



PLANNING & DEVELOPMENT APPEAL FORM

SITE ADDRESS: 2800 Via Real (cross street Lambert Rd and Via Real Lane), Carpinteria, CA 93013

ASSESSOR PARCEL NUMBER: #005-210-056

Are there previous permits/applications? no yes numbers: 19CUP-00000-00004,
(include permit# & lot # if tract)

Is this appeal (potentially) related to cannabis activities? no yes

Are there previous environmental (CEQA) documents? no yes numbers: 19NGD-00000-00004

1. Appellant: Patrick Nesbitt Phone: 805-695-0141 FAX: _____

Mailing Address: 205 Lambert Road, Carpinteria, CA 93013 E-mail: PNesbitt2@wcghotels.com
Street City State Zip

2. Owner: Patrick Nesbitt Phone: 805-695-0141 FAX: _____

Mailing Address: 205 Lambert Road, Carpinteria, CA 93013 E-mail: PNesbitt2@wcghotels.com
Street City State Zip

3. Agent: _____ Phone: _____ FAX: _____

Mailing Address: _____ E-mail: _____
Street City State Zip

4. Attorney: Lance S. Strumpf Phone: 818-402-1775 FAX: _____

Mailing Address: 5136 Woodley Ave., Encino, CA 91436 E-mail: lance206@mac.com
Street City State Zip

2019 NOV 15 AM 11:52
COUNTY OF SANTA BARBARA
BOARD OF SUPERVISORS

COUNTY USE ONLY

Case Num **19APL-00000-00029**
Superviso
Applicabl
Project Pl
Zoning De
APPLICANT APPEAL OF CARP VALLEY FAR
2800 VIA REAL LN 11/15/19
CARPINTERIA 005-210-056

Companion Case Number: _____
Submittal Date: _____
Receipt Number: _____
Accepted for Processing _____
Comp. Plan Designation _____

COUNTY OF SANTA BARBARA APPEAL TO THE:

BOARD OF SUPERVISORS

PLANNING COMMISSION: COUNTY MONTECITO

RE: Project Title Hellstop - Carpinteria Valley Farms

Case No. H-7-2019

Date of Action 11-7-19

I hereby appeal the approval approval w/conditions denial of the:

Board of Architectural Review – Which Board? _____

Coastal Development Permit decision

Land Use Permit decision

Planning Commission decision – Which Commission? Santa Barbara County

Planning & Development Director decision

Zoning Administrator decision

Is the appellant the applicant or an aggrieved party?

Applicant

Aggrieved party – if you are not the applicant, provide an explanation of how you are and “aggrieved party” as defined on page two of this appeal form:

Reason of grounds for the appeal – Write the reason for the appeal below or submit 8 copies of your appeal letter that addresses the appeal requirements listed on page two of this appeal form:

- A clear, complete and concise statement of the reasons why the decision or determination is inconsistent with the provisions and purposes of the County's Zoning Ordinances or other applicable law; and
- Grounds shall be specifically stated if it is claimed that there was error or abuse of discretion, or lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

see attachment by Lance S. Strumpf, Attorney at Law on behalf of Patrick Nesbitt

Specific conditions imposed which I wish to appeal are (if applicable):

- a.

- b.

- c.

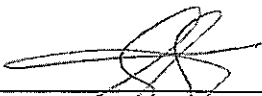
- d.

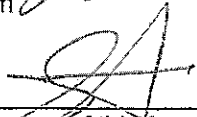
Please include any other information you feel is relevant to this application.

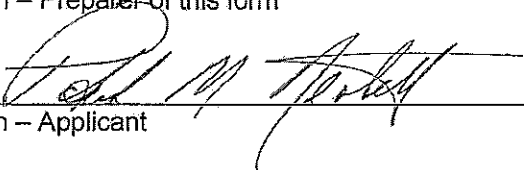
CERTIFICATION OF ACCURACY AND COMPLETENESS Signatures must be completed for each line. If one or more of the parties are the same, please re-sign the applicable line.

Applicant's signature authorizes County staff to enter the property described above for the purposes of inspection.

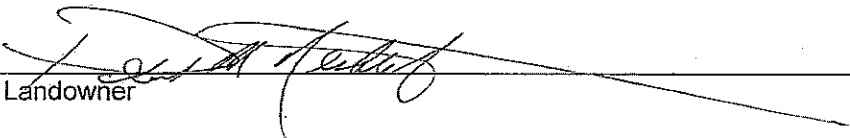
I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I acknowledge and agree that the County of Santa Barbara is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the County may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits.

Lance S. Strumpf  11-15-19
Print name and sign – Firm Date

Lance S. Strumpf  11-15-19
Print name and sign – Preparer of this form Date

Patrick Nesbitt  11/15/19
Print name and sign – Applicant Date

Print name and sign – Agent Date

Patrick Nesbitt  11-15-19
Print name and sign – Landowner Date

Lance S. Strumpf
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FILED WITH THE PLANNING AND
DEVELOPMENT DEPARTMENT OF
THE COUNTY OF SANTA BARBARA
SOUTH COUNTY OFFICE
123 E. ANAPAMU STREET
SANTA BARBARA, CA 93101

19APL-00000-00029

APPLICANT APPEAL OF CARP VALLEY FAR
2800 VIA REAL LN 11/15/19

CARPINTERIA 005-210-056

Attorneys for Appellant Carpinteria Valley Farms, Ltd., and its
Principal Owner, Patrick Nesbitt
Mailing Address: 205 Lambert Road, Carpinteria, CA 93013

BOARD OF SUPERVISORS

FOR THE COUNTY OF SANTA BARBARA, CALIFORNIA

CARPINTERIA VALLEY FARMS, LTD., by
and through its Principal, PATRICK NESBITT,

APPELLANT,

v.

PLANNING COMMISSION OF THE COUNTY
OF SANTA BARBARA,

RESPONDENT.

**NOTICE OF APPEAL OF THE
COUNTY OF SANTA BARBARA
PLANNING COMMISSION'S
DENIAL OF A CONDITIONAL
USE PERMIT 19CUP-00000-
00004**

DATE OF DENIAL: 11/08/2019

NOTICE OF APPEAL

COMES NOW, Appellant CARPINTERIA VALLEY FARMS, LTD., by and through its Principal, PATRICK NESBITT and their attorneys of record and pursuant to the provisions of the Code of the County of Santa Barbara §§ 21-71.4, 21-71.4.4 A2(b), et. al., "Appeals to the Board of Supervisors," files their Notice of Appeal of the denial of a Conditional Use Permit Application 19CUP-00000-00004. In accordance with The Code of the County of Santa Barbara §21-71.4.4 C, entitled Scope of Appeal Hearings, "The hearings on the appeal shall be *de novo*."

The permit application was denied on or about November 8, 2019 when the County of Santa Barbara Planning Commission voted in favor of their motion to deny Appellant's Conditional Use Permit "TO ALLOW FOR A HELISTOP ON APPELLANT'S PROPERTY TO BE USED FOR APPELLANT'S PERSONAL USE AND FOR EMERGENCY SERVICES."

Appellant respectfully requests that the BOARD OF SUPERVISORS, in accordance with §21-71.3.2, set this matter for public hearing and considering the grounds for the appeal and after public hearing, reverse the decision of the Planning Commission in accordance with §21-71.4.4 D, "Action on Appeal," and grant Appellant the Conditional Use Permit.

GROUND FOR APPEAL

The grounds for appeal are:

1. Appellant's Conditional Use Permit is *consistent* with the provisions and purposes of the County's Zoning Ordinances and other applicable law as set forth in the original Staff Report and Findings of Approval with its full analysis of the Project and all findings in favor of Appellant supported by Negative Declaration 19NGD-00000-00004;
2. There was an error and abuse of discretion by the Planning Commission – the Planning Commission, not once but twice, demanded that Staff invent and devise reasons to not make findings in favor of Appellant's Conditional Use Permit, then denied Appellant the opportunity to respond to the expanded reasons for denial devised by Staff at the behest of the Planning Commission;
3. The decision is not supported by the evidence presented for consideration and is conclusory at best – the Planning Commission does not explain how the Project does not conform to the policies of the Comprehensive Plan including the Coastal Use Plan, does not explain how a helicopter flying over no persons property for landing and takeoff could possibly affect any resident, has no proof that a helicopter actually negatively affects a recorded butterfly preserve; and has no proof that a limited number of helicopter operations will startle horses.
4. There was a lack of a fair and impartial hearing – 1) influenced by Chairman Parke's personal horseback riding experiences in remote areas having no connection with the land use that is the subject of this Project and 2) Appellant was denied the opportunity of a fair hearing on the second round of contrived amendments prepared in response to the "cry of the public," but not upon any new evidence or new analysis.

Procedural History

Appellant's Application was filed February 7, 2019 for a Conditional Use Permit and Coastal Development Permit for a helistop for personal use and emergency services within Appellant's 19.78-acre property zoned AG-I-20 in compliance with Section 35-172 of Article II, the Coastal Zoning Ordinance and to adopt the Negative Declaration (19NGD-00000-00004) finding full compliance with CEQA.

On June 18, 2019, Staff issued its report recommending that the Planning Commission conditionally approve Case Nos. 19CUP-00000-00004 and 19CDP-00000-00055 marked "Officially Accepted,

County of Santa Barbara (June 26, 2019) County Planning Commission Attachments A-L", based upon the project's consistency with the Comprehensive Plan, including the Coastal Land Use Plan and the Summerland Community Plan, and based on the ability to make the required findings; and that the Planning Commission's motion should include the following:

1. Make the required findings for approval of the project as specified in Attachment A of this staff report, including CEQA findings;
2. Adopt the Negative Declaration (19NGD-00000-00004) included as Attachment C of this staff report; and
3. Approve the project (Case Nos. 19CUP-00000-00004 and 19CDP-00000-00055) subject to the Conditions of Approval included as Attachments B.1 and B.2.

On September 25, 2019 a public hearing was had. At the hearing, Staff made its presentation to the Planning Commission. The presentation included updates to the original Staff Report and fully supported Staff's original recommendations to grant the permit and again recommended approval because all findings could be made in Appellant's favor. The updates to the September 25, 2019 presentation included having only one landing location on the property (in the approximate middle of the polo field) and a flight path that keeps the helicopter offshore with approach and departure paths at least 500' above ground level until over the subject property and a curved low noise fly neighborly flight path that crosses over no persons residence as the aircraft flies over the beach, Highway 101, Via Real and then descends on Appellant's 20 acre property.

Appellant presented his case to the Planning Commission through his own statement, as well as statements from an aviation law and safety expert, a noise and heliport design expert. Local law enforcement favored the proposal to have a ready site at their disposal for emergencies. Appellant was supported by neighbors who are equestrian experts with actual experience riding on the trails that surround Appellant's property including trails that Appellant has donated for public use. Summerland Cottage residents (Patrick Nesbitt's closest residential neighbors) and members of their HOA support the Project many of whom have personal experiences with aircraft and horses with no negative impacts and participated in a demonstration flight testifying that they could not hear the helicopter over the sound of the freeway.

After hearing from the general public, and their land use expert attorneys, the Planning Commission went into public deliberation. Much of the discussion was about the effect that a helicopter might have upon horses riding upon the trails near Appellant's property. Not one person presented any evidence of a horse ever being startled by a helicopter taking off or landing on Appellant's property even though Appellant admitted that he had allowed helicopters on his property for at least 20 years not knowing that he needed a permit. Appellant presented correspondence from the Los Padres Outfitters (which operates horseback riding for a range of rider abilities novice to expert on the very trails in question) stating that helicopters have **"absolutely no negative effect on our horses' behavior,"** and Los Padres Outfitters' observation was corroborated by a letter from Charles Picerni a 50 year member of the Montecito Trails Foundation, stating, **"flying helicopters on and off his [Nesbitt's] property . . .**

has never interfered with our horse riding experiences along either Lambert Rd and/or the riding trail that is adjacent and just south of Mr. Nesbitt's property."

All speakers agreed that helicopter traffic in general along the coast could not be controlled by the County and that air traffic control is in the exclusive jurisdiction of the Federal Aviation Administration. No one could distinguish Appellant's aircraft from any other helicopter in Federal airspace so the issue was re-focused upon the inbound and outbound turns needed for landing and take-off. Yet despite the consensus that low flying helicopters have been flying up and down the coast for years over the very trails that the County seeks to protect, not one person could recount his or her horse ever being "startled."

With respect to horses, Chairman Parke has decades of experience on horseback. At the first hearing, Mr. Park decided on the record to ignore well-established legal principles requiring neutral and unbiased decision making to interject his own personal experiences. See video September 25, 2019 at 3:59, 4:01 where Parke's personal experiences are used to influence the Commission talking about his horseback experience on Hurricane Deck (with 3000' drop offs) during a first responder helicopter rescue of an injured rider. http://sbccounty.granicus.com/MediaPlayer.php?view_id=11&clip_id=3613.

Near the end of the hearing, the Planning Commission, basically ignoring the advice of its staff and the well-developed evidence to support the findings, passed a motion to require the Staff to prepare its report to devise reasons to deny the application on the basis of the conditionally permitted use being incompatible with the surrounding area and a second hearing was set for November 7, 2019. The Commission told the Staff to devise findings under §§2.2.6 and 2.3.5 even though the Staff had already made specific methodical findings addressing the equestrian trails as follows:

"2.2.6 The development will comply with the public access and recreation policies of this Article and the Comprehensive Plan including the Coastal Land Use Plan. The project proposal is for a helistop with two landing zone areas that will be entirely within the parcel boundaries of the subject property. The helistop will not significantly impact the existing walking and equestrian trails adjacent to the property as the landing zones are at least 100ft inward of the closest property line. As discussed in Section 6.0 of the Planning Commission staff report dated June 18, 2019 and incorporated herein by reference, the landing of a helicopter on the property would be below 65 dB(A) at all of the property lines. Therefore, noise generated by the project would not significantly impact the use of the public trails that are adjacent to the property. Therefore, this finding can be made."

"That the project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the **neighborhood** and will not be incompatible with the **surrounding area**. A helistop is a conditionally permitted use in the AG-I-20 zone per Article II Section 35-172.5. The proposed helistop use will not generate new traffic. No new roadway improvements will be needed or required. Public roads serving the subject property are adequate and will not be affected by the proposed project since residential density will remain

unchanged. Access will continue to be provided off of Lambert Road, Via Real, and Montecito Ranch Lane via existing driveways. As discussed in the Negative Declaration, 19NGD-00000-00004, herein incorporated by reference, anticipated emergencies in the Santa Barbara area would most likely be related to fire response. During a fire, most people evacuate via land using their own vehicles and a small number are transported via helicopter. Therefore, traffic impacts associated with the use of the helistop by emergency responders during a fire would be considered negligible. As discussed in Section 6.1 of the staff report, dated June 18, 2019 and incorporated herein by reference, due to the substantial distance between the proposed landing zones and existing trails (250ft from the first landing zone and 100ft from the second landing zone), the minimal proposed usage of the helistop, and the existing noise and disturbance of Highway 101, there will be no significant impacts to the existing public trails that are located adjacent to the property. The proposed helistop use will not increase demand for fire or police protection services. On the contrary, the new helistop will benefit emergency responders by providing a new helicopter landing zone to be used when responding to emergencies in the Santa Barbara County area. Therefore, this finding can be made.”

Notwithstanding the complete, analytical and fact-based recommendations in the original report, Staff prepared a new three-page findings for denial to be presented at the November 7, 2019 hearing. The only reason given in support of the new findings for denial in each of the sections, 2.1.1-2.2.3 was **“Noise events associated with helicopter traffic are percussive in nature and stand out against the existing ambient noise levels at the site. These loud and percussive noise events may startle horses being ridden on the equestrian trail and pose a safety threat to users of the trail.”**

On November 7, 2019, the second public hearing took place. Pat Nesbitt presented a support letter from Katie Graham and read the letter into the record. A true and correct copy of the Graham letter dated November 6, 2019 is attached as an Exhibit to this appeal. Graham, current Chairman of the *Summerland Citizens Association Beach Watch Committee* and a local expert on horses with personal experience upon the trails and beaches, states that horses are not concerned with aircraft flying above them and that the concern of startled horses is totally without merit. The Planning Commission then decided to vote to ask the Staff to expand its reasons for denial, to prepare that report immediately and to present the report that very day to the commission for further proceedings and Staff agreed they could amend their reasons in short order and they did.

See http://sbcounty.granicus.com/MediaPlayer.php?view_id=11&clip_id=3639

As a result of the motion to once again ask staff to come up with additional reasons for denial, Staff prepared a new Attachment “A,” adding that the helistop would have an adverse effect on a recorded butterfly habit and “nearby” residences. Prior to the lunch break and with no opportunity for Appellant to respond and based upon the conclusions in the new Attachment “A,” the Commission, succumbed to the “cry of the public” voted to deny the Project. Mr. Nesbitt received an email dated November 7, 2019 that he had until November 18, 2019 to file his appeal. Appellant had no opportunity to address the amended Attachment “A” that forms the basis for the denial. The new Attachment “A” contains no analysis but only conclusory statements. The broader findings for denial were ordered “as the right

thing to do," even though not supported by any analysis of any impact on the environment or nearby residences.

Argument in Support of the Appeal

1. THE DECISION OF THE PLANNING COMMISSION IS INCONSISTENT WITH THE PROVISIONS AND PURPOSES OF THE COUNTY'S ZONING ORDINANCES AND OTHER APPLICABLE LAW;

The original Staff Report dated June 26, 2019 analyses all of the environmental (CEQA) factors as well as all administrative requirements needed to grant a CUP and concludes that all required findings can and should be made. The report also concludes that the findings follow Article II, of the Coastal Zoning Ordinance. The two subsequent Staff documents mandated by the Planning Commission to support their pre-determined denial of the CUP are conclusory at best and contain no factual analysis to negate the findings of the original staff report. As set forth below, there is no substantial evidence to refute the well-developed original staff report which concludes that granting Appellant's CUP is consistent with the provisions and purposes of the County's zoning ordinances and other applicable laws.

The back-tracking engaged in by the Planning Commission is a political abuse of discretion unsupported by reason and analysis but rather in response to an unjustified public outcry of opening a Pandora's Box of helistop permits that the County would have to "automatically grant." Due to the unique location of Appellant's property, its existing ambient noise levels generated by the 101 freeway and the ability to approach and depart the property from the sea without flying over anyone's residence, Appellant has demonstrated why the initial Staff report is correct in its rationale that all necessary findings could be made and that the CUP should be granted. Appellant's application must be judged upon its own merits and cannot be denied based upon unfounded fears of what "might" happen in the future.

2. THERE WAS AN ERROR AND ABUSE OF DISCRETION BY THE PLANNING COMMISSION BECAUSE THERE IS NO SUBSTANTIAL EVIDENCE TO SUPPORT THE DENIAL;

The procedural history contains irregularities that indicate that the Planning Commission pre-determined denial of this application, did not consider the evidence, but instead, ordered the Staff to amend its report, not once but twice, to deny the CUP based upon conclusory statements, personal but unrelated experiences of certain commissioners and the cry of the public. The denial of this CUP does not pass the substantial evidence test. Under the substantial evidence test, substantial evidence must support the findings of the local agency in the light of the whole record. The conclusory findings of freeway adjacent percussive helicopter noise, startled horses, butterfly habitat destruction and harm to nearby neighbors are not even sufficient to apprise Appellant whether and on what basis he should seek review because there are no facts supporting the

conclusions and no rationale or basis for the decision. The noise studies performed and presented by Appellant all show exposure within acceptable limits; the evidence presented by Appellant shows that butterflies have not been present on his land for decades, horse experts say that the thought of a helicopter startling a horse riding next to the louder freeway is a fantasy and not reality and the flight path does not go over anyone's residence or even close. The findings adopted by the Commission fly in the face of the real evidence, do not expose the mode of analysis used by the decisionmakers and this constitutes an error of law.

3. THE DECISION IS NOT SUPPORTED BY THE EVIDENCE PRESENTED FOR CONSIDERATION. THERE IS NO PRESUMPTION THAT A CITY'S RULINGS REST UPON THE NECESSARY FINDINGS AND THAT SUCH FINDINGS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE. RATHER, CITIES MUST EXPRESSLY STATE THEIR FINDINGS AND MUST SET FORTH THE RELEVANT FACTS SUPPORTING THEM.

The California Supreme Court has laid down distinct, definitive principles of law detailing the need for adequate findings when a city approves or denies a project while acting in a quasi-judicial, administrative role. In *Topanga Ass'n for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506 (1974) the court interpreted Code of Civil Procedure section 1094.5 to require that a city's decision be supported by findings, and the findings **be supported by evidence**. The court defined findings, explained their purposes, and showed when they are required.

The Topanga court outlined five purposes for making findings, three relate to the decision-making process, two relate to judicial (court) functions:

- a. To provide a framework for making principled decisions, thereby enhancing the integrity of the administrative process
- b. To facilitate orderly analysis and reduce the likelihood the agency will leap randomly from evidence to conclusions
- c. To serve a public relations function by helping to persuade parties that administrative decision-making is careful, reasoned, and equitable.
- d. To enable parties to determine whether and on what basis they should ask for judicial review and remedies.
- e. To apprise the reviewing court of the basis of the agency's decisions.

There must be evidence in the record to support the findings. Evidence may consist of staff reports, written and oral testimony, the EIR, exhibits and the like. Boilerplate findings or findings that do not recite specific facts upon which the findings are based are not acceptable. Similarly, in *Honey Springs Homeowners Ass'n v. Board of Supervisors*, 157 Cal. App. 3d 1122, 1151 (1984) a finding

that is made “perfunctorily” and “without discussion or deliberation and thus does not show the ...analytical route from evidence to finding will be struck down”. In summary, there is no presumption that a city’s rulings rest upon the necessary findings and that such findings are supported by substantial evidence. Rather, cities must expressly state their findings and must set forth the relevant facts supporting them.

In examining the trumped upon reasons for denial devised by Staff on short notice on November 7, 2019 in the middle of a public hearing, it becomes evident that the Planning Commission, without any substantial evidence or reasoning, was grasping for straws.

The Summerland Community Plan Policy N-S-1 provides that residential uses shall be protected to minimize significant noise impacts. The evidence is that the noise generated by the R-44 helicopter is within acceptable community standards. The evidence actually shows that the goals of N-S-1 are met, not violated.

There is no evidence of any impact upon a recorded butterfly habit. All of the evidence concerning the effect on enjoyment of the horseback trails shows that in reality, the horses are not affected at all, they have adapted to the noise of the freeway and to the noise of all other aircraft that are legally transiting the shoreline or highway routings as directed by Air Traffic Control or in the best discretion of the pilots. Indeed, the CUP contains a pilot information sheet advising pilots to remain ¼ mile off shore and to maintain an altitude of at least 500 feet above ground level until they let down on Appellant’s property.

The closest neighbors in Summerland personally observed a demonstration of the landing and take-off and could not even hear the helicopter from their front and back balconies, any noise being drowned out by the ambient noise of the highway.

The Planning Commission has not complied with the law with any principled decision but has destroyed the integrity of the administrative process, using their staff as an unwilling bludgeon to devise reasons to deny this CUP instead of following logic and the evidence.

4. THERE WAS A LACK OF A FAIR AND IMPARTIAL HEARING. BIAS – EITHER ACTUAL OR AN “UNACCEPTABLE PROBABILITY” OF IT – ALONE IS ENOUGH ON THE PART OF A MUNICIPAL DECISION MAKER IS TO SHOW A VIOLATION OF THE DUE PROCESS RIGHT TO FAIR PROCEDURE. A BIASED DECISIONMAKER IS CONSTITUTIONALLY UNACCEPTABLE.

The Court’s language in the case of *Woody’s Group, Inc. v City of Newport Beach* (2015) 233 Cal.App.4th 1012, is instructive.

“Most of us think of city councils as legislative bodies. But city councils sometimes act in an adjudicatory capacity, that is, they sit in a role similar to judges. Judging applications for land-use permits is one of those times. (*Wiltshire v. Superior Court* (1985) 172 Cal.App.3d 296, 304.) And, as recognized in *BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205 – the main

case on which the city relies – when functioning in such an adjudicatory capacity, the city council must be “neutral and unbiased.” (Id. at p. 1234 [“The contention that a fair hearing requires a neutral and unbiased decision maker is a fundamental component of a fair adjudication”].)

As it turns out, there is already a body of case law bearing on whether an applicant for a land use permit is afforded procedural due process when a member of the adjudicatory body considering the permit is, or may be, biased against the applicant. (See *Nasha*, supra, 125 Cal.App.4th 470 [member of planning commission wrote article attacking project under consideration, member held biased and commission’s decision reversed]; *BreakZone*, supra, 81 Cal.App.4th 1205 [city council member exhibited no bias in asking for appeal of planning commission decision where the municipal code expressly provided for such action]; *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1173 [city council member should have recused himself because proposed project had “direct impact” on the “quality of his own residence”]; *Cohan*, supra, 30 Cal.App.4th 547 [city council, acting as a whole, appealed decision it didn’t like to itself despite absence of authorization to bring such an appeal; city council decision reversed]; accord, *Gai v. City of Selma* (1998) 68 Cal.App.4th 213 [member of personnel commission investigating officer’s discharge should have recused himself because he was actually biased against officer]; *Mennig v. City Council* (1978) 86 Cal.App.3d 341, 351 [members of city council who became personally “embroiled” in conflict with police chief should have recused themselves on question of discipline of police chief].)

The generally accepted linguistic formation of the rule against bias has been framed in terms of probabilities, not certainties. The law does not require the disappointed applicant to prove actual bias. Rather, there must not be ““an unacceptable probability of actual bias”” on the part of the municipal decision maker. (*Nasha*, supra, 125 Cal.App.4th at p. 483; *BreakZone*, supra, 81 Cal.App.4th 1205, 1236 [“To prevail on a claim of bias violating fair hearing requirements, *BreakZone* must establish ‘an unacceptable probability of actual bias on the part of those who have actual decision-making power over their claims.’ [Citation.]”].) Thus bias – either actual or an “unacceptable probability” of it – alone is enough on the part of a municipal decision maker is to show a violation of the due process right to fair procedure. (E.g., *Cohan*, supra, 30 Cal.App.4th at p. 559 [“A biased decisionmaker is constitutionally unacceptable.”].)

Excerpts from a Washington State Supreme Court case illustrate the importance of due process and the appearance of fairness. Although not a California case, it clearly illustrates the fairness and impartiality the courts will expect of Planning Commission deliberations. “Members of Planning Commissions with the role of conducting fair and impartial fact-finding hearings must, as far as practicable, be open-minded, objective, impartial, free of entangling influences and capable of hearing the weak voices as well as the strong.” *Buell v. City of Bellingham* (1972).”

The hearings on September 25, 2019 and November 7, 2019 ignored the evidence in the record and were influenced by personal observations of unrelated events having to do with the effect of helicopter noise on horses. Not one opponent, nor the Staff, presented any expert testimony that horses would be startled by Appellant’s helicopter operation. All of the evidence was precisely to

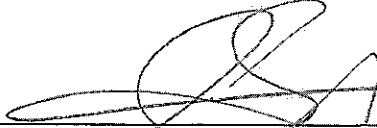
the contrary, that the fears of a helicopter startling a horse and endangering its mount are pure fantasy. Chairman John Parke, in his own words, violated his adjudicatory duty to remain impartial and unbiased, then went on the record to influence the Commission with his fantastic stories up on Hurricane Deck. The Hurricane Deck Marathon is a remote Santa Barbara County mountainous loop in the *Los Padres National Forest San Rafael Wilderness* that circles from Nira, up the Portrero Trail, across Hurricane Deck lengthwise, then meets up with Lost Valley Trail, loops back to the Manzana trail and emerges at Nira Campground. Hurricane Deck is a far cry from the easy and level trails that surround the Nesbitt property, run along and over the 101 freeway, where no one has even complained of their horse being affected by the normal sounds of urban and rural areas that must and do co-exist in Santa Barbara County. Chairman Parke was and is clearly affected by his personal experiences on horseback in the otherwise quiet and serene wilderness, a far cry from the constant buzz of the highway with its steady drone of unregulated traffic and ubiquitous loud and perceptible noises of motorcycles, large trucks, backfires and the like.

The helicopter with its vertical take-off and landing abilities, is simply another form of acceptable transportation that can and should be allowed to co-exist where all findings can be made for a CUP – they can; but instead of following the evidence, the Planning Commission’s vote was based upon public outcry, political pressure and personal preference.

For all of the above, this Appeal should be granted and the decision of the Planning Commission should be reversed; and Appellant’s CUP should be granted on the basis that all findings, as set forth in the Staff Report dated June 18, 2019 can be made.

Respectfully Submitted,

¹⁵
Dated: November 11, 2019



Lance S. Strumpf, Attorney at Law
Attorney for Appellant, Carpinteria Farms, Ltd. and
Patrick Nesbitt

Attached

Staff Report 6/18/2019

Attachment “A” Findings for Denial 11/07/2019

Attachment “A” Findings for Denial 10/29/2019

11/07/2019 email from Rey Harmon to Pat Nesbitt

Katie Graham letter 11/06/2019

11/12/19 Reasons for denial