



Advocating for Responsible Planning to Insure Sustainability of the Finite Resources of
Napa County

A Better Plan. A Better Future.

Prepared for Napa Vision 2050 by:
George Caloyannidis, Architect PhD
2202 Diamond Mountain Road
Calistoga, CA 94515
calti@comcast.net

May 15, 2015

Kelli Cahill
Napa County Planning
1195 Third Street
Napa, CA 94559

RE: Palmaz Residence Private Heliport Application
4031 Hagen Road, Napa, CA 94558 (APN 033-110-080)
UP# P14-000261-UP

Dear Ms. Cahill,

A) RELEVANT HISTORIC PERSPECTIVE:

Our Diamond Mountain Homeowners' Association with the cooperation of the Napa Planning Department, Planning Commission and the Board of Supervisors was instrumental in establishing Ordinance No. P 04-0198-ORD approved on June 15, 2004 which prohibits commercial helicopter landings at wineries.

Affiliated Organizations: California Fisheries & Water Unlimited; Calistoga Citizens for Green Community; Defenders of the East Napa Watersheds; Dry Creek Road Alliance; Get a Grip on Growth; Living Rivers Council; Mt. Veeder Stewardship Council; Protect Rural Napa; Save Rural Angwin; Save Yountville Hill; Sierra Club; Soda Canyon/Loma Vista Foundation; Stop Syar Expansion; St. Helena Citizens; Watersheds Alliance of Atlas Peak

During the several hearings preceding the Ordinance at which we presented approximately 3,500 petition signatures of support, a variety of interest groups opposing the Ordinance testified based on the general argument that helicopter tours at wineries would be beneficial to their financial health and that the Ordinance would have the unintended consequence of a proliferation of flybys around the county.

Without knowing what the future held, some argued that despite the detrimental noise effect generated by the proliferation of helicopters over the Napa skies, at least some financial benefit might be derived. No such case can be made to justify this application. Eleven years later we now know that none of the arguments proved to be true - the wineries are doing financially better than ever and no proliferation of flyovers has occurred.

B) LEGAL FRAMEWORK OF THE CONDITIONAL USE PERMIT:

The 1997 Governor's Office of Planning and Research Conditional Use Permit Manual (1), defines the Use Permit as a tool to: "Enable a municipality to control certain uses which could have detrimental effects on the community" (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal. App.3d 1176).

It further lays out:

Case Law: "The proposed use is in the best interest of public convenience and necessity and will not be contrary to the public health, morals, or welfare (*Upton v. Gray* (1996) 269 Cal.App.2d 352).

General Welfare Standard: "The establishment, maintenance or conducting of which a use permit is sought will not, under the particular case, be detrimental to the public welfare or injurious to property or improvements in the neighborhood" (*Hawkins v. County of Marin* (1976) 54 Cal.App.3d 586).

Nuisance Standard: "Any use found to be objectionable with the character of the city and its environs due to noise, dust, odors or other undesirable characteristics may be prohibited" (*Snow v. City of Garden Grove* (1961) Cal.App.2d 496).

Zoning Consistency Standard: "That such use would be essential or desirable to the public convenience or welfare, and will not impair

the integrity and character of the zoned district or be detrimental to the public health, safety, morals or welfare" (*O'Hagen v. Board of Zoning Adjustment* (1971) 19 Cal.App.3d 151).

Conditions of Approval: "The condition must further a legitimate public purpose".

On the other hand, in protecting the rights of the property owner, the same *Planning Law* specifies that: " The property owner may not be required to carry a disproportionate load in furthering the public purpose" *California Land-Use and Planning Law*, 9th edition).

It is difficult to find that granting any private helicopter use permit in the unincorporated areas of the county which are quiet and rural in character is *in the interest of any public convenience, is not objectionable to its character and environs due to noise or other undesirable characteristics, is desirable to the public convenience etc.*

On the contrary, each and every impact of such a use permit is detrimental to the welfare of its communities in every respect without contributing to a single benefit.

On the other hand, it is impossible to make the case that denying such a use permit poses a disproportional load on the property owner in furthering a public purpose, as there is none.

In essence, this use permit is asking the community and the public to carry an undue burden for the sole benefit and pleasure of a single person and his family, directly contrary to California Conditional Use Permit case law.

Should the Supervisors elect to ignore the above case law record, the following are important additional issues for consideration:

C) PALMAZ APPLICATION - INTENT / CREDIBILITY:

The application documents refer to the applicant alternatively as "Palmaz Residence" or "Palmaz Vineyards". In one instance the word "Vineyards" has been scratched out and replaced with "Residence". This ambivalence coupled with the fact that the proposed helipad, while technically on the residence lot is equidistant to the Palmaz Winery for which the helicopter use is prohibited, raises serious concerns as to the stated intent of the use.

Added to this is the fact that a variety of Palmaz entities own several hundred acres surrounding the proposed helipad (of the 16 neighbors within the 300 foot notification radius, 6 are Palmaz entities) making adherence monitoring to the provisions of the use permit by the County impossible.

Adherence therefore is solely based on the good faith of the applicant.

Judging from its past history, the credibility record of the applicant is dismal. In 2011 he was fined \$ 1.9 million by the San Francisco Bay Regional Water Quality Board for violating environmental laws by illegally filling creeks and wetlands during the development of its vineyards. After burdening the public with a protracted court battle, Palmaz agreed to reduce the fine in exchange for restoring the wetlands.

Is this the kind of applicant who the public, and especially its neighbors can trust to use the helicopter solely for his family and guests and not for winery visitors and operations? Or one we can trust to adhere to the stated flight schedules and patterns?

D) COUNTY'S ABILITY TO ENFORCE:

The County's record in monitoring illegal helicopter landings and use permit compliance is equally dismal.

During the past few years and as recently as 2013, Diamond Mountain homeowners have filed complaints with the County - including helicopter photographs, colors, ID numbers, time of landing and departure - regarding prohibited landings at the Constant winery without the County ever investigating them, let alone imposing sanctions of any kind.

This, coupled with the fact that almost half the county winery use permits in 2013 were found to be in violation, exposed the County's unwillingness to impose sanctions of any kind to even known violators has become cause of widespread disillusionment with the County's ability to safeguard the public interest .

Granting such a use permit would compromise the integrity of the process and further erode the public trust.

E) THE AIRBUSS EC 130 B4 / THE MEAD & HUNT NOISE REPORT:

The applicant's Noise Report touts the quiet qualities of the helicopter intended for use, an Airbuss EC 130 B4. This helicopter is indeed quieter than most of its kind. It is large, accommodating 7 people with ample cargo space and has a wide, 35 foot long body. It was specifically designed for and is being used by tour operators around this country (Hawaii, Aspen, Long Island, Grand Canyon, to name a few) and the world; hardly a typical personal use machine.

The EC 130 B4 has a good safety record, though in 2012 cracks were discovered in its Tail Boom **(2) (3)**.

The applicant's Mead & Hunt Noise evaluation has not taken any direct test measurements resulting from an actual approach, landing, takeoff and flights of the EC 130 B4 as this specific location. Figure 3 (CNL Noise Contours) is a generic one, superimposed on to the specific location. As a result, it does not reflect and fails to account for the specific topography of the site. The immediate proximity of Mt. George, a rocky, lacking substantial tree growth mountain, is likely to generate a substantial amplifying ricochet sound effect over the wider neighborhood community exceeding the generic dB standards.

The Mead & Hunt Report has also failed to provide specific background noise measurements in this quiet neighborhood, the only way to more accurately assess the impact severity of the introduction of helicopter noise.

While approach and departure paths are specified, FAA regulations leave it up to the pilot to adjust such paths according to his judgment depending on weather and wind patterns. There is no way to insure any specific neighbors that no flight patterns will directly impact them overhead.

In spite of the benign presentation of the EC 130 B4 noise impact, the factory recommended flight path specifications state: "Select a path as far as possible from sensitive areas or fly along the noisiest land route (highway, railroads...)" **(4)**. The Hagen Road community is a sensitive area indeed and the flight path through it before it reaches the closest highway (Silverado Trail) is two miles away.

F) HELICOPTER NOISE PERCEPTION FINDINGS:

The Mead & Hunt Report states (pg. 2 / Design Helicopter) that in spite of the EC 130 B4 producing lower than International Civil Aviation Organization (ICAO) noise levels, according to the manufacturer, it still delivers 86.8 EPNdB (Effective Perception Noise) on takeoff and 84.3 EPNdB flyover noise levels.

According to the California Land Use Planning Handbook **(5)**, 37% of average communities find such noise levels to be "very severe" , similar to a "3rd floor apartment next to freeway" and that "the general community attitude is likely to be the most important of all adverse aspects of the community environment" (4-8).

The Schultz curve (7-14) indicates that the percent of people being highly annoyed accelerates smoothly between 55 dB and 70 dB. The FAA selected the 65 dB as the dividing point between normally *compatible* and normally *incompatible* residential land use (7-12).

The Handbook (6-8) acknowledges that "helicopter noise has a character all its own" and attributes it to its unique *blade slap* sound.

More extensive research, *2008, 9th International Congress on Noise as a Public Health Problem, The Improvement of Helicopter Noise Management in the UK* **(6)** identifies the uniquely annoying character and effect of helicopter noise but also the lack of sufficient research. The study's Summary concludes by stating that "virtual noise" such as the one triggered by the common association with emergency services is just as important as acoustic noise (measured in dB) and is unlikely to significantly improve public acceptance of helicopter noise. Social surveys indicate that helicopters are 10 to 15 dB more annoying than fixed wing aircraft.

There are several studies on the subject. Of note is Aviation Week's, 2015 Managing Helicopter Noise **(7)** which corroborates the above findings **(6)** but also states (pg.4) that, according "to the FAA's study of nonmilitary helicopter noise in cities, helicopters used in public service operations such as law enforcement, medical transport and firefighting, are regarded more benignly than those carrying sightseers, or executives". The Palmaz intended use belongs to the latter category.

Research is in agreement that comparing dB levels of helicopter blade slap noise to similar dB levels of other noise generating activities such as "Normal Conversation" or "Noisy Restaurant" is not an accurate way to compare annoyance levels between the two.

G) BUYER AWARENESS DISCLOSURES:

Due to the obtrusive perception of fixed-wing aircraft and especially helicopter blade slap, the California Land Use Planning Handbook (5) recommends Buyer Awareness Disclosures wherever there is a nearby airport/helipad with likely disturbing noise effects either by Recorded deed Notices or Real Estate Disclosure Statements (4.3.1). Similarly, the Napa County General Plan (Action CC-451), states: "The County shall use navigation easements, disclosure statements and other appropriate measures to ensure that residents and businesses within any airport influence area are informed of the presence of the airport and its potential for creating current and future noise".

H) INSUFFICIENT NOTIFICATION RADIUS:

Given the wide-reaching impact of helicopter flights, the County's required 300 foot notification radius is grossly insufficient. During the flights that took place at the Constant winery, we received calls from neighbors as far as one mile away warning of an impending helicopter approach.

In the Palmaz case, since the flight path through a sensitive area extends to two miles before it reaches a manufacturer recommended highway, the notification radius ought to be one mile at a minimum.

I) CUMULATIVE IMPACTS:

In assessing this application, the County must evaluate the approximate number of properties which potentially could accommodate private use heliports. They generally are one acre minimum with an area safe enough to perform a landing satisfying FAA safety standards.

Judging from data presented by Planning in relation to all potential winery sites in the county, one can estimate with some accuracy that the number of residential sites which could accommodate a helipad to be in the order of 10,000. While the ownership of a helicopter is expensive (the proposed EC 130 B4 proposed by Palmaz retails in excess of \$ 2 million) there are less expensive models on the market as well ones for rent. In addition, there are also several thousand

wealthy enough Napa county residents who can afford one of the above qualifying alternatives.

Even more significantly, since the ownership of a helicopter is not a requirement - just the use of one is - landings by helicopters owned by operators, similar to a taxi service would be a relatively inexpensive personal use accommodation.

This is a calculation with transformative environmental implications for the entire county which this use permit needs to take into account.

J) HELICOPTER FLIGHT PROBLEMS IN OTHER COMMUNITIES:

Helicopter noise around the country as well as the UK and New Zealand is triggering massive community protests, ones not experienced regarding fixed wing aircraft. Torrance CA, Long Island's North Fork, Chicago, Los Angeles, London are setting up complaint lines for citizens to express their anger.

In the U.S., Sen. Chuck Schumer introduced restrictive legislation over Long Island (traffic in the sky requires such legislation) and in California, Sen. Diane Feinstein teamed with Rep. Adam Schiff to enact an amendment mandating the industry find solutions to the helicopter noise problem "or else".

While the county has no jurisdiction in the sky, it has jurisdiction over land use and landings. I am sure, Napa County is not willing to reach the point where it needs to set up complaint sites and address hundreds of complaints daily.

K) CONCLUDING REMARKS:

It seems that the exclusion of private use helicopters in Ordinance P04-0198 was insufficiently vetted against California Conditional Use Permit case law as shown under **(B)**.

Given the rural, quiet agricultural character of the unincorporated areas of the county, it seems impossible that any private use helicopter application can show a public benefit of any kind or that it is not detrimental to its respective neighborhood character and environment.

Such use permits will always have to be denied if these standards are taken seriously into account as they should.

It is therefore my recommendation for the BOS to revisit this Ordinance and either remove private helicopter landings from the exclusion list or outright permit them. If the ease by which approximately 3,500 petition signatures against helicopter landings at wineries were collected in 2004 is any indication, it is highly unlikely that the county residents' mood on the much less justified private use helicopter issue has changed.

Adjusting the Ordinance in either direction, will relieve applicants from incurring unnecessary expenses and save valuable Staff, Planning Commission and Board of Supervisors time in evaluating them.

In addition to the fundamental use permit requirements in denying private helicopter landings in general, the specific ones surrounding the Palmaz application, make a compelling case for its denial.

REFERENCES:

- (1) Governor's Office of Planning and Research Conditional Use Permit 1997
- (2) Inspection of Tail Boom (Cracks) EC 130 B4
- (3) Airworthiness Directives EC 130 B4
- (4) Flight Path Selection Specifications EC 130 B4
- (5) California Airport Land Use Planning Manual
- (6) The Improvement of Helicopter Noise Management in the U.K.
- (7) Aviation Week, Managing Helicopter Noise