



A Tradition of Stewardship
A Commitment to Service

Airport Land Use Commission
Mtg.
SEP 06 2017
Agenda Item # 8A

Airport Land Use Commission

1195 Third Street, Suite 210
Napa, CA 94559
www.countyofnapa.org

David Morrison
Executive Officer

AGENDA ITEM: #8.A

September 5, 2017

TO: Airport Land Use Commission

FROM: John McDowell
ALUC Staff

**Re: Palmaz Personal Use Heliport (File No. #P17-00037 ALUC)
Correction Memo to September 6, 2017 Staff Report**

In the Background Section of the September 6, 2017 Staff Report concerning the Palmaz Personal Use Heliport proposal the number of operations is incorrectly stated as 8 flights per month. The correct number of operations is four arrivals and four departures, or 8 flights per week as noted in the Agenda and Recommendation Section of the Staff Report, and as stated in the May 17, 2017 Staff Report.

Any questions or comments can be directed to me at (707) 299-1354 or by email at john.mcdowell@sbcglobal.net.

cc: Tom Capriola, ALUC Counsel

From: [Dhana Waken](#)
To: [McDowell, John](#); [Ayers, Dana](#); chrismcclu@gmail.com; [Robert Davis](#); [Carol Davis](#); [Carolyn Bacigalupi](#); [Jocelyne Monello](#); [Joe Newman](#); [Mary Beth Kitchens](#); [Mary FranRocca](#); [Phillip Marco Trombetta Box](#); [Jane Kimmell](#); [Janet L. Kirtlink](#); [Elias Moussa](#); [Marie Karam Moussa](#); [Ed Henderson](#); [Ed Berruezo](#); [Larry Lawrence](#); [Sherri Nolan-Neefe](#)
Subject: Fw: AS350 B3e Helicopter Crash at Frisco, Colorado, July 3, 2015 - YouTube
Date: Thursday, August 31, 2017 1:52:44 PM

Napa County Planning/the Mayor (forward):

Re: **Safety issues!!!**

Nearby schools/Fire prevention, (helicopter crash)

The Helipad Application: Palmaz Winery
Hearing Sept. 6th @ 9am

Attempt to build Helipad in our
Mt. George/Olive Hill Neighborhood.
Affects many and possibly State Loopholes
for County/City future studies/taxation!

**Please pass this on to others in our
Neighborhood vicinity Homeowners!!!**

Opposed Residents
Dhana and Gene Waken

On Thursday, August 31, 2017 11:12 AM, "wakengene@gmail.com" <wakengene@gmail.com> wrote:

<https://m.youtube.com/watch?v=cUX11OT85oM>

Sent from my iPhone

From: [Dhana Waken](#)
To: [McDowell, John](#); [Ayers, Dana](#); chrismcclu@gmail.com; sherri.neefe@gmail.com; [Robert Davis](#); [Jane Kimmell](#); [Mary Beth Kitchens](#); [Phillip Marco Trombetta Box](#); [Joe Newman](#); [Jocelyne Monello](#)
Subject: Fwd: AS350 B3e Helicopter Crash at Frisco, Colorado, July 3, 2015 - YouTube
Date: Thursday, August 31, 2017 12:58:37 PM

Sent from my iPhone

Begin forwarded message:

On the Subject: Palmaz Helipad
Opposed!!!!

From: wakengene@gmail.com
Date: August 31, 2017 at 11:12:45 AM PDT
To: Dhana <wakendhana@yahoo.com>
Subject: AS350 B3e Helicopter Crash at Frisco, Colorado, July 3, 2015 - YouTube

<https://m.youtube.com/watch?v=cUX1IOT85oM>

Sent from my iPhone

From: [Brian Russell](#)
To: [McDowell, John](#); [Capriola, Thomas](#); [Norm Brod](#); [Amy Walcker](#); [anne.l.cottrell@gmail.com](#); [Joelle Gallagher](#); [Jeri Gill](#); [Mike Basayne](#); [Terry, Scott](#)
Cc: [Ayers, Dana](#); [Anderson, Laura](#); [Morrison, David](#)
Subject: Palmaz - ALUC
Date: Thursday, August 31, 2017 1:50:02 PM
Attachments: [2017-08-31 Ltr to ALUC re- Review Stds FINAL.pdf](#)

Mr. McDowell,

Attached is correspondence that discusses the proper review standards for the Palmaz heliport consistency determination.

Please let me know if you have any questions.

Best regards,

Brian

Brian Russell

ABBOTT & KINDERMANN, INC.

A Professional Corporation

1485 Main Street, Suite 205 | St. Helena, CA 94574

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[website](#) | [blog](#) | [email](#)

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August 31, 2017

Via U.S. Mail and Electronic Mail

Mr. John McDowell
Principal Planner
Napa County Planning Division
1195 Third St., 2nd Fl.
Napa, CA 94559
John.McDowell@countyofnapa.org

Re: Napa County Airport Land Use Commission Consistency Determination

Dear Mr. McDowell:

As you are aware, this law firm represents Amalia Palmaz Living Trust (“Palmaz” or the “Applicant”) who submitted an Airport Land Use Consistency Determination application regarding County of Napa Use Permit (P14-00261-UP) to allow construction and operation of a personal use heliport on one of two project locations. One heliport location is on APN 033-110-080 and the other is on APN 033-110-079. The application was submitted to the Napa County Airport Land Use Commission (“ALUC”) to determine whether Palmaz’s private use heliport would be consistent with Napa County’s adopted Airport Land Use Compatibility Plan.

Despite the clear directives outlined in the May 17, 2017, Napa County ALUC staff report, statements from the public, as well as some ALUC members, evidenced a blurring or misunderstanding of the distinct roles of the ALUC and the Napa County Planning Commission. It is this misunderstanding that we hope to clear up prior to the next ALUC meeting on September 6, 2017.

I. ALUC Authority Over This Project Is Limited To A Determination Of Compliance With Applicable Regulations

Unlike the Napa County Planning Commission which acts on behalf of the County and has broad discretion to review and consider proposed land use projects under its general police powers, the ALUC’s authority to review the private use heliport is proscribed in the State

Aeronautics Law. (Pub. Util. Code, §§21001, et seq.) Specifically, ALUC review powers may only be exercised in accordance with the provisions of Article 3.5 of Chapter 4 of the State Aeronautics Law (Pub. Util. Code, §§21670-21679.5), which calls for the creation of a local ALUC and the preparation of an Airport Land Use Compatibility Plan (“ALUCP”). The preparation and implementation of an ALUCP is expressly intended “to prevent the creation of new noise and safety problems” resulting from existing and proposed land uses within areas around airports. (Pub. Util. Code, §21670(a)(1).)

To implement this charge, the Napa County ALUCP defines the ALUC’s consistency review authority over proposed private use heliports, where it expressly defines only three options available to the ALUC (Policy 1.4.6):

- a) Approve the proposal as being consistent with the specific review policies listed in Section 2.3 below;
- b) Approve the proposal and adopt a Compatibility Plan for that facility. Adoption of such a plan is required if the airport or heliport will be a public-use facility; and
- c) Disapprove the proposal on the basis that the ***noise and safety impacts*** it would have on surrounding land uses are ***not adequately mitigated***.

(Emphasis added.)

Thus, consistent with its mandate under state law, as well as the express requirements adopted in the ALUCP, the ALUC may only disapprove a consistency determination for a private use heliport on the basis of a noise and/or safety impact. Any other reason or finding not based upon noise or safety would be legally inadequate. (See *AFL v. Unemployment Ins. Appeals Bd.* (1996) 13 Cal.4th 1017, 1042.)

It is important to note that even though the ALUC’s consistency review authority is limited to noise and safety, this does not mean that broader general land use compatibility issues are ignored. Instead, it is the Planning Commission that fulfills that role on behalf of the County, not the ALUC. The ALUC furthers the State’s goal of “prevent[ing] the creation of new noise and safety problems” by making its consistency determination, and leaves the broader land use compatibility decisions to Napa County.

II. ALUC Decisions Must Be Supported By Substantial Evidence

When making its consistency determination findings, the ALUC’s decision is reviewed under the abuse of discretion standard. (Code of Civ. Proc., §1094.5.) An agency has abused its discretion when “the findings are not supported by substantial evidence in the light of the whole record.” (*Id.* §1094.5(c).) What constitutes substantial evidence in support of an agency decision is commonly understood in the context of the California Environmental Quality Act (“CEQA”). “Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert

opinion supported by facts. [Citations.] It does not include ‘[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous.... [Citations].’” (*North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647, 673.)

Testimony from the general public can represent substantial evidence in some circumstances. (See, e.g., *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 733-34 [testimony from residents about noise from existing facility operations and safety of roadway constituted substantial evidence].) However, “[i]nterpretation of technical or scientific information requires an expert evaluation. Testimony by members of the public on such issues does not qualify as substantial evidence. [Citations.]” (*Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 690-91.) “[I]n the absence of a specific factual foundation in the record, dire predictions by nonexperts regarding the consequences of a project do not constitute substantial evidence. [Citations.]” (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1417.)

Here, the proposed private use heliport has been evaluated in an Environmental Impact Report supported by scientific studies that analyze the potential noise and safety impacts that could result from the heliport’s operations. These scientific studies show that there will be no project impacts from noise or safety that cannot be mitigated to a less than significant level. Consequently, absent a factual foundation, speculative opinion of potential impacts that purport to contradict those studies will not constitute substantial evidence. While we do not presume that no evidence could ever be introduced to challenge the EIR’s conclusions or the evidentiary record before the ALUC, to date no testimony or other evidence has been submitted by opponents of the project that would support disapproval findings, let alone survive judicial scrutiny.

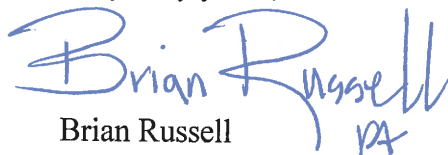
III. Conclusion

For the reasons outlined above, the ALUC’s statutory review authority is limited to the review of the private use heliport’s potential noise and safety impacts, and not broader land use compatibility concerns. To be clear, any decision by the ALUC that attempts to balance whether this project is “orderly development” or factors in whether a private use heliport is “good planning” when the Napa County Airport is approximately 7.5 miles from the Palmaz heliport is an exercise of quasi-judicial authority beyond ALUC’s jurisdiction and is extremely vulnerable to a legal challenge to overturn that decision. Additionally, the ALUC’s decision must be supported by substantial evidence, which does not include dire predictions from nonexperts or layman testimony challenging technical or scientific information.

Mr. John McDowell
August 31, 2017
Page 4 of 4

Therefore, we respectfully request that the ALUC is reminded of (1) its limited review authority under the Napa County Airport Land Use Compatibility Plan; and (2) the need to support its decision with substantial evidence. We appreciate your prompt attention to this matter.

Very truly yours,

A handwritten signature in blue ink that reads "Brian Russell" with a stylized flourish at the end.

Brian Russell

BR/pa

cc: Applicant

From: [Dhana Waken](#)
To: [McDowell, John](#); [Ayers, Dana](#); chrismclu@gmail.com; [Sherri Nolan-Neefe](#); [Jane Kimmell](#); [Mary Beth Kitchens](#); [Phillip Marco Trombetta Box](#); [Joe Newman](#); [Joe Newman](#); [Robert Davis](#)
Subject: Palmaz Helipad: Waken (Homeowners: 1145 Olive Hill Lane)
Date: Thursday, August 31, 2017 1:33:37 PM

To those Officials of Napa County Planning and to the Mayor(please forward):

WHY AND HOW IS IT, THAT THIS MEETING HELD @ 9AM IN THE MORNING, AS MANY HOMEOWNERS, WORK AND TAKE THEIR CHILDREN TO SCHOOL, TO LESSEN THE ATTENDANCE, FOR THE SAKE AND CONVENIENCE FOR THE PALMAZ!

This voting should stay, so that the majority of the thousand+ mailers that went out, "be represented to an evening meeting"!

Obvious to the intentions of the Napa County Planning and the Mayor's intent, to favor this to pass.

This is going to sound/smell like another "John McCain decision factor"... Your "conscience vote" will not rest, against the residents of Our Neighborhood!!!!

We are Homeowners in Napa Valley since 1979, WE have seen it all.

The Palmaz are pushing their wants (as they already have done) thru the Napa County for "FAVOR" dollars to the coffers of this County/City, from the Mayor and all it's officials in representation! Should this pass, it will surely effect **"NO Re-elections"** from many of us who live in the nearby vicinities, county and

city of this "selfish wanted Helipad"!
BY WORD OF MOUTH, it travels Fast!!!!

Many a hidden agenda and certainly
unbeknownst loopholes (CA's most used
term) that will bring more
taxation/emissions studies, etc....to not
only, on us, but possibly, the majority
of people of Napa County and City, moving
forward (a sleeping Giant) and any issues
resulting from your ridiculous decisions
based on MONEY, (not the well being of
our prestigious, quiet neighborhood)
to/in your selfish coffers!

This decision will certainly **OPEN the
FLOODGATES** to more Elites doing the same
through out this Valley, should this come
to pass!

Have you seen the damage to trees, cause
from fuel emissions on our highways/road
ways to trees up and down the
valley/county, just by vehicles.

Concerns of **ENVIROMENTAL ISSUES** of our
neighborhood:

- >**Affected...All Wildlife and Local
homeowners with Livestock**, in the planned
adjacent area of this unwanted helipad.
- >For near 40+ years, the patterns of **Wild
Geese bird flight have a established
pattern of 5 mile radius, within the
planned locale, numerous times of day!**
- > **Noise Pollution**
- >**Spread of Toxins by helicopter whirl** from
Vineyard spray- continued cause of **Health
Respiratory Disease, no studies have been
done.**
- >**Emissions Pollution**
- >**Safety of accident prevention** caused by

Established Wild Geese Bird Flight
>**Invasion of privacy in our backyards!**

**The Napa Airport is 15 minutes from THEIR
FRONT GATE!!!**

**WE LIVE HERE!!!! PROTECTING OUR
NEIGHBORHOOD!**

There is NO "INCONVIENCE" FOR THE MANY AND
MAJORITY of the people who live in Napa
Valley....to not use the local Napa
Airport, just 15 minutes to the airport,
from their and ours front door!

WE strongly oppose, as did many other
people Up valley on the Jason Palmeyer
Helipad application!
This isn't about anything, but about Napa
County sucking up for MONEY!

STRONGLY OPPOSED!
We will surely attend,

Dhana and Gene Waken
1145 Olive Hill Lane
Napa, Ca 94558