally superior to the Project.

For either the Project or Mt. George Alternative, the applicant has proposed a voluntary "No-Fly Zone" over the single-family residential neighborhood north and west of the applicant's properties, as well as, a voluntary reporting program for demonstrating ongoing compliance with the "No-Fly Zone." The applicant would fly the aircraft in the "No-Fly Zone" only during emergencies threatening the safety of the aircraft or its passengers, and in such emergencies, would fly at altitudes of 1,000 or more feet to minimize aircraft noise to residences. A map depicting the boundaries of the "No-Fly Zone" is included in the DEIR as Exhibit 2-5 and is included with the Project plans in Attachment D.

While the Planning Commission is not requested to make any final decisions on either the certification of the FEIR or the approval or denial of the Project at this time, the Commission is requested to accept testimony and to provide any comments and preliminary direction on the Project and adequacy of the FEIR at today's meeting. After the Commission has received and considered the ALUC's determination on the Project's consistency, taken any additional public comment, and closed the public hearing, the Commission can take action. It should be noted that approval documents reflecting staff's recommendation would be included in the Commission's packet for adoption at the March 22 meeting and could be used for final action at that meeting. If the Commission desires to deny the Project, then the Commission would make a tentative motion to deny the proposal and remand the matter to staff to draft the required findings of denial, based on the Commissioners' statements. Staff would return to the Commission with draft findings of denial for adoption following the March 22 public hearing at a date yet to be determined. If the Commission desires to approve the Project rather than the Mt. George Alternative, the Commission would make a tentative motion to do so, and staff would return with the findings at a future date for the Commission's adoption.

**FISCAL IMPACT**

Is there a Fiscal Impact?                      No

**ENVIRONMENTAL IMPACT**

Consideration and possible certification of a FEIR (State Clearinghouse No. 2015122030) and adoption of a Mitigation Monitoring and Reporting Program.

**BACKGROUND AND DISCUSSION**

**Property Owner/Applicant:** Amalia Palmaz Living Trust

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

**Zoning:** AW District

**General Plan Designation:** AWOS

**Application Filed:** July 28, 2014; September 24, 2015; December 23, 2016; February 2, 2017

**Parcel Size:** 220.4 acres (Project site); 46.2 acres (Alternative site)

**Existing and Proposed Use Characteristics:** Single-family residence, approximately 1.5 acres of vineyards (Project site); approximately 14 acres of vineyards (Alternative site)

**Adjacent General Plan Designations, Zoning Districts and Land Uses:**

**Project Site:**

**North:** An approximately 17-acre, single-family residential parcel adjoins the northern property line of the Project site. Beyond that parcel are larger parcels (34 and 320 acres) owned by the Napa County Land Trust. All parcels to the north of the Project site have a General Plan land use designation of AWOS and are zoned AW District.

**West:** An approximately three-acre, single-family residential parcel adjoins the western property line of the site; this parcel is also owned by the applicant. Beyond that parcel is a 167-acre parcel predominantly planted with vineyards; further to the west is a neighborhood of large-lot (one acre or larger), single-family residences with and without vineyards, and the 97-acre Napa Valley Country Club and golf course. The applicant's three-acre parcel, the 167-acre vineyard parcel, and the Napa Valley Country Club have a General Plan land use designation of AWOS and are zoned AW District. The neighborhood of single-family residences has a General Plan land use designation of Rural Residential and is zoned RC (Residential Country) District.

**South:** The 122-acre, Palmaz Vineyards and winery parcel adjoins the southern property line of the site; this parcel is also owned by the applicant. Further south of that parcel are single-family residential parcels ranging in size from seven to 160 acres. All parcels to the south of the Project site have a General Plan land use designation of AWOS and are zoned AW District.

East: Additional landholdings of the applicant are located to the west of the proposed Project site, including 73- and 80-acre parcels, of which approximately 13 acres are planted with vineyards and the rest is undeveloped. A vineyard access road spans the smaller of the two parcels and provides vehicular access to the uphill vineyards. All parcels to the east of the Project site have a General Plan land use designation of AWOS and are zoned AW District.

#### **Mt. George Alternative Site:**

The FEIR prepared for the Project also evaluated an alternative under which the proposed heliport would be constructed on property owned by the applicant and located on Mt. George, approximately one mile northeast of the proposed Project site. Under the Alternative scenario, the heliport would also include a helipad and an approximately 4,100 square foot hangar and storage building. Accessory facilities to the heliport in the Alternative scenario include: (a) a wet draft style hydrant system connected to a 5,000-gallon poly-tank for fire suppression; (b) a bioretention basin; and (c) improvements to the access road northeast of the Alternative heliport location to provide emergency vehicle access in compliance with Napa County RSS. Like the Project, the heliport would be for personal use of the owners of the property, and trips would be limited to four inbound and four outbound flights per week. The location of the Alternative site (Assessor's Parcel No. 033-110-079) is approximately three miles east of the City of Napa municipal boundary, has an AWOS General Plan land use designation, and is located in the AW zoning district.

Properties surrounding the Mt. George Alternative site are predominantly undeveloped, with some vineyard acreage. All properties have a General Plan land use designation of AWOS and are zoned AW District.

North: An approximately 153-acre parcel borders the northern property line of the Alternative site; the parcel has significant vineyard acreage, as well as a single-family residence and farm labor dwelling. The existing vineyard road proposed to be improved to provide emergency access to the Alternative site spans this parcel, generally from north to south. A larger, 320-acre, undeveloped parcel, owned by the Napa County Land Trust, is also northwest of the Alternative site.

West: An approximately 73-acre parcel, owned by the applicant, borders the western property line of the Alternative site. This parcel is largely undeveloped but does have a vineyard road that provides vehicular access between the applicant's residence and the Alternative site.

South: An 80-acre parcel, also owned by the applicant, borders the southern property line of the Alternative site. There are approximately 13 acres of planted vineyards on the property; the remainder of the parcel is undeveloped. A larger, roughly 150-acre parcel is also southeast of the Alternative site; it is also largely undeveloped except for a single-family residence.

East: Two parcels with a combined area of 240 acres are east and northeast of the Alternative site. Both parcels are owned by Kenzo Estates and are largely undeveloped with some vineyard acreage and access roads.

#### **Parcel and Code Compliance History:**

The Project site is a 220.4-acre parcel located east of the intersection of Hagen Road and Olive Hill Lane. The subject parcel and an adjacent 2.8-acre single-family residential parcel were created by a lot line adjustment (LLA 1773) that was approved by the County and recorded in 2013. The subject parcel is predominantly undeveloped, with the exception of ornamental landscaping and a single-family residence that was originally built by 19th century winemaker, Henry Hagen, and later restored by the current property owners. The parcel also has a 10-foot wide access road spanning generally from north to south, and approximately three acres of terraced vineyard that were permitted by the County in 2007.

The Mt. George Alternative site is a 46-acre parcel located approximately 0.75 miles northeast of the proposed location of the heliport on the Project site. There are approximately 15 acres of vineyards on the site. There is also an approximately one-acre area, the proposed location of the heliport, that was previously disturbed as an area of deposition of spoils generated from construction of the Palmaz Winery and caves at 4029 Hagen Road.

Vineyards on the Project and Alternative sites were initially graded and planted by the applicant without County approvals and were the subject of code enforcement by the County. The County and the applicant settled the matter in 2007. The applicant obtained after-the-fact erosion control plan approvals from the County and was subject to additional requirements that included fees and wetland and woodland restoration as compensation for disturbance to creek tributaries that occurred during on-site construction. That matter is closed, and there are currently no outstanding code compliance matters related to either the Project site or Mt. George Alternative site.

#### **Discussion Points:**

Potential Environmental Impacts: The FEIR (viewable online at <http://www.countyofnapa.org/Pages/DepartmentContent.aspx?id=4294985262>) analyzes the potential environmental impacts from the Project and Mt. George Alternative. For the Project, the FEIR analysis found potentially significant environmental impacts in the areas of Land Use and Agricultural Resources, Biological Resources, Cultural Resources and Noise. The FEIR also identifies mitigation measures that, if adopted and upon implementation, would reduce the severity of the specific impacts to less than significant levels. Environmental impacts in the areas of Hazards, Greenhouse Gas Emissions (GHG) and Air Quality were preliminarily found to be potentially significant in the Initial Study prepared for the Project, but upon further analysis in the FEIR were not determined to be significant, and no mitigation is required in those areas. Other topic areas in the CEQA initial study checklist (Aesthetics, Geology and Soils, Hydrology and Water Quality, Mineral Resources, Population and Housing, Public Services, Recreation, Transportation and Traffic, Utilities and Service Systems) were determined not to have potential for significant environmental impacts, and so they were not analyzed beyond the initial study. (See Appendix A1 to DEIR).

Noise: The FEIR found the Project would result in generation of noise from the construction and operation of the heliport facility. The FEIR analysis concluded that construction-related noise impacts of the Project would not be significant because the nearest sensitive receptors (in this case, occupants of residents off-site of the property) are over 1,000 feet northwest of the proposed heliport site, and well beyond the 242-foot distance at which equipment noise would be reduced to an acceptable 75 decibels during daytime hours of construction (DEIR, pages 3.4-10 and 3.4-11). Thus, no mitigation is recommended for construction-related noise of the Project. For the Mt. George Alternative, the nearest sensitive receptor is a farm labor dwelling over 2,500 feet mile northwest of the Alternative heliport site. As with the Project, no mitigation is recommended for the construction-related noise for the Mt. George Alternative.

During ongoing operations of the heliport under the Project scenario, the FEIR concluded that helicopter flights by the applicant's aircraft could result in significant environmental impacts. Under the Project, the applicant would utilize one of three aircraft approach/departure paths to/from: (a) the west; (b) the northeast; and (c) the southeast of the helipad. Proposed flight paths were identified that avoided the applicant's designated voluntary "No-Fly Zone," an area to the west and northwest of the Project site that is characterized by large-lot single-family residential development of the highest densities within the general vicinity of the Project site. Flights below cruising altitude (1,000 feet) within the "No-Fly Zone" would be avoided, with the limited exception of emergencies threatening the safety of the aircraft or its occupants.

The FEIR concluded that the Project has the potential to generate noise levels inside off-site residences that would exceed acceptable County noise thresholds of 70 decibels during daytime hours between 7:00 a.m. and 10:00 p.m., and 65 decibels during nighttime hours between 10:00 p.m. and 7:00 a.m. (County Code Section 8.16.060; DEIR, pages 3.4-11 through 3.4-14). More specifically, helicopter operations were projected to have a significant

impact inside of residences located: (a) along the western flight path (day and night); (b) along the northeastern flight path (day and night); and (c) along the southeastern flight path (nighttime only). Thus, to reduce the impact to less-than-significant, mitigation is recommended in the FEIR that would restrict the applicant's flight path to daytime hours only, and along the southeastern flight path only (DEIR page 3.4-14 and FEIR pages 4-2 and 4-3). If the Project is approved, this mitigation measure would be incorporated as a condition of approval of the Project.

For the Mt. George Alternative, the applicant proposes two potential flight paths: (a) to/from the northwest, and (b) to/from the northeast. With fewer residences proximate to the Alternative site, there are fewer sensitive receptors potentially affected, and the FEIR concluded that heliport operations at the Alternative site would have less-than-significant noise impacts and no mitigation is required. (See DEIR pages 6-16 through 6-18.)

Biological Resources: The analysis in the FEIR identified less-than-significant impacts to listed sensitive animal species requiring evaluation under CEQA; however, it identified potentially significant impacts to holly-leaved ceanothus and Napa bluecurls, two special-status plants that were found or that have the potential to occur on the Project site. To reduce this potentially significant impact, the FEIR recommends mitigation measures that include pre-construction surveys, avoidance wherever possible, consultation with California Department of Fish and Wildlife (if specimens are found within area of disturbance), and if required by the state agency as part of a mitigation plan, relocation of specimens. The FEIR also identifies mitigation for potential impacts to oak woodlands as a result of Project construction, which mitigation includes protection of mature specimens and root systems of mature trees that might be affected by grading for the improved access road to the Project site (DEIR pages 3.3-28 through 3.3-30). Similar findings of potential impacts were made relative to the Alternative site. If either the Project or Alternative site is approved, these measures would be incorporated as conditions of approval.

Cultural Resources: The initial study prepared in advance of preparation of the DEIR identified a potentially significant impact relative to possible discovery of cultural resources during site grading. Although literature research and survey of the Project site did not suggest likelihood of presence of archeological or cultural resources, and the Project site has been previously disturbed, the potential for human remains or other historic resources to occur below the existing ground surface of the Project site cannot be completely dismissed. The FEIR therefore recommends mitigation measures that require cessation of work upon discovery of potential resources, and evaluation of the find, in a manner consistent with standard County conditions of approval (DEIR, pages 1-3 and 1-4). Because ground disturbance and site excavation would occur on both the Project and Alternative sites, the mitigation measure would apply in either scenario.

Agricultural Resources: The FEIR also identified a potentially significant impact on agricultural resources. As discussed on page 3.2-11 of the DEIR, portions of the Project site are mapped by the state as Prime Farmland or Farmland of Local Importance. Construction of the Project would result in removal of existing agricultural plantings (vineyards) to provide area for the heliport, resulting in conversion of approximately 0.35 acre of Prime Farmland and 0.18 acre of Farmland of Local Importance from agricultural to non-agricultural use. As mitigation, the FEIR recommends that the applicant identify and preserve 0.53 acre of existing farmland of equal or higher quality, through easements, replanting of areas outside the permanent area of disturbance of the Project, or other appropriate mechanism implemented prior to the first grading permit for the Project. In accordance with General Plan Policy AG/LU-9, preservation of equivalent acreage of farmland to that lost with the Project would be considered mitigation of the impact, and the impact would be less than significant (DEIR, page 3.2-12). By contrast, because the Mt. George Alternative site is designated as "Other Land" and is not mapped by the state as Farmland, and because no vineyards would be removed for construction of the heliport in the Alternative location, there would be no farmland impact and no mitigation would be necessary.

Recommended Conditions and Mitigation Monitoring: The Project would involve up to a maximum of four inbound and four outbound flights per week by the applicant, using their personal aircraft and avoidance of the northwestern "No-Fly Zone" under normal (non-emergency) circumstances. As recommended in the FEIR, mitigation measures and conditions of approval of the Project would further restrict the applicant to use of a single flight path analyzed in



the FEIR, and would prohibit nighttime flights along that path. In the event that the Project is approved, to facilitate monitoring of compliance with mitigation measures and conditions of approval, the applicant has also proposed and requested a voluntary enforcement tracking methodology be adopted as a condition of approval and includes the following:

- (a) At the conclusion of each flight, the applicant would create a flight log summary that includes the time of each flight, number of landings, and flight duration. This data would be provided to the County on a quarterly basis; and
- (b) A surveillance system consisting of GPS position tracking and in-cockpit video/voice recording would record the arrival and departure of flights to and from the heliport.

If the County receives a complaint of intrusion into the “No-Fly Zone,” the County would use the flight log data to determine if the Palmaz helicopter was operational at the time identified in the complaint. If it was not operational, no further action would be taken. If it was operational, the applicant would provide to the County the GPS tracking and recording data discussed above to demonstrate compliance with the use permit. If the helicopter was forced to enter the “No-Fly-Zone,” and a complaint is registered, the applicant suggests that data would be submitted to the ALUC to determine whether the applicant complied with established flight tracks and to assess the merits of why a deviation was necessary. Although determination of the merits of deviation from a condition of use permit approval, as suggested by the applicant, falls outside the scope of responsibility of the ALUC, the Planning Director would have the authority to determine whether a condition of the use permit was violated and may choose to consult with County Airport staff or other aviation experts for advice in making that determination.

The features proposed by the applicant are further described in detail in Appendix A to the FEIR.

FAA Preemption and Enforceability of Mitigation Measures and Flight Path Restrictions: The Project would require an airspace determination (described below) from the Federal Aviation Administration (FAA). Recommended mitigation measures and voluntary operational aspects of the Project, including the restriction on hours of facility use, restriction on flight paths, avoidance of the “No-Fly Zone” and limitation on the number of weekly flights, would be enforceable by the County as use permit conditions of approval, should the Planning Commission approve the request.

Title 49, Section 40103 of the United States Code (USC) assigns to the federal government the management of navigable airspace as “necessary to ensure the safety of aircraft and the efficient use of airspace.” The FAA is directed to: prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for (A) navigating, protecting, and identifying aircraft; (B) protecting individuals and property on the ground; (C) using the navigable airspace efficiently; and (D) preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects. (49 USC 40103[b].)

In May 2016, following the April 29, 2016, commencement of the comment period on the DEIR, the applicant obtained an Airspace Analysis Determination (the Airspace Determination) from the FAA, for both the Project and the Mt. George Alternative sites. (See Appendix C to the FEIR.) To facilitate the FAA’s review, the applicant submitted to the FAA the locations of each of the potential heliport locations, as well as the three proposed approach and departure flight paths for the Project site and the two proposed approach and departure flight paths for the Mt. George Alternative site. The FAA’s aeronautical study and Airspace Determination “determined that the private use heliport will not adversely affect the safe and efficient use of airspace by aircraft.”

Through its Airspace Determination, the FAA determined that operations from the Project and Mt. George Alternative sites, as well as each of their proposed respective flight paths, were acceptable and would not pose conflicts in the existing and planned use of airspace. The FAA further expressly stated in its Airspace Determination that the FAA “in no way preempts or waives any ordinances, laws, or regulations of any government body or agency.”

By design, all three of the approach and departure paths for the Project avoid the “No-Fly Zone” defined by the applicant and depicted on DEIR Exhibit 2-5. The recommended mitigation measure for the Project would preclude use of two of the three proposed flight paths, to minimize noise impacts to nearby sensitive receptors. This measure is necessary to avoid exceedances of acceptable noise thresholds specified in Napa County Code, Chapter 8.16, by the Project. Because the FAA has determined that the southeastern approach and departure path would not result in airspace conflicts, the local agency (County) may impose a restriction that limits all non-emergency flights to that path, to reduce noise impacts to acceptable levels and in alignment with the FAA Airspace Determination. The FEIR concluded that neither of the proposed flight paths for the Mt. George Alternative site would result in significant noise impacts.

FAA Preemption and Regulation by County of Helicopter Standards: The FAA regulates the maximum noise level that a civil aircraft can emit through required noise certification standards. The standards assign maximum noise level requirements in “stages.” Requirements for stage 2 aircraft are lower (i.e., the aircraft are louder) than those for stage 3 aircraft (i.e., the aircraft are quieter). The Bell 429 helicopter operated by the applicant is not certified by the FAA as a stage 3 helicopter but meets the standards for certification as stage 3. The County can, with the facility operator’s agreement, impose a restriction on the use of the heliport exclusively to aircraft meeting or exceeding stage 3 criteria. With such a restriction, United States Code allows the local agency to impose additional restrictions on the total number of aircraft operations and the hours of operation of a heliport, provided that the proprietor and all operators of the facility (in this case, the applicant, in both regards) agree to the restrictions (49 USC 47524). For the Project as well as the Mt. George Alternative, these limitations represent a combination of voluntary restrictions offered in writing by the applicant (DEIR, pages 2-1, 2-2, and 2-10) and, therefore, are measures to which the proprietor/operator of the facility would agree. These measures would be included as conditions of approval that run with the land in perpetuity and bind the applicant and subsequent permittees.

Use Permit Findings: County Code Section 18.120.010.B allows personal use airports and heliports in any zoning district upon grant of a use permit in each case. Pursuant to County Code Section 18.124.070, grant or denial of a use permit must be based on the following findings supported by substantial evidence:

- (a) That the commission or board has the power to issue a use permit under the zoning regulations in effect as applied to the property;
- (b) That the procedural requirements set forth in County Code Chapter 18.124 have been met;
- (c) That grant of the use permit, as conditioned, will not adversely affect the public health, safety or welfare of the county;
- (d) That the proposed use complies with the applicable provisions of County Code and is consistent with the policies and standards of the general plan and any applicable specific plan;
- (e) That, in the case of groundwater basins identified as "groundwater deficient areas" under Section 13.15.010, the proposed use would not require a new water system or improvement, or utilize an existing water system or improvement causing significant adverse effects, either individually or cumulatively, on said groundwater basins in Napa County, unless that use would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Section 13.15.070 or 13.15.080 of County Code; and
- (f) That, in the case of other groundwater basins, or areas which do not overlay an identified groundwater basin, substantial evidence has not been presented which demonstrates that the new water system or improvement might cause a significant adverse effect on any underlying groundwater basin, unless that use would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Section 13.15.070 or 13.15.080 of County Code.

General Plan Consistency Analysis: The EIR includes a discussion of the Project in the context of some of the applicable policies of the Napa County General Plan in Chapter 3 of the DEIR and a similar discussion of Mt. George Alternative and General Plan policies in DEIR Section 6.3.2. Staff is preparing additional analysis that will be distributed to the Commission under separate cover prior to the meeting.

### **Decision-making Options:**

Upon consideration of the ALUC's consistency determination and consideration of 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 and Mt. George Alternative, and would approve the Project. 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 standards, the number of flights per week, and the limitations on 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 mitigations measures identified in the FEIR would be adopted as conditions of approval of the Project.

Action Required – Take a tentative action to certify the FEIR and approve the Project, and direct staff to prepare conditions of approval that encompass FEIR mitigation measures, as well as other standard County conditions of approval. Staff would return at a future meeting date with the final approval documents for the Commission to formally adopt.

#### 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 Project and Mt. George Alternative, and 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 the compliance with the applicant's proposed reporting and monitoring program. While construction-related mitigations of the Project would also apply to the Mt. George Alternative (such as those requiring mitigation for potential impacts to sensitive plant species and cultural resources), recommended measures that would limit 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 scenario.

With fewer potential significant impacts, and with 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 necessary findings to approve a use permit, as compared to the Project. The analysis in the FEIR also concluded that the Mt. George Alternative would be environmentally superior to the Project.

Action Required – Take action to certify the FEIR and approve the Mt. George Alternative, and the conditions of approval that encompass appropriate and applicable FEIR mitigation measures, as well as other standard County conditions of approval. Approval documents reflecting staff's recommendation would be included in the Commission's packet for adoption at the March 22nd meeting.

#### 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, 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 flight paths or the number of flights per week, and the "No-Fly Zone" would be imposed or enforceable by the County.

Action Required – Take a tentative action to deny the Project and direct staff to draft the necessary findings. If the Commission determines 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. The Commission would then make a tentative motion to deny the proposal and remand the matter to staff to draft the required findings of denial, based on the Commissioners' statements. Staff would return to the Commission with draft findings of denial for adoption following the March 22nd public hearing at a date yet to be determined.

Option 4: Continuance Option.

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

**SUPPORTING DOCUMENTS**

- A . Recommended Conditions of Approval
- B . Environmental Impact Report
- C . Use Permit Application Packet
- D . Project Submittal Materials
- E . Mt. George Alternative Submittal Materials
- F . Public Comments - Letters
- G . Public Comments - Petitions
- H . Graphics
- I . GP Supplemental Consistency Analysis (Added after initial agenda posting)
- J . Correspondence sent 2/27/17 (Added after initial agenda posting)
- K . Correspondence sent 2/27/17 & 2/28/17 (Added after meeting)
- L . Comisky PowerPoint Presentation (Added after meeting)
- M . Brian Russell - Palmaz Presentation (Added after meeting)
- N . Ken Brody - Overflight and Noise Report (Added after meeting)
- O . Correspondence rec'd 2/28 & 3/01 after packet mailout (Added after meeting)

Napa County Planning Commission: Approve

Reviewed By: Charlene Gallina