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Memorandum from  
Barbara E. Lichman, Ph.D, Buchalter,  
August 28, 2017

## MEMORANDUM

**To:** Chair and Commissioners  
**From:** Barbara E. Lichman, Ph.D.  
**Date:** August 28, 2017  
**Re:** Palmaz Heliport - Response to Questions Raised by Commission

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This Memorandum is provided in response to questions that have been raised concerning the enforceability of the conditions, placing operational restrictions on the flight paths of helicopters accessing the heliport location(s) proposed by Christian Palmaz (“Project Proponent”).

With respect to question 1 - “**Is it advisable to create a typical arrival and departure path?**” – Helicopters are vertical takeoff and landing vehicles, and are consequently unconstrained by the technological limitations of fixed-wing aircraft on arrival and departure. However, FAA Order 8260.4B, U.S. Standard for Helicopter Area Navigation, imposes certain procedural requirements upon helicopter approaches and departures, depending on whether the airport being utilized has compatibility to handle instrument flight rule arrivals, or is limited to visual flight rules. In any event, specification of flight paths and arrival and departure routes by a local entity would not normally be enforceable, as entirely preempted by federal law, *see* 49 U.S.C. § 40103(a); *see also Montalvo v. Spirit Airlines*, 508 F.3d 464, 468 (9th Cir. 2007) [“[T]he FAA preempts the entire field of aviation safety through implied field preemption. The [Federal Aviation Act] and regulations promulgated pursuant to it establish complete and thorough safety standards for air travel, which are not subject to supplementation by, or variation among, state laws.”]. Therefore, any arrival and departure paths specified are subject to approval by the FAA.

In this case, in compliance with the requirements of FAA regulation 14 C.F.R. § 157, the Project Proponent submitted a Form 7480-1, “Notice of Construction, Alteration, Activation and Deactivation of Airports,” for each proposed location, including aeronautical charts depicting the primary approach and departure flight tracks (headings, ground tracks, etc.), as well as the secondary approach and departure flight tracks for each of the sites.

In response, FAA “completed an airspace analysis” of each of the sites. Notice, p. 1 of 3. Each of those analyses “determined that the private use heliport will not affect the safe and

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efficient use of airspace by aircraft provided the following conditions are met and maintained. Reference FAA Advisory Circular (AC) 150/5390-2, Heliport Design (current version) . . . private use only, day and night operations.” Notice, p. 1 of 3.<sup>1</sup>

In making that determination, FAA further explained that it took into consideration “the safe and efficient use of airspace by aircraft and . . . the safety of persons and property on the ground,” Notice, p. 1 of 3. FAA also “considered such matters as the effect the proposal would have on existing or planned traffic patterns of neighboring airports, the effects it would have on airspace structure and projected programs of the FAA, the effects it would have on the safety of persons and property on the ground, and the effects that existing or proposed manmade objects (on file with the FAA) and known natural objects within the affected area would have on the heliport proposal.” Notice, pp. 1-2 of 3. Based on the above, it appears clear that the FAA, in its role as the delegee of Congress with respect to enforcement of the relevant provisions of the Federal Aviation Act, has found the flight paths proposed by the Project Proponent safe under all applicable safety standards.

Finally, FAA expressly recuses itself from all preemptive authority over local land use regulation. *See* Notice, p. 2 of 3 [“This determination in no way preempts or waives any ordinances, laws or regulations of any government body or agency.”]. Thus, compliance with the restrictions can be ensured by making the restrictions approved by FAA conditions on the applicant’s Conditional Use Permit. Divergence from the agreed conditions may then result in revocation of the CUP.

With respect to question 2 - “**Are there any specific pilot certifications or qualifications necessary for the steeper profile ascent and descent operations?**” – The requirements for helicopter pilot certifications and qualifications are set forth in FAA regulation 14 C.F.R. § 61.109(c). There do not appear to be any supplementary qualifications for unique approach and departure procedures.

Please feel free to let me know if I can provide any further information.

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<sup>1</sup> FAA Advisory Circular 150/5390-2 provides recommendations and guidelines regarding various technical and engineering considerations, such as recommended load bearing capacity of the pavement, landing area dimensions and layout, marking and stripping of the heliport’s paved surfaces, and guidelines for perimeter lighting and illumination of aeronautical fixtures. The second FAA condition limits the use of either site 1 or 2 to only “private use” helicopter flights and such operations must be conducted in accordance with visual flight rules, *i.e.*, the landing area cannot be utilized when instrument meteorological conditions prevail or when instrument flight rules are applicable. The applicant has indicated his agreement to both conditions.